



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEW HAMPSHIRE TROOPERS ASSOCIATION,
TROOPER EDER-LINELL**

COMPLAINANT

CASE NO. G-0097-6

v.

DECISION NO. 2010-013

**NEW HAMPSHIRE, DEPARTMENT
OF SAFETY, DIVISION OF STATE
POLICE**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: January 13, 2010 at the PELRB in Concord.

Appearances: John S. Krupski, Esq.
New Hampshire Troopers Association

Marta Modigliani, Esq.
State of New Hampshire, Dept. of Safety

Background:

The New Hampshire Troopers Association ("NHTA") filed an unfair labor practice complaint on December 14, 2009. After giving birth in May, 2009 Trooper Eder-Linell applied for sick leave with pay under Article 11.2.3 of the parties' collective bargaining agreement (the "CBA") and also submitted an application to the sick leave bank established under Article 11.9

of the CBA. The State did not grant Trooper Eder-Linell's requests as submitted. The NHTA contends the State's actions violated the CBA and that Trooper Trooper Eder-Linell was entitled to the disputed paid sick leave as requested. The NHTA has filed this complaint under Article 14.5.1 of the CBA, which permits the filing of an unfair labor practice complaint following the completion of the preceding steps in the grievance process, and claims that the State's actions violate RSA 273-A:5 I (a), (c), (h) and (i).

As relief the NHTA requests the PELRB: 1) find that the State committed an unfair labor practice; 2) order the State to cease and desist from any further violations; 3) restore Trooper Eder-Linell's sick leave time; 4) allow Trooper Eder-Linell access to the sick leave bank; and 5) grant such other and further relief as is just and equitable.

The State filed its answer on December 29, 2009 and denies the charges. The State contends that under the parties' CBA the Commissioner of Safety's decisions on sick leave bank applications are final and not subject to review by the PELRB and the State otherwise complied with its obligations under the CBA, that any complaints about the State's actions prior to July, 2009 are untimely, that Trooper Eder-Linell has not properly completed a Step III grievance, and with respect to the alleged violation of RSA 273-A:5, I (c) she has failed to exhaust her administrative remedies as required under RSA 273-A:6, I.

The State requests the PELRB find that the State did not commit an unfair labor practice, dismiss the complaint, and order such other relief as it deems just.

ISSUES FOR DETERMINATION

1. Whether in July, 2009 the State improperly denied Trooper Eder-Linell's requests for paid sick leave under Article 11.2.3 and 11.9 of the CBA.

2. Whether Trooper Eder-Linell's claims are timely, properly preserved or barred by a failure to exhaust administrative remedies.

WITNESSES

For the Union:

1. Tr. Rebecca Eder-Linell
2. TFC Bill Graham
3. Tr. Bob Lima
4. TFC Jill Rockey
5. Rebuttal Witnesses

For the State:

1. Commissioner John Barthelmes
2. Colonel Frederick Booth
3. Major Susan Forey
4. Major Russell Conte
5. Sara Willingham, Division of Personnel
6. Thomas Manning
7. Captain Allen Welch
8. Captain Steve Barrett
9. Lt. Terrance Kineen
10. Elizabeth Labonte, HR Administrator
11. Rebuttal Witnesses

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule to be established by subsequent 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

Agreed to:

1. Collective Bargaining Agreement between the parties

For the Union:

1. Grievance chronology

2. Communications between the State and NHTA
3. Denial letters
4. NH Human Rights Commission complaint
5. Rebuttal exhibits

For the State:

1. Correspondences between the Respondent and the Complainant's
2. Relevant personnel records of Tr. Eder-Linell
3. Statement of purpose of the sick leave bank
4. Relevant Professional Standards of Conduct, including Chapter 22-B
5. Rebuttal exhibits, including NH Human Rights Commission response

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule to be established by subsequent 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. At the pre-hearing the State asked for an order relative to its pending request for certain medical records. The State explained that paragraph three of the Joint Pre-Hearing Worksheet refers to the State's January 7, 2010 written request to attorney Krupski for "a copy of all medical records, from Dr. Fletcher Wilson or any other treating medical provider, concerning or relevant to Tr. Eder-Linell's pregnancy from on or about August 2008 to August 20, 2009." The State asserts that it is entitled to these records because they are relevant and necessary in connection with the preparation and presentation of its case given Trooper Eder-Linell's counsel assertion in January, 2009 that she was entitled to a requested reassignment because she "may be suffering from intrauterine growth retardation."

The NHTA objects, contending that the records are confidential under physician-patient privilege, are not relevant, and constitute an improper "fishing expedition."

Based upon the pleadings and the representations of the parties at the pre-hearing I find that the requested medical records are not relevant. Whether or not the State properly acted on a January, 2009 reassignment request is not an issue in this case. Additionally, these records are not necessary for the State to establish at hearing, if necessary, that a number of its decisions were justified because Trooper Eder-Linell's requests were not supported by required documentation in the form of medical records or a physician's note. Accordingly, the State's request for an order requiring the NHTA or Trooper Eder-Linell to produce the requested medical records is denied.

2. At the pre-hearing the NHTA requested a complete copy of Trooper Eder-Linell's personnel file. By 5:00 p.m. today, as discussed and agreed at the pre-hearing, the State is to email to NHTA's counsel the required written authorization form to be executed by Trooper Eder-Linell. Upon receipt of the duly executed authorization the State's counsel shall facilitate a prompt delivery of a copy of the personnel file to NHTA's counsel.

3. At the pre-hearing it was noted that Trooper Eder-Linell has filed a complaint with the New Hampshire Human Rights Commission to address many of the references to disparate treatment on account of her medical condition (pregnant) included in the complaint and that such issues are beyond the scope of the PELRB's jurisdiction.

4. At the pre-hearing the parties discussed the factual basis for the claim that the State's actions in July, 2009 on Trooper Eder-Linell's requests for paid sick leave under 11.2.3 and 11.9 of the CBA violated RSA 273-A:5, I (c)(to discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization). As discussed at the pre-hearing, the complaint does not currently satisfy Pub 201.02 (b) specificity requirements with respect to the alleged violation

of RSA 273-A:5, I (c). Accordingly, on or before January 20, 2010 the NHTA shall file a specification setting forth in detail the factual basis for the alleged violation of RSA 273-A:5, I (c) or notify the PELRB that any such claim is being withdrawn. The State shall file its response to any such specification on or before January 29, 2010. Whether evidence dating to the fall of 2008 concerning Trooper Eder-Linell's alleged union activities will be otherwise allowed into the record at hearing as "background" is a matter reserved for the presiding officer to be addressed at hearing to the extent such evidence is offered.

5. In view of the foregoing paragraph, and as discussed at the pre-hearing, the adjudicatory hearing scheduled for January 26, 2010 is cancelled. A subsequent scheduling order, which may include a further pre-hearing conference, will issue subsequent to January 20, 2010.

6. As discussed at the pre-hearing, the parties' final fact stipulations shall contain a significantly more comprehensive statement of Trooper Eder-Linell's employment history during the applicable time period than is reflected on the Joint Pre-Hearing Worksheet.

HEARING

In accordance with the foregoing, the adjudicatory hearing currently scheduled for January 26, 2010 is cancelled. A hearing rescheduling notice will issue subsequent to January 20, 2010.

So ordered.

January 13, 2010


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

Distribution:

John S. Krupski, Esq.

Marta Modigliani, Esq.