



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

**State of New Hampshire, Department of Safety,
Division of State Police**

**Case No. G-0097-21
Decision No. 2017-197**

Pre-Hearing Memorandum and Order

Date of Conference: November 17, 2017

Appearances: John Krupski, Esq., for the Complainant

Marta Modigliani, Esq., and Jill A. Perlow, Esq., for the
Respondent

Background:

On September 15, 2017, New Hampshire Troopers Association (NHTA) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the State of New Hampshire, Department of Safety, Division of State Police (State) has violated RSA 273-A:5, I (g), (h), and (i) when it failed to provide benefits under the collective bargaining agreement (CBA) to an employee who has been reinstated in his position after the Personnel Appeals Board reversed the State's decision to terminate him. The NHTA requests that the PELRB find that the State has committed an unfair labor practice and order the State to cease and desist from any further violations and to make the employee whole.

The State denies the charges and asserts, among other things, that the subject employee did not receive any benefits under the CBA because, once terminated, he ceased to be a member of the NHTA and the CBA no longer applied to him. The State also argues that the complaint is

untimely under the CBA grievance procedure and RSA 273-A:6, VI; that the NHTA failed to state a claim upon which relief may be granted; that the issues of whether the employee was reinstated and to what backpay or benefits he is entitled are part of the case that is now on appeal before the Supreme Court; and that the PELRB does not have jurisdiction over the NHTA's complaint and the NHTA has no standing to bring the complaint on behalf of the employee. The State requests, among other things, that the PELRB dismiss the complaint or, in the alternative, stay the complaint pending the conclusion of the State's appeal before the Supreme Court.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the NHTA's claims.
2. Whether the NHTA's claims are barred by RSA 273-A:6, VII.
2. Whether the State violated 273-A:5, I (g), (h), and/or (i)

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 NHTA, 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 conference, the State moved to continue the hearing scheduled for November 28, 2017 on the ground that two of its witnesses are not available on this date. The NHTA did not object to the continuance. Accordingly, the State's assented to motion to continue is granted. The hearing scheduled for November 28, 2017 is cancelled.

3. At the pre-hearing conference, the parties expressed an interest in submitting the current case for decision on stipulated facts and briefs. The parties shall file a joint request to submit this case on stipulated facts and briefs, if any, no later than **November 30, 2017**. Any such request shall contain a proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.
4. In the event the parties decide not to file a request for submission of this case on briefs, the parties shall submit to the PELRB, on or before **November 30, 2017**, six alternative hearing dates (three in December, 2017 and three in January, 2018) that are acceptable to both parties.
5. As discussed at the pre-hearing conference, any request to stay or to dismiss this case "shall be presented in a separately filed motion." See Pub 201.01 (j). See also Pub 203.04 (a) and (b).
6. 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.
7. The requirement that the parties file copies of proposed exhibits prior to the date of 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: 11/20/2017


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

Distribution: John Krupski, Esq.
Marta Modigliani, Esq.
Jill A. Perlow, Esq.