



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Troopers Association/Trooper
Brian Doyle

Complainant

v.

State of NH Department of Safety, Division of
State Police

Respondent

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Case No. P-0754-21

AND

New Hampshire Troopers Association/Trooper
Christopher St. Cyr

Complainant

v.

State of NH Department of Safety, Division of
State Police

Respondent

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Case No. P-0754-22

Decision No. 2008-146

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

New Hampshire Troopers Association/Trooper Brian Doyle (the "Doyle complaint") and Christopher St. Cyr (the "St. Cyr complaint") filed separate unfair labor practice complaints on May 19, 2008 alleging that the State of NH Department of Safety, Division of State Police (the "state") committed an unfair labor practice in violation of RSA 273-A:5 (h). In both cases, the association claims that the state's critical comments provided in performance evaluations and in a Memo of Counsel provided to Trooper St. Cyr concerning the extent of their use of sick time violated the parties' collective bargaining agreement as the troopers use of sick leave is authorized by the collective bargaining agreement. Additionally, the association claims the state improperly criticized Trooper Doyle in his performance evaluation for his unavailability when

contacted for immediate call back duty at a time when Trooper Doyle was not being paid to be on standby status.

The complainants request that the PELRB: a) declare that the state committed an unfair labor practice when it criticized Trooper Doyle in his January 31, 2008 performance evaluation for being unavailable for immediate call back to duty during his off duty hours when the state was not paying Trooper Doyle to be on standby status; b) declare that the state committed an unfair labor practice when it criticized Troopers Doyle and St. Cyr in their performance evaluations and Trooper St. Cyr in a Memo of Counsel for using sick time in circumstances consistent with the requirements of Section 11.2 of the CBA; c) order that the state is not paying Trooper Doyle to be on standby status in any future promotion or reassignment decisions; d) order that the state cease in the future from criticizing in performance evaluations members of the bargaining unit for not being available for immediate call back to duty during off-duty hours when the state is not paying the employee to be on standby status; and e) order that the state cease in the future from criticizing in performance evaluations members of the bargaining unit for sick time in compliance with the requirements of Section 11.2 of the CBA; and f) grant such other relief as may be just.

The state filed its answer on June 3, 2008 and generally denies the charges. The state also asserts that the requirements for performance evaluations are dictated by the Division of Personnel rules, ~~not the parties' collective bargaining agreement, and that the board has no~~ jurisdiction over the contents of an employee's performance evaluation. The state requests that the PELRB: a) dismiss the charge of unfair labor practice; b) declare that the New Hampshire Department of Safety, Division of State Police did not commit an unfair labor practice; and c) order such other relief and further relief as it deems just.

The undersigned Hearing Officer conducted a pre-hearing conference on July 28, 2008 at the Public Employee Labor Relations Board in Concord.

PARTICIPATING REPRESENTATIVES

For the Complainants: James W. Donchess, Esq.

For the Respondent: Marta A. Modigliani, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the State's documented and critical remarks concerning complainants' use of sick leave and Trooper Doyle's availability for call back breached the parties' collective bargaining agreement in violation of RSA 273-A:5 (h)?

WITNESSES

For the Complainant:

1. Lou Copponi
2. Brian Doyle
3. Christopher St. Cyr

For the State:

1. Colonel Frederick Booth
2. Thomas Manning
3. Lt. John Scarinza
4. Sgt. Todd Landry
5. Lt. Scott Carr
6. Sgt. Charles J. Winters
7. Captain Robert L. Quinn

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. ~~It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.~~

EXHIBITS

For the Complainant:

1. CBA
2. Performance Evaluation dated 12/22/07
3. Performance Evaluation dated 2/5/08
4. Memo of Counsel dated 2/5/08

For the State:

1. CBA
2. Performance evaluation dated 12/22/2007
3. Performance evaluation dated 2/5/08
4. Memo of Counsel dated 2/5/08
5. Relevant Personnel Rules
6. Trooper Supplemental Job Description & Class Specification

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each

party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is 4 hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of the evidentiary hearing.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. Unless otherwise ordered, the parties shall meet, or otherwise confer, on or before October 1, 2008 and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. The parties shall document any such agreement by immediately filing a joint statement which includes a proposed schedule for the parties' fact stipulation filings and briefs, if any.
2. If the matter is to proceed to hearing, the parties shall meet, or otherwise confer, ~~on or before October 1, 2008 in order to compose a mutual statement of agreed facts.~~ The parties shall file their fact stipulations at least 10 days prior to the date of the hearing.
3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists at least 5 days prior to the scheduled hearing date. The parties shall meet, or otherwise arrange, to pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. These two cases are consolidated for hearing by agreement of the parties.
5. The motion to continue discussed at the pre-hearing conference has been filed and is granted. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on **November 5, 2008 at 9:30 a.m.** at the Public Employee Labor Relations Board in Concord.

So ordered.

July 29, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

James W. Donchess, Esq.
Marta Modigliani, Esq.