



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**STATE EMPLOYEES ASSOCIATION
SEIU, LOCAL 1984**

Petitioner

and

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS**

Respondent

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CASE NO. S-0376-11

DECISION NO. 2000-083

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The State Employees Association, SEIU, Local 1984 (Association), filed unfair labor practice charges on June 12, 2000 alleging that the NH Department of Corrections (State) and its agents breached the Collective Bargaining Agreement (CBA) Article 27.22 by the manner in which investigations are conducted and the unilateral adoption of a rule limiting the scope of Article 27.22 to Internal Affairs investigations in violation of RSA-A:5 I (h) and (i). The State asserts that the claim is too ambiguous to grasp the specific nature of the claim, asserts that to the extent there is a valid claim it is not within the primary jurisdiction of the PELRB and generally denies the commission of any unfair labor practice. The State then asks the PELRB to dismiss the complaint. In opposition, the Association seeks to have the PELRB issue an order against the State to make it "cease and desist the ongoing invalidation of Article 27.22" by the Department of Corrections.

PARTICIPATING REPRESENTATIVES

For the Complainant: William H. McCann, Negotiator/Field Representative II

For the Respondent: Sarah Wellingham, Manager of Employee Relations

ISSUES FOR DETERMINATION BY THE BOARD

1. Does the PELRB have jurisdiction to hear this matter?
2. Does the application of the doctrine of res judicata prevent the admission into evidence of the *Appeal of Roy*, Docket #99-D-7, Personnel Appeals Board?
3. Does the definition of "investigation" in Chapter 27.22 of the Collective Bargaining Agreement (CBA) between the parties, dated 7/1/99-6/30/00, include the investigation complained of in the Association's ULP?
4. Does the definition of "complaint" in Chapter 27.22 of the Collective Bargaining Agreement (CBA) between the parties, dated 7/1/99-6/30/00, limit the application of Chapter 27.22 to the investigation complained of in the Association's ULP? If so, to what extent?

WITNESSES

For the Complainant:

1. Gary Smith, Chapter President and Stewart
2. Gerry Henley, Stewart of Record

For the Respondent:

1. Lisa Currier, Human Resources Administrator
2. Richard Gerry, Administrator of Security
3. John Vinson, Esq., Counsel to Department of Corrections

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood

that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

The parties agree to the entry into evidence of the following documents as Joint Exhibits:

1. Collective Bargaining Agreement, 7/1/99-6/30/01
2. Letter of Warden Cunningham, dated 5/15/00
3. Policy Procedure Directive (PPD) 2.16, Rules and Guidelines
4. Notification of Administrative Rights

The Complainant intends to offer into evidence and additional exhibit over the planned objection of the Respondent:

1. *Appeal of Roy*, Docket #99-D-7, Personnel Appeal Board Decision

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than five (5) days before the date of the evidentiary hearing.

DECISION AND PRE-HEARING ORDER

Following a discussion between the parties and the conduct of a Pre-Hearing Conference the following decisions have been made:

1. The parties agree that no testimony is necessary to be presented to the Board on Issues #1 and #2, above, and each shall submit its Memorandum of Law in support of its respective positions on those two issues to the PELRB on or before August 30, 2000 at 4:30 p.m.
2. The parties shall submit a mutually executed Agreed Statement of Facts to the PELRB on or before August 30, 2000 at 4:30 p.m..

3. In the event that the parties otherwise resolve this matter before August 30, 2000, then the Association shall inform the PELRB of its withdrawal of the unfair labor practice and the matter shall be administratively dismissed.
4. In the event that the parties do not resolve the matter before August 30, 2000, then in that event, the matter shall be scheduled for a full evidenciary hearing before the Board. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
5. Any additional procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the evidenciary hearing date.

So Ordered.

Signed this 14th day of August, 2000.



Donald E. Mitchell, Esq.
Hearing Officer