



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NH,
SEIU LOCAL 1984

v.

Case No. S-0428-6
Decision No. 2008-163

STATE OF NEW HAMPSHIRE

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: August 18, 2008 at the PELRB in Concord.

Appearances: Glenn R. Milner, Esq. for the State Employees Assoc.
Rosemary Wiant, Esq. and Michael K. Brown, Esq. for the State

Background:

The State Employees Association of New Hampshire, Local 1984 (the "SEA") filed an unfair labor practice complaint on June 30, 2008 alleging that the State of New Hampshire has breached the parties' 2007-2009 collective bargaining agreement ("CBA") and committed an unfair labor practice in violation of RSA 273-A:5, I (h) on account of the State's administration of a health reimbursement arrangement ("HRA") under Article 19.8.1 (1)(d) of the CBA, which provides:

Effective January 1, 2008, subscribers in either the Network or POS plans shall be eligible to participate annually in a health reimbursement arrangement established by the Employer, upon annual completion and proper submission of the health risk appraisal provided for under the respective plans. The arrangement shall provide funds for the payment of any out-of-pocket costs associated with health care services and products obtained under the health plan up to the amount of \$200*.

The SEA complains that HRA funds should be available to pay costs such as employee monthly premium contributions (currently \$30) and office visit co-payments, that employee's domestic partners should be eligible to share the HRA funds, and that employees should not have to incur a minimum of \$20 in covered costs before receiving HRA funds.

On July 2, 2008 the SEA amended its complaint to add the claim that by offering certain benefits, including the HRA, to non-bargaining unit employees the State is discouraging membership in the SEA and otherwise interfering with the administration of the SEA in violation of RSA 273-A:5, I (b), (c) and (e).

The SEA requests that the PELRB: 1) find that the State has committed an unfair labor practice as detailed above; 2) order the State to reimburse all adversely affected collective bargaining unit members; 3) order the State to refrain from committing these unfair labor practices as related to the HRA benefit in the future; and/or 4) issue such other orders as may be just.

On July 14, 2008 the State filed its answer denying the unfair labor practice charge. The State contends that it has properly administered the HRA under the CBA and that the SEA is seeking payment for expenses that are not "out-of-pocket costs associated with health care services or products obtained under the health plan." The State does not provide same sex partners of employees with access to HRA funds because this would require 100% of the value of the HRA funds to be imputed to the employee's income. The \$20 expense reimbursement threshold is based upon the position of the third party administrator. The State denies that it has

discouraged SEA membership and interfered with the administration of the SEA by providing non-bargaining unit employees with some of the same benefits, such as the HRA, that are contained in the parties' CBA. The State contends that the provision of the HRA benefit to non-bargaining unit employees is proper and that in order to sustain its claim the SEA must, at a minimum, prove that the State's intent and purpose in providing such benefits to non-bargaining unit employees is to discourage SEA membership and interfere with the administration of the SEA.

The State requests that the PELRB: a) dismiss the complaint; and b) grant such other relief as justice may require.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the State has improperly administered CBA provisions concerning HRA funds?
2. Whether the State has discouraged SEA membership and interfered with the administration of the SEA by providing certain CBA benefits such as the HRA to non-bargaining unit employees?

WITNESSES

For the SEA:

1. Dennis Kinnan, Contract & Field Operations Administrator, SEA
2. Gary Smith, President SEA
3. Diana Lacey
4. Thomas Manning
5. Sara Willingham, SNH/Manager, Employees relations
6. Any and all witnesses contained the State's witness list not called by them during the course of the presentation of their case and any necessary rebuttal witnesses.

For the State:

1. Sara Willingham
2. Monica Ciolfi
3. Thomas Manning

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 SEA:

1. 2005-2007 collective bargaining agreement;
2. Health plan documents;
3. Collective bargaining agreements for all other state employees;
4. Legislative documents regarding funding of benefits;
5. Any and all pleadings in this matter
6. Any and all documents filed as exhibits to pleadings
7. Any document or exhibit included in the State's exhibit list not otherwise introduced by the State
8. Any and all documents required for impeachment purposes

For the State:

1. All exhibits listed in the SEA's pre-hearing worksheet.

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.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. The parties shall prepare and file a statement of stipulated facts on or before September 11, 2008.
2. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before September 15, 2008. The parties shall 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.
3. The elements of and proof necessary to sustain the SEA's claim that the State has improperly extended HRA benefits to non-bargaining unit employees was discussed at the pre-hearing conference. It is evident that the parties have a not insignificant difference of opinion on these questions. In order to assist in the efficient prosecution and defense of this claim, and as discussed at the pre-hearing conference, on or before August 18, 2008 the SEA shall file a pre-hearing memorandum¹ addressing the elements of this claim. The SEA's pre-hearing memorandum shall specifically address whether this claim requires proof that the State had the intent to discourage SEA membership and interfere with the administration of the SEA and shall include a written offer of proof in support of the elements of the claim, including an offer of proof addressing whether and how the State's actions have in fact discouraged SEA membership and interfered in the administration of the SEA. The State shall file its reply brief on or before August 25, 2008.

HEARING

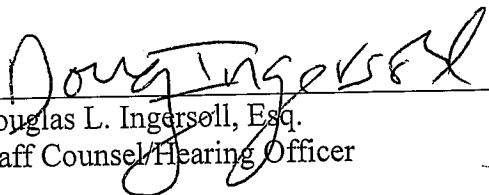
Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **September 18,**

¹ This pre-hearing memorandum is not required in the event the SEA withdraws this portion of its complaint.

2008 at 9:30 a.m. at the offices of the Public Employee Labor Relations Board in Concord. The time 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 hearing.

So ordered.

August 18, 2008.



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

Distribution:

Glenn R. Milner, Esq.
Michael K. Brown, Esq.
Rosemary Wiant, Esq.