



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**State Employees' Association of NH, Inc., SEIU Local 1984**

v.

**State of New Hampshire Department of Health & Human Services – DJJS**

**Case No. G-0148-1**

**Decision No. 2010-230**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: December 1, 2010

Appearances: John S. Krupski, Esq. for State Employees' Association of NH,  
Inc., SEIU Local 1984

Jonathan V. Gallo, Esq. for the State of New Hampshire  
Department of Health & Human Services – DJJS

Background:

The State Employees' Association of NH, Inc., SEIU Local 1984 (SEA) filed an unfair labor practice complaint against the State of New Hampshire Department of Health & Human Services – Division of Juvenile Justice Services (DHHS) on October 13, 2010. The SEA alleges the following: (1) the DHHS terminated employment of Dan Barry, an SEA Steward, in retaliation for his union activities; (2) the DHHS has placed George Kalampalikis, the SEA Chapter Vice President, on paid suspension in retaliation for his union activities; and (3) the DHHS prevented Kristen Marabella, the SEA Chapter Secretary, from leaving the facility to seek medical treatment while on shift in retaliation for her union activities. The SEA claims that Mr.

Barry's, Mr. Kalampalikis', and Ms. Marabella's union activities included raising concerns with the DHHS management regarding unilateral work schedule changes and safety of residents and organizing and signing a petition of no confidence presented to the Director of the Sununu Youth Services Center (SYSC). The SEA asserts that the DHHS's actions with respect to Mr. Barry, Mr. Kalampalikis, and Ms. Marabella violate RSA 273-A:5, I (a), (b), (c), (d), (e), and (g) and RSA 273-A:11. The SEA requests that the PELRB declare that the DHHS committed unfair labor practices in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), and (g), order the DHHS to cease and desist from any further discriminatory targeting of union members or activists, and order the DHHS to post the PELRB's decision.

The DHHS denies the charges. On October 28, 2010 the DHHS filed a Motion to Dismiss claiming that the SEA's complaint does not satisfy the requirements of Pub 201.02 (b)(4) because it is too vague and fails to specify dates, times, places, individuals, and the context and also violates Pub 103.02 because the complaint is submitted not on the PELRB's current approved form. The DHHS also argues that the SEA's complaint does not satisfy the requirements of Pub 201.02 (b)(5) and violates RSA 273-A:6 because it alleges violations of RSA 273-A:5, I (c) and (d) without identifying whether the complainant has exhausted the administrative remedies provided by statutes other than RSA 273-A. For these reasons, the DHHS requests that the PELRB dismiss the SEA's complaint or, in the alternative, order the SEA to withdraw and refile the complaint in compliance with the rules of the PELRB and RSA 273-A.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the DHHS committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), and (g) when it terminated the employment of Dan Barry.
2. Whether the DHHS committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), and (g) when it placed George Kalampalikis on paid suspension.

3. Whether the DHHS committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), and (g) when it allegedly prevented Kristen Marabella from leaving the SYSC facility in order to seek medical treatment.

#### JOINT EXHIBITS

1. Collective bargaining agreement

#### WITNESSES for COMPLAINANT

1. Joseph Meagher
2. William Fenniman
3. Dan Barry
4. George Kalampalikis
5. Ray Wieczorek
6. Kristen Marabella

#### EXHIBITS for COMPLAINANT

1. Policy regarding restraints
2. Policy regarding internal investigations
3. National standards on staffing
4. Select portions of investigations
5. Schedules
6. Letter of no confidence
7. List of injuries

The 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.

## WITNESSES and EXHIBITS for RESPONDENT

The DHHS failed to identify its witnesses and exhibits in the Joint Pre-Hearing Worksheet as required under Pub 202.01 and it was not excused from doing so by any order of the PELRB. Its failure to identify its witnesses and exhibit is not justified by its criticism of the SEA's pleadings. There was sufficient information contained in the complaint to allow the DHHS to preliminarily identify potential witnesses and exhibits.

### DECISION

1. "Parties" means the SEA, the DHHS, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the SEA agreed to provide the DHHS with the specifics regarding the SEA's allegations of discrimination and retaliation against Dan Barry, George Kalampalikis, and Kristen Marabella. The SEA shall prepare and file a written specification containing specific information regarding circumstances giving rise to the complaint, including dates, times, and places of occurrences, and the names of all persons involved in or witnessing the occurrences, no later than December 3, 2010. See Pub 201.02 (b). Accordingly, action on the pending Motion to Dismiss/Motion for Refiling is deferred at this time.
3. At the pre-hearing conference, the DHHS indicated that it intends to file additional motions to dismiss. Any such motion shall be filed no later than December 6, 2010 and any objection to such motion shall be filed no later than December 9, 2010.
4. The parties shall exchange and file their final witness and exhibit lists no later than December 8, 2010.
5. The parties shall prepare and file a comprehensive statement of stipulated facts no later than December 10, 2010.


6. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

### HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **December 14, 2010 at 9:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 6 hours.

So ordered.

December 1, 2010

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

**Distribution:**

John S. Krupski, Esq.

Jonathan V. Gallo, Esq.