



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

State Employees' Association of NH, SEIU Local 1984

v.

**State of New Hampshire,
Department of Health and Human Services**

**Case No. G-0148-7
Decision No. 2016-273**

Pre-Hearing Memorandum and Order

Date of Conference: November 21, 2016

Appearances: Glenn R. Milner, Esq., and Sean Bolton, Grievance Representative,
for the Complainant

Nancy Smith, Esq., and MaryBeth Miller, Esq., for the Respondent

Background:

On October 24, 2016, the State Employees' Association of NH, SEIU Local 1984 (SEA) filed an unfair labor practice complaint alleging that the State of New Hampshire, Department of Health and Human Services (State) violated RSA 273-A:5, I (e), (h), and (i) when it refused to provide a salary enhancement to a newly-hired part-time Teacher I/Library Media Specialist. The SEA argues, among other things, that the State acted in bad faith when it unilaterally eliminated the salary enhancement for a new hire in a manner that was deemed an unfair labor practice in PELRB Case No. G-0148-2 (PELRB Decision No. 2014-184). The SEA requests, among other things, that the PELRB find that the State committed an unfair labor practice, order the State to cease and desist from unilaterally reducing or eliminating salary enhancements, and order the

State to restore the salary enhancements and to negotiate with the SEA over any changes to wages.

The State denies the charge and asserts, among other things, that the salary enhancements were a bargaining subject during the negotiations for the 2015-17 collective bargaining agreement and were rejected by the State. The State also filed a motion to dismiss arguing that the PELRB has no jurisdiction over the SEA's complaint because the complaint concerns a probationary employee and probationary employees are excluded from the definition of a "public employee" under RSA 273-A:1, IX (d). The SEA objects to the motion to dismiss and argues that, under the State's personnel rules, the probationary period applies only to full-time employees and, therefore, part-time employees are not probationary employees.

Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (e), (h), and/or (i) 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.

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.

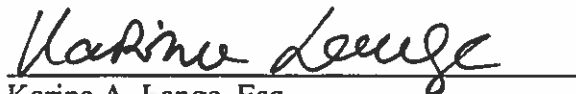
2. At the pre-hearing, the parties opined that this matter might be suitable for submission on stipulated facts, exhibits, and briefs. A written request, if any, to submit this matter on briefs shall be filed no later than December 5, 2016. Such request shall contain a

proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.

3. The State filed an assented to motion to continue the adjudicatory hearing currently scheduled for December 8, 2016. Both parties are available for a rescheduled hearing on December 21 and December 22, 2016. The State's motion is granted. The hearing scheduled for December 8, 2016 is cancelled. The new hearing date will be set forth in a subsequent order.
4. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than 10 days prior to the date of hearing.
5. 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 copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

So ordered.

Date: 11/22/2016


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

Distribution: Glenn R. Milner, Esq.
Nancy Smith, Esq.
MaryBeth Miller, Esq.