



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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

v.

State of New Hampshire, Liquor Commission

**Case No. G-0202-2
Decision No. 2013-129**

Order re Motion to Amend

At the conclusion of the final day of adjudicatory hearing (July 1, 2013)¹ in the above captioned case, the Association indicated its intent to file, within two days, a written motion to amend the complaint to conform to the evidence presented at hearing. In its July 3, 2013 motion, the Association seeks to add, based on the testimony by the State's witnesses, claims of violation of RSA 273-A:5, I (b) (interference in formation or administration of employee organization), (h) (breach of collective bargaining agreement), (i) (adoption of law, regulation, or rule relative to terms and conditions of employment that would invalidate portion of agreement). The Association also seeks to amend its request for relief by adding a request that Mr. Perras be made whole for his use of additional sick leave not required by the collective bargaining agreement (CBA).

The State responded to the Association's motion on July 18, 2013 objecting to the amendment on the grounds that, among other things, the amendment is not supported by the

¹ The two-day adjudicatory hearing commenced on March 28, 2013.

evidence and that the State cannot fairly address these allegations without the ability to perform discovery² and put forth additional testimony and evidence. The State requests that the PELRB deny the motion to amend and, if the amendment is allowed, schedule an additional hearing date to enable the State to defend itself against the new allegations.

Administrative Rule Pub 201.04 provides in relevant part:

(c) The board *shall allow* requests for an amendment filed less than 15 days prior to the date of hearing, *including requests filed at the conclusion of the hearing to amend the complaint or answer as necessary to conform to the evidence*, unless the amendment shall result in unnecessary delay of the proceeding or unfair prejudice to another party in the proceeding.

(Emphasis added.) As a result of a short statutory deadline to conduct an administrative agency hearing, the discovery of new evidence sometimes occurs during the conduct of the hearing. Such circumstances are addressed by Pub 201.04 which allows parties to amend their pleadings as necessary to conform to the evidence. Under Pub 201.04, the Association's request for amendment must be granted unless the amendment would result in unfair prejudice or unnecessary delay. Based on the evidence presented at hearing and on the record as a whole, I find that the amendment is appropriate and will not result in unnecessary delay or unfair prejudice. The State's objections are overruled.

Accordingly, the Association's motion to amend the complaint is granted. The determination of whether the evidence supports the amended claims is reserved for the decision on the merits.

The State's request to schedule additional hearing time to provide the State with opportunity to address the added allegations is denied without prejudice because, at this time, I

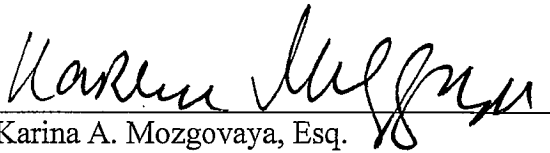
² As evidenced by a 45-day statutory deadline to conduct a hearing on an unfair labor practice complaint, neither RSA 273-A nor PELRB rules allow for discovery beyond a pre-hearing conference and exchange of lists of witnesses and exhibits. See RSA 273-A:6, II.

find additional testimony unnecessary. The State will have an opportunity to address the amended claims through briefing. Furthermore, if at any time prior to the issuance of the decision on the merits, I determine that additional testimony and/or other evidence is necessary to a full consideration of the issues in this case, I will reopen the record in accordance with Pub 203.07, request that the parties submit additional evidence and, if necessary, schedule an additional hearing.

Accordingly, the parties shall submit post-hearing briefs no later than August 27, 2013. The record is now closed except for submission of post-hearing briefs. No new evidence shall be attached to the briefs except as allowed under Pub 203.06.

So ordered.

July 26, 2013


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

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