



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

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

v.

**State of New Hampshire**

**Case No. G-0115-6  
Decision No. 2013-223**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: October 25, 2013

Appearances: Glenn R. Milner, Esq., and Lauren Snow Chadwick, Esq., for the  
Complainant

Michael K. Brown, Esq., and Rosemary Wiant, Esq., for the  
Respondent

**Background:**

On September 24, 2013, the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA) filed an unfair labor practice complaint claiming that the State violated RSA 273-A:5, I (e) and (h) when it failed to appear for a previously scheduled arbitration hearing. The SEA alleges that pursuant to the PELRB Decision No. 2013-022 (January 25, 2013, Case No. G-0115-4) granting the State's motion to stay the proceedings pending outcome of the grievances in a case concerning shift differential, the parties agreed to participate in arbitration and scheduled an arbitration hearing for September 4, 2013. The SEA further alleges that the State proposed a stipulation that would make the arbitrator's decision advisory should the arbitrator render a decision adverse to the State "because it may require an appropriation of additional funds" even if it does not actually require any appropriation. According to the SEA, this stipulation is contrary to the parties' CBA which provides in part that the arbitrator's

decision is final and binding unless it requires an appropriation of additional funds in which case it is advisory. The SEA claims that it informed the State that it did not agree to the proposed stipulation and on August 30, 2013 informed the State and the arbitrator of its intention to move forward with the arbitration on September 4, 2013. According to the SEA, its representatives appeared for the arbitration on September 4, 2013 and were informed by the arbitrator that the State cancelled the arbitration at 7:50 p.m. on September 3, 2013. The SEA requests that the PELRB order the State to cease and desist from engaging in an unfair labor practice and order the State to arbitrate the underlying contractual dispute and pay the entire cost thereof.

The State denies the charges and asserts that the SEA, through its representative John Howard, agreed that the arbitration will be advisory. The State claims that this stipulation was a pre-condition to the State's agreement to arbitrate and to waive its procedural and other objections to arbitration. The State further asserts, among other things, that it informed the SEA on August 30, 2013 that it would not go forward with the arbitration unless the dispute over whether or not the arbitration would be advisory was resolved; and that on September 3, 2013 Manager of Employee Relations Matthew Newland told the SEA's representative Howard that the State "would likely be unable to proceed with the arbitration unless the dispute between the parties was resolved." According to the State, Mr. Newland was waiting for the response from Mr. Howard, who allegedly promised to get back to Mr. Newland in 10 minutes but never called back, until nearly 8:00 p.m. before it notified the SEA and the arbitrator that "it was necessary to continue the arbitration to allow the parties time enough to resolve the dispute."

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the State violated RSA 273-A:5, I (e) and (h) as charged by the SEA.

#### WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that

each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five (5) copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

#### DECISION

1. "Parties" means the SEA, 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 parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than November 4, 2013.

#### HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **November 14, 2013, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 hours.

So ordered.

October 28, 2013

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

Distribution:  
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