



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Troopers Association/Troopers
Lou Copponi et al

Complainants

v.

State of NH Department of Safety, Division of
State Police

Respondent

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Case No. P-0754-23

Decision No. 2008-147

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

New Hampshire Troopers Association/Troopers Lou Copponi, Greg Deluca, Greg Ferry, Robert Lima, Paul Massaro & Lance Myrdek (the "association") filed an unfair labor practice complaint 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 (a), (b), (d), (h), and (i). The association's claim involves language in the parties' collective bargaining agreement that provides that "[a]ny employee may live within a town within a patrol area to which she/he is assigned or within a reasonable distance from his/her assigned patrol area." According to the association, in January of 2008 Trooper Danielle Cole, through the association, obtained permission from the Commissioner of Safety to move 5 miles outside her Troop's patrol area. This decision reversed Colonel Booth's earlier action on Trooper Cole's request. The association contends that the state then retaliated by reassigning Troopers Copponi et al to different troops. The association also complains that the state improperly denied Trooper Kevin Leblanc's request to live in Epsom, which is within his Troop's patrol area, although not, according to the state, within Trooper Leblanc's patrol area. The association contends that the state's actions violate Section 21.7 of the parties' collective bargaining agreement and long established past practice.

The association request that the PELRB: a) declare that the state violated RSA 273-A:5 (a), (b), (d), (h), and (i) on account of the transfers of Troopers Copponi et al; b) order the reversal of the disputed troop transfers; and c) order such other and further relief as may be just.

The state filed its answer on June 3, 2008 and generally denies the charges. The state asserts that the transfers are within the scope of its rights under Article II of the parties' collective bargaining agreement and the transfers effectuated the intent of Section 21.7 of the collective bargaining agreement. The state also contends the transfers were justified in order save on the cost of fuel and vehicle maintenance. 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 improperly reassigned Troopers Copponi et al contrary to the parties' collective bargaining agreement and established past practice and in violation of RSA 273-A:5 (a), (b), (d), (h), and (i)?

WITNESSES

For the Complainant:

1. Lou Copponi
2. Greg Deluca
3. Paul Massaro
4. Greg Ferry
5. Robert Lima
6. Lance Myrdek
7. Jill Rockev
8. Danielle Cole

For the State:

1. Colonel Frederick Booth
2. Thomas Manning
3. Sara Willingham
4. Commissioner John Barthelmes

5. Captain Alan Welch
6. Earl Sweeney
7. Kevin O'Brien (Ret.)
8. Wesley Colby

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. Collective Bargaining Agreement
2. Memo of Transfer
3. Grievances filed by Danielle Cole

For the State:

1. Collective Bargaining Agreement
2. E-mail of transfer

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.

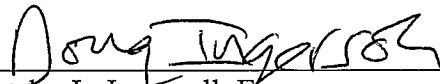
3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists at least 5 days prior to the scheduled hearing date. The parties shall meet, or otherwise arrange, to pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. At the pre-hearing the complainants' inclusion of a request for a declaratory ruling in its unfair labor practice charge was discussed. The complainants' inclusion of a request for declaratory relief in its unfair labor practice complaint is dismissed without prejudice. Should the complainants wish to proceed with a request for declaratory ruling they shall file a separate petition for declaratory ruling on or before September 1, 2008. The state shall file its answer within 15 days of the date any petition is filed. The parties shall address consolidation of any declaratory ruling petition with this unfair labor practice complaint in their pleadings.

~~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 **October 21, 2008 at 9:30 a.m.** at the Public Employee Labor Relations Board in Concord.~~

So ordered.

July 28, 2008.



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

Distribution:

James W. Donchess, Esq.

Marta Modigliani, Esq.