



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire
Local 1984 SEIU

Petitioner

v.

State of New Hampshire

Respondent

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Case No. S-0384-7

Decision No. 2002-100

PRE-HEARING DECISION and ORDER

BACKGROUND

The State Employees Association of New Hampshire, Local 1984, SEIU, (hereinafter referred to as the "Union") filed a complaint ("ULP") with the Public Employee Labor Relations Board on July 24, 2002 in which the Union alleged that improper labor practices had been committed by the State of New Hampshire (hereinafter referred to as the "State"). The Union states that at least fifty (50) percent of the employees within the Department of Safety bargaining unit held membership in the Union on July 26, 2001, the date agreed upon by the parties for a determination of the percentage of all bargaining unit members holding membership in the Union. The Union further states that notwithstanding the existence of that number of members, provisions within the parties' collective bargaining agreement ("CBA") and a previous decision of the Public Employee Labor Relations Board, the State has failed to implement the so-called "agency fee" provisions of the parties' CBA as it relates to Union services rendered to bargaining unit members within the Department of Safety. The Union alleges that the State's failure to implement the agency fee deduction is not only a breach of the parties' CBA but also constitutes a violation of RSA 273-A:5, I (a), (e), (g), (h) and (i).

The Union requests relief through an order of the PELRB that the State cease and desist from violating the CBA and that the State immediately implement the agency fee

provisions of the parties' CBA. Claiming that the Union has had to litigate a clear right and to compel compliance with a previously issued PELRB decision relating to this matter, the Union requests that the PELRB order the State to pay all lost revenue calculated retroactively back to May 3, 2002 and order the State to pay the reasonable market value of all costs of legal representation and attorney's fees and all legal costs.

The State of New Hampshire responded by filing its answer on August 6, 2002 in which it denies all allegations of the Union except that the State agrees that the PELRB has jurisdiction over this action, that the PELRB issued previous decisions related to this matter, that since at least May 25, 2001 the Union has sought a finding of the existence of at least fifty (50) percent membership of the employees within the Department of Safety, and that the State's Director of Personnel had refused to implement the agency fee provisions of the parties' CBA based upon a prospective interpretation of a previous PELRB decision. The State requests that the PELRB find that it acted in accordance with law and the negotiated collective bargaining agreement. Further, the State requests the PELRB to dismiss the Union's complaint.

A Pre-Hearing Conference was conducted on August 28, 2002. Both parties were represented at that time and, after discussion between themselves and with the undersigned Hearing Officer, agreed to formulate certain stipulations that have been approved and that are incorporated into this Order.

PARTICIPATING REPRESENTATIVES

For the Complainant: Michael C. Reynolds, Esquire, General Counsel SEIU, SEA-NH

For the Respondent: Thomas F. Manning, Director, Division of Personnel
Sarah J. Willingham, Manager of Employee Relations

ORDER ON STIPULATIONS

The parties have discussed certain procedural aspects of this matter in light of the filing of the Petition for Declaratory Ruling, filed on August 9, 2002 by the Department of Employment Security (Case No. S-0306-1). On September 3, 2002 the parties filed stipulations for acceptance by the PELRB that appear below. The PELRB has reviewed the parties' mutually executed submission and finds as follows:

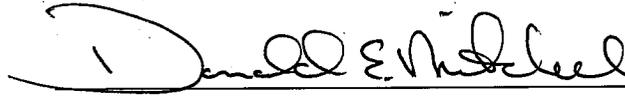
1. Both parties in this matter are aware of PELRB Case No. S-0306-1 (Petition for Declaratory Ruling by John J. Ratoff), and the pleadings submitted on that case.
2. Some or all of the issues in this unfair labor practice matter, Case No. S-0384-7, may become moot with the resolution of Case No. S-0306-1 and/or the

expected December 2002 implementation of the fair share provisions of CBA Article 5.8.I.a-d The parties hereby agree that, subject to the approval by the PELRB, this case may be held in abeyance until Case No. S-0306-1 is resolved; except that the PELRB is hereby requested to hold a second pre-hearing conference in this matter on December 18, 2002.

3. Neither party makes any admission or gives up any other rights due to the submission of these stipulations.
4. The parties believe that judicial economy will be served by the PELRB granting this request.

So Ordered.

Signed this 4th day of September, 2002.

A handwritten signature in black ink, appearing to read "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearing Officer