



State of New Hampshire
Public Employee Labor Relations Board

SEA of NH, Inc., SEIU Local 1984 v. State of New Hampshire
Case No. G-0252-1

and

NEPBA, Inc. Local 40 (Fish & Game) et. al. v. State of New Hampshire
Case Nos. G-0254-1, G-0255-1, G-0110-2, G-0106-2, G-0107-2

Consolidated Cases
Decision No. 2017-071

Pre-Hearing Memorandum and Order

Date of Conference: April 21, 2017

Appearances: Glenn Milner, Esq., for the SEA, SEIU Local 1984
Peter J. Perroni, Esq., for the NEPBA
Nancy J. Smith, Esq., and Jill Perlow, Esq. for the State

Background:

On March 24, 2017, the SEA filed an unfair labor practice complaint under the Public Employee Labor Relations Act, charging that the State has committed an unfair labor practice in violation of RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter); (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations) and (g)(to fail to comply with this chapter or any rule adopted under this chapter)(RSA 273-A:3 and 11). The case revolves, in part, around RSA 273-A:9, I, titled "Bargaining by State Employees," which provides as follows:

All cost items and terms and conditions of employment affecting state employees in the classified system generally shall be negotiated by the state, represented by the governor as

chief executive, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.

The parties' joint pre-hearing worksheet reflects that five unions,¹ representing different state bargaining units, began negotiations with the State in December of 2016. By early March of 2017, after several months of negotiations utilizing the RSA 273-A:9 framework, both the Teamsters Local 633 and the NH Troopers Association-Troopers/Sergeants declared a bargaining impasse.² The SEA and the NEPBA have attempted to continue negotiations with the State but the State has declined. The SEA request that the PELRB: 1) find that the State's refusal to continue bargaining violates the cited sub-sections of RSA 273-A:5, I; 2) issue an order directing the State to return to the bargaining table; and 3) grant additional relief as appropriate.

The NEPBA's complaint was filed on April 10, 2017 and is based upon the same facts as the SEA complaint. The NEPBA argues that the State has violated RSA 273-A:5, I (a), (b)³, (e), and (g) and requests the same relief as the SEA.

The State denies the SEA and NEPBA charges. According to the State, under RSA 273-A:9 cost items and terms and conditions of employment affecting employees in the classified system generally must be either negotiated or mediated by all five unions together. Therefore, the State argues that it has not committed an unfair labor practice but instead is simply insisting that the parties proceed as required by RSA 273-A:9. The State is ready to resume negotiations with the SEA and the NEPBA provided all five unions return to the bargaining table to negotiate

¹ SEA, SEIU Local 1984; NEPBA; Teamsters Local 633; NH Troopers Association-Troopers/Sergeants; and NH Troopers Association-Command Staff.

² See RSA 273-A:12, Resolution of Disputes, which sets forth the statutory mediation and fact-finding procedures.

³ Sub-section (b) provides that it is an unfair labor practice for an employer "to dominate or to interfere in the formation or administration of any employee organization."

cost items and terms and conditions of employment affecting employees in the classified system generally. Alternatively, the State is ready to proceed to mediation with all five unions on the same topics.

The State has also filed a motion for summary judgment, a motion to expedite, and a motion to consolidate and join necessary parties. The PELRB has already granted the motion to consolidate but deferred action on the State's request to join necessary parties.⁴

Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (a),(b), (e), and/or (g) as charged by the SEA and the NEPBA.

Decision

1. "Parties" means the SEA, the NEPBA, 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 agree a hearing is unnecessary and that these consolidated cases can be submitted for decision on stipulated facts, exhibits, and briefs. The stipulated facts and exhibits are contained in the joint pre-hearing worksheet, and may be supplemented no later than April 28, 2017. Briefs shall be filed as follows:

SEA and NEPBA opening briefs: April 28, 2017

State opening brief: May 5, 2017

SEA and NEPBA reply briefs, if any: May 10, 2017

3. The concerns raised in the State's motion to expedite are addressed by the schedule in the preceding paragraph and therefore the motion is moot.


⁴ See PELRB Decision No. 2017-068 and 069 (April 20, 2017).

4. At the pre-hearing conference the State withdrew the pending motion for summary judgment.
5. The State's motion to join necessary parties⁵ is denied. Pub 201.10 allows third parties to join a pending case by filing a proper petition to intervene. However, there are no provisions in the rules or RSA 273-A which allow the PELRB to join third parties as requested by the state.
6. The hearing currently scheduled for May 11, 2017 is cancelled.

So ordered.

Date:

April 24, 2017


Douglas L. Higersoll, Esq.
Executive Director/Presiding Officer

Distribution: Peter J. Perroni, Esq.
Glenn Milner, Esq.
Jill Perlow, Esq.
Nancy J. Smith, Esq.

⁵ The other three unions representing state executive branch employees.