



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Eric Johnson

v.

**New Hampshire Troopers Association
&
New Hampshire Department of Safety**

Case No. G-0097-8

Decision No. 2010-167

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: September 20, 2010

Appearances: Jon Meyer, Esq. for Eric Johnson

John S. Krupski, Esq. for the New Hampshire Troopers
Association

Marta A. Modigliani, Esq. for the New Hampshire Department of
Safety

Background:

Eric Johnson, a retired New Hampshire State Trooper, filed an unfair labor practice complaint against the New Hampshire Troopers Association (Association) and the New Hampshire Department of Safety, Division of State Police (State) on August 13 2010. Mr. Johnson claims that the Respondents breached the duty of fair representation when they entered into a Settlement Agreement following the PELRB order in *New Hampshire Troopers Association v. New Hampshire Department of Safety, Division of State Police*, PELRB Decision No. 2005-028, affirmed by the New Hampshire Supreme Court. *See Appeal of N.H. Department*

of Safety, 155 N.H. 201 (2007). In its decision, the PELRB ordered the State to restore the annual and sick leave to certain State Troopers. Mr. Johnson was among the Troopers allegedly covered by the PELRB Decision No. 2005-028. Mr. Johnson retired after the decision was issued but before the Respondents entered into a Settlement Agreement, which did not provide any compensation for the Troopers who retired prior to the date of the Agreement.¹ Mr. Johnson asserts that the Association's decision to abridge the retired Troopers' rights under the PELRB Decision No. 2005-028 constitutes an unfair labor practice in violation of RSA 273-A:5, II (a) and that the State's failure to restore the retired Troopers' annual and sick leave constitutes an unfair labor practice in violation of RSA 273-A:5, I (h). Mr. Johnson requests that the PELRB direct the State to restore his annual and sick leave accounts for the hours improperly deducted and to pay him for such hours at his rate of pay as of the date of his retirement with interest accrued from the date of the complaint; order the Association to pay him the value of accumulated annual and sick leave multiplied by the hourly rate of pay at the time of retirement with interest accrued from the date of the complaint; and order the State and/or the Association to reimburse him for the reasonable attorney's fees and expenses.

The Association denies the charges and asserts that the claims are time barred, that the claims are barred by the doctrines of election of remedies, res judicata, collateral estoppels, estoppels, and waiver; that Mr. Johnson failed to state a claim upon which relief may be granted; that the PELRB lacks jurisdiction; and that Mr. Johnson failed to name the correct party.

The State denies the charges and asserts the following defenses: Mr. Johnson failed to state a claim upon which relief can be granted; Mr. Johnson named the wrong party; the claims are barred in whole or in part by the doctrines of res judicata; collateral estoppels; waiver,

¹ This Settlement Agreement was the subject of prior proceedings on Mr. Johnson's Petition for Enforcement. See *Eric Johnson v. New Hampshire Department of Safety, Division of State Police*, Case No. G-0097-4, PELRB Decision No. 2010-060 (petition dismissed).

estoppels, and statute of limitations; the PELRB lacks jurisdiction; and Mr. Johnson's claims are barred by release.

On September 16, 2010 Mr. Johnson filed a motion to continue the adjudicatory hearing and a motion for subpoenas requesting the PELRB to issue subpoenas duces tecum to Respondents to produce by October 1, 2010 all documents related to the negotiations of the Settlement Agreement and to subpoena five individuals for depositions (hereinafter discovery motion).

During the pre-hearing conference, the counsel for Mr. Johnson clarified that, despite several references to "other retired troopers" in his filings, the only client he represents in this matter is Mr. Johnson and that the present complaint has been filed on behalf of Mr. Johnson only. In addition, the Respondents indicated that they intend to file motions to dismiss the complaint. The Respondents further indicated that they do not object to the continuance of the adjudicatory hearing but do not necessarily agree that Mr. Johnson is entitled to conduct formal discovery prior to a hearing. The parties represented that they will confer and attempt to resolve Mr. Johnson's discovery motion by agreement.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Association breached the duty of fair representation by entering into the Settlement Agreement which did not provide any compensation for Mr. Johnson.
2. Whether the State committed an unfair labor practice by entering into the Settlement Agreement which did not provide any compensation for Mr. Johnson.

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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. 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. 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 Eric Johnson, the Association, the State, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The Respondents shall file motions to dismiss, if any, on or before **October 1, 2010**. The objections to the motions to dismiss, if any, shall be filed on or before **October 16, 2010**.
3. Mr. Johnson's motion to continue the adjudicatory hearing currently scheduled for October 14, 2010 is hereby granted. Formal action on Mr. Johnson's discovery motion is deferred at this time. The parties shall promptly notify the PELRB in the event this motion is resolved by agreement providing for voluntary exchange of information. However, any objections to the discovery motion shall be filed on or before **October 5, 2010** after which an order will issue as necessary.
4. The parties shall prepare and file a final statement of stipulated facts on or before **November 1, 2010**. The final statement of stipulated facts shall be signed by all the parties to this case. If, however, any two parties come to an agreement on more facts than are set forth in the three-party statement of stipulated facts, an additional two-party statement of stipulated facts shall also be filed on or before **November 1, 2010**.

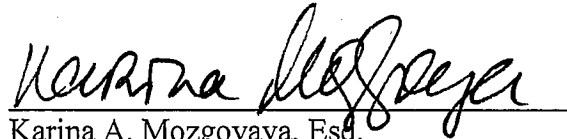
5. The parties shall exchange and file their final Witness and Exhibit lists on or before **November 1, 2010.**

HEARING

The date for the adjudicatory hearing shall be established by subsequent notice. The time set aside for this hearing is 6 hours.

So ordered.

September 21, 2010


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Jon Meyer, Esq.

John S. Krupski, Esq.

Marta A. Modigliani, Esq.

