



NH Supreme Court declined appeal of this decision on January 29 1997, Supreme Court Case No. 96-616.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, S.E.I.U.
LOCAL 1984

Complainant

v.

STATE OF NEW HAMPSHIRE
(LIQUOR COMMISSION)

Respondent

CASE NO. S-0311:2

DECISION NO. 96-033

APPEARANCES

Representing State Employees Association:

Ward P. Freeman, Chief Negotiator

Representing State of New Hampshire:

Thomas F. Manning

Also appearing:

- Bonnie J. McSpiritt, Arbitrator
- Cynthia B. Smith, N.H. Sweepstakes Commission
- George E. Liouzis, N.H. Liquor Commission
- Muriel Falkner, N.H. Liquor
- William McCann, Jr. Liquor Employee
- Raymond Proulx, SEA Liquor Division

BACKGROUND

The State Employees Association of New Hampshire, S.E.I.U., Local 1984 (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire, State Liquor Commission (State) on January 19, 1996, alleging violations of RSA 273-A:5 I

(d), (h) and (i) for refusing to bargain and changing a past practice about payment of certain incentive prize monies which the Liquor Commission receives or has received from the Sweepstakes Commission. The State filed its answer on February 2, 1996. After an intervening continuance sought by and granted to the parties for March 14, 1996, the PELRB heard this matter on April 18, 1996.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of personnel employed by and in the facilities of the State Liquor Commission, and elsewhere, within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, Local 1984, S.E.I.U. is the duly certified bargaining agent for personnel employed by the State at the facilities of the State Liquor Commission.
3. The Union and the State are parties to a collective bargaining agreement (CBA) for the period July 1, 1995 through June 30, 1997 which is in effect for all times pertinent to these proceedings.
4. RSA 284.21-s, as amended in 1977, gives the Sweepstakes Commission authority "to pay graduated cash awards only, to a maximum sum of \$1,000, as an inducement to servants and agents, excluding Sweepstakes Commission employees, who actually sell tickets for persons authorized to sell tickets pursuant to RSA 284:21-h, II (d), provided such sweepstakes ticket selling servant or agent sells the winning sweepstake ticket for which the commission has authorized an incentive award." The 1977 amendment was intended to allow state employees, who are not employees of the Sweepstakes Commission, to be eligible to receive the aforesaid cash incentive awards. These cash awards thereafter were paid to state employees employed at State Liquor Commission stores from an undisclosed date in the mid-1980's, until January 5, 1994. On January 5, 1994, the Sweepstakes Commission voted unanimously to change the policy of paying certain incentive awards for agent ticket sellers and, instead, voted to pay bonuses for paying or cashing a winning ticket. Union Exhibit No. 1, pp. 2-6.
5. Commensurate with the implementation of the "cashing

bonus" or incentive, the Sweepstakes Commission changed the awards for which incentives were paid. (Union Exhibit No. 1.) In particular, it stopped paying incentives on "lower tier" prizes. As stated in a letter from the State Liquor Commission dated December 6, 1995 to William H. McCann, Jr., a witness in these proceedings:

Employees of a store selling a winning jackpot ticket share 1% of the winnings up to \$30,000.00 for a winning Megabucks, Powerball, Cash Lotto or 5 Card Cash ticket. The lower tier prizes formerly shared by employees for selling winning tickets on other games have been discontinued. A 1% redemption payment, a payment never distributed to employees, is deposited directly to the general fund when a winning ticket less than \$599.00 is redeemed at a Liquor Commission facility. (Attachment No. 5 to ULP.)

Consequently, the Sweepstakes Commissions stopped sending monies representing incentives on "lower tier" prizes to the State Liquor Commission and the State Liquor Commission stopped distributing those now non-existent monies to its employees.

6. On March 25, 1994, the Union and the State entered into sub-unit negotiations for the State Liquor Commission. On that date, the union presented a proposal concerning the distribution of Sweepstakes Commission incentive awards among full-time retail liquor store employees. (Attachment No. 3 to ULP.) Between March 23, 1994 and June 21, 1995, the State and the Union were unable to come to agreement on the proposal or modifications thereto. On June 21, 1995, the Union withdrew the proposal with an understanding, according to Raymond Proulx, that the parties would meet and consult on this matter during the life of the successor contract which is in effect for the period July 1, 1995 through June 30, 1997. Both Proulx and McCann testified that no meet and consult meeting was ever held with the State on the issue of distribution of incentives.
7. Between June 21, 1995 and October 17, 1995, McCann had several communications with George Liouzis, Human Resources Manager for the State Liquor Commission, about the incentive distribution issue and the scheduling of a meet and consult session. Liouzis

confirmed these overtures in his testimony and said he wanted to collect more facts and to see if the Sweepstakes Commission would reinstate any of the lost incentives before any meet and consult session was held. According to a State Liquor Commission "Hot Sheet" reporting on a supervisory meeting held on October 18, 1995, Liouzis reported that the "incentive question is now in consultation." There is no evidence that that "consultation" process involved the Union. Thereafter, Liouzis posed the question of the status of the meet and consult initiative to the State Liquor Commission. This prompted the Commission's letter of December 6, 1995, cited in Finding No. 5, above, which also said, "Based upon our review of the current status of Sweepstakes Commission prizes and their distribution, we do not see where further action or discussion is necessary."

8. The Union claims the acts complained of have lessened the overall compensation to employees of the State Liquor Commission, have changed past practice with respect to incentive distributions and have breached the parties' agreement to meet and consult about the distribution of incentive payments. The State claims that the ULP is time barred dating to January of 1994, that the issue was resolved by the signing of a comprehensive CBA for 1995-97 between the parties, inclusive of the Union's removing the issue from the bargaining table on June 21, 1995, and that the matter was beyond the control of the State Liquor Commission once the Sweepstakes Commission stopped making payments for the incentive programs which it directed be terminated at its meeting held on January 5, 1994.

DECISION AND ORDER

As noted in Finding No. 5, above, the Sweepstakes Commission stopped sending monies representing incentives on "lower tier" prizes to the Liquor Commission. The vote to change the incentive system was documented and taken by the Sweepstakes Commission January 5, 1994. When the Sweepstakes Commission stopped sending "lower tier" incentive monies to the Liquor Commission, the Liquor Commission, in turn, stopped distributing the now non-existent incentive awards to its employees.

From this set of circumstance we conclude that the discontinuance of the distribution of "lower tier" incentives by the Liquor Commission to its employees was a matter beyond its

control; it no longer was receiving the monies from the Sweepstakes Commission from which to make the distributions. Accordingly, we direct that the unfair labor practice charges be and hereby are, DISMISSED.

So ordered.

Signed this 12th day of JUNE, 1996.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard Roulx and E. Vincent Hall present and voting.