



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire
Local 1984 SEIU,

Complainant

v.

State of New Hampshire

Respondent

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Case No. S-0330-5

Decision No. 2003-093

PARTICIPATING REPRESENTATIVES

For the Complainant: Lorri Hayes, Esquire, Contract and Field Operations
Administrator SEIU, SEA Local 1984

For the Respondent: Laura E. B. Lombardi, Esquire, Assistant Attorney General
Sara Willingham, Employee Relations Manager

BACKGROUND

State Employees Association of New Hampshire Local 1984 SEIU, (hereinafter referred to as the "Association") filed unfair labor practice charges against the State of New Hampshire (hereinafter referred to as the "State") on March 7, 2003 alleging violations of RSA 273-A:5 I (a), (b), (e), (g), (h) and (i) and RSA 91-A New Hampshire's so-called "Right to Know Act." Specifically, the Association alleges that the State's refusal to provide the Association with the names and home addresses of all bargaining unit employees, including members who are not members of the Association, constitutes a refusal to bargain in good faith, an interference with the Association's administration or an interference with the general exercise of rights afforded to public employees and their exclusive representative under RSA 273-A, the Public Employee Labor Relations Act. It further asserts that the Association is entitled to release of the requested information

under the provisions of RSA 91-A. As relief, the Association asks that the requested information be provided and that the Association be reimbursed the reasonable market value of representation and fees necessitated by the filing of this complaint.

The State of New Hampshire filed its answer and a Motion to Dismiss asserting a failure of the Association to state a claim upon which relief may be granted on March 21, 2003. The Association filed its objection to the State's Motion to Dismiss on April 4, 2003. Thereafter, the matter was scheduled for a pre-hearing conference that was continued by agreement and, later, conducted on April 23, 2003.

At the Pre-Hearing Conference, the parties stipulated to the jurisdiction of the PELRB to decide the issue raised by the Association's complaint. The parties also agreed to waive an evidentiary hearing and oral argument, and to complete the record through the submission of stipulated facts and exhibits and supportive legal memoranda. On June 2, 2003, the last of these filings was filed with the PELRB and the record was closed. The Board then considered the parties' pleadings, stipulated facts, exhibits and legal memoranda in reaching its decision.

FINDINGS OF FACT

The facts appearing below were jointly submitted by agreement of the parties. The Board hereby incorporates them into this decision as its "Findings of Fact" in this matter.

1. The Public Employee Labor Relations Board (hereinafter "PELRB" or "Board") has jurisdiction over this improper practice charge pursuant to RSA 273-A: 6.
2. The State Employees' Association, SEIU Local 1984 (hereinafter referred to as the Association) is the exclusive representative of certain classified employees employed by the Executive Branch of the State of New Hampshire as described in the enclosed State Employees' Association and the State of New Hampshire Collective Bargaining Agreement, 2001-2003 (Attachment A) under the authority of RSA 273-A; with the exception of those classified employees excluded from the definition of public employee under the provisions of RSA 273-A:1, IX.
3. Governor Craig Benson appointed the State of New Hampshire Negotiating Committee. (hereinafter referred to as the Negotiating Committee) The Negotiating Committee members are Mr. John Ratoff, Commissioner, Department of Employment Security, Ms. Sarah Willingham, Manager, Employee Relations, Mr. Bill Bartlett, Director, Department of Fish and Game, Mr. Richard Flynn, Commissioner, Department of Safety, Ms. Linda Pepin and Mr. Ray Marshall. Ms. Willingham is employed by the State as its representative for Employee Relations matters. Her office address of record is 25 Capitol Street, State House Annex, Concord, NH 03301. The State of New

Hampshire (hereinafter referred to as the State) is the Executive Branch of the State and the employer under authority of RSA 273-A.

4. In December 2002, the Negotiating Committee and the Association began their biannual negotiations for a Master Collective Bargaining Agreement. After several negotiating sessions, Governor Benson replaced a majority of the Negotiating Committee with the individuals who currently make up the team.
5. On December 10, 2002, the Association filed its first request for information. On January 2, 2003, the Association filed its second request for information. This information is necessary for the Association to adequately prepare for bargaining. (Attachment B and C) The information requested is also relevant to the Association's quest to present the best proposals "to establish a basic understanding relative to personnel policy, practice, and procedures and matters affecting conditions of employment with respect to which the Employer is empowered to negotiate, and to provide a means of amicable discussions and adjustment of matters of mutual interest." State Employees' Association and the State of New Hampshire Collective Bargaining Agreement, Preamble, 2001-2003. (Attachment A)
6. Ms. Willingham, the Negotiating Committee representative, responded to [the Association's] requests on January 14, 2003 by providing the requested information. (Attachment D)
7. On February 19, 2003, the Association's Chief Negotiator sent a request to Ms. Willingham to provide "a list of names and homes addresses of all employees in the various bargaining units represented by SEA." (Attachment E) On February 26, 2003, the Negotiating Committee replied denying our request for this information. (Attachment F)
8. The issue of access to employees' home addresses is a longstanding issue that has arisen in the past between the Association and the State. Over the years, it has always been the decision of the State to deny requests for home addresses of employees who are not members of the Association. The Association in its continued request for the information, clearly disagrees with the State's position.

DECISION AND ORDER

The Public Employee Labor Relations Board ("PELRB") has primary jurisdiction to adjudicate unfair labor practice complaints alleging violations of RSA 273-A:5, I and makes its determination in this matter pursuant to the authority vested in it under the provisions of RSA 273-A:6. The PELRB does not have primary jurisdiction to apply the

provisions of New Hampshire's so-called "Right-to-Know" law, RSA 91-A, and does not exercise any such authority in reaching its decision in this case. Either party may therefore seek separate relief to the extent jurisdiction is available to them in a more appropriate forum.

The State and the Association are parties to a collective bargaining agreement. (Finding of Fact #1, see also Exhibit A). The Association is the duly certified exclusive representative of a bargaining unit comprised of certain individuals who are employed by the State of New Hampshire and are the subject of this action. (Finding of Fact #2). The Association's complaint is that on February 19, 2003 it requested the State to provide it with the names and home addresses of all State employees who were individuals of the several bargaining units consisting of state employees for whom the Association was certified to act as the exclusive bargaining representative. (Finding of Fact#7, see also Exhibit E). On February 26, 2003 the State denied that request. (Finding of Fact #7, see also Exhibit F). The State had previously denied a similar request of the Association in 1999. (Finding of Fact #8, see also Exhibit F). The State has provided other types of information as separately requested by the Association. (Finding of Fact #5 and #6, see also Exhibits B, C, and D).

The positions of the respective parties are revealed in their exchange of correspondence. The Association letter dated February 19, 2003 requested the names and home addresses of unit members. The letter expressed as a rationale for the Association's request that it sought the information to allow it to "communicate with all members of the bargaining unit irrespective of their membership or non-membership in the Association" and "to meet our responsibilities as the bargaining representative..." (Exhibit E). Further, the letter expressed that "this is information which we might only obtain from the State and is a key component to our ability to conduct a democratic and fair bargaining process on behalf of all of these employees." (*Id.*) The State's February 26, 2003 letter included the responsive assertion, among other things, that the Association's "relationship to employees due to its exclusive representative status does not outweigh the privacy interests of state employees." (Exhibit F).

In this state, the exclusive representative of a bargaining unit is provided certain rights that, among other rights included in the provisions of our governing statute, include: "[t]he right to represent employees in collective bargaining negotiations..." RSA 273-A:11, I(a). The Association alleges that it is the fulfillment of that obligation which creates its need for the names and home addresses of all employees within the bargaining unit whether or not they are members of the Association. The Association alleges that the State's refusal to provide the Association with the home addresses of public employees who are not members of the Association violates certain statutory provisions of the Public Employee Labor Relations Act, RSA 273-A. These provisions mandate, in relevant part, that:

"I. It shall be a prohibited practice for any public employer:

(a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;

- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (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;
- (g) To fail to comply with this chapter or any rule adopted under this chapter;
- (h) To breach a collective bargaining agreement;
- (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.” RSA 273-A:5, I.

The Association also alleges that the State’s refusal violates the Right-to-Know Act, RSA 91-A. As the PELRB does not exercise primary jurisdiction over alleged violations of RSA 91-A, we focus solely on those provisions within our governing statute, RSA 273-A *et seq.*, and our Administrative Rules Pub 101 *et seq.* to consider the merit of the parties’ respective positions in this case.

Because our rules specifically express an obligation of a public employer to provide the names and home addresses of members of a bargaining unit to its exclusive bargaining representative, we first address application of that rule to the evidence before us. Admin. Rule Pub 303.01(b) provides that a public employer must provide a list of the names and home addresses of employees in a bargaining unit, for which an election is pending, to an exclusive bargaining representative that has been certified by the PELRB under the provisions of RSA 273-A:8. The existing rules do not address the provision of employees’ home addresses at other times or for other reasons at the request of a duly certified exclusive bargaining representative. There is no evidence before us that indicates that the parties are involved in a pending election. Rather, the evidence is that the bargaining unit’s existence is of long standing. (Finding of Fact #8, see also Exhibit F). Therefore the State is not required to provide the requested information pursuant to Admin. Rule Pub 303.01 (b) over which the PELRB has jurisdiction.

That administrative rule aside, our remaining consideration, then, is to examine the evidence before us to determine whether or not the statutory prohibitions contained in RSA 273-A: 5,I (a), (b), (e), (g) (h) or (i) have been violated by the State’s refusal to provide the requested information. As the complaining party, the Association bears the burden of proof to establish by a preponderance of the evidence that the state’s actions amount to an improper practice. The proof offered in this case consists solely of the agreed facts as stipulated by the parties that appear above and the parties’ joint exhibits.¹

¹ Exhibit A – Collective Bargaining Agreement; Exhibit B – Association letter request, dated 12/20/02; Exhibit C – Association’s second letter request, dated 1/2/03; Exhibit D – State’s letter of response, dated 1/14/03; Exhibit E – Association’s third letter request, dated 2/14/03; Exhibit F – State’s letter of response, dated 2/26/03; Exhibit G – Timberlane Regional Education Association & a. v. Robert V. Crompton, 114 N.H. 315 (1974).

At the outset we find insufficient evidence, within the limited number of agreed facts stipulated by the parties and the mutual exhibits submitted for our consideration that cause us to determine that the State has restrained, coerced or otherwise interfered with employees exercising rights conferred by RSA 273-A: 5,I (a). We also find insufficient evidence provided by the facts and exhibits provided to us that the State has unilaterally acted in a manner affecting terms and conditions of employment that invalidates any portion of the parties' agreement. RSA 273-A:5,I(i). Further, because the parties have agreed to submit the issues presented in the Association's complaint to the PELRB for resolution and because the language in Section 3.2 of the parties' collective bargaining agreement (Exhibit A) is unambiguous and clearly expresses limiting access to employees' home addresses to Association members only, we find no basis for the Association's allegation that the State has violated RSA 273-A:5, I(h) by breaching the parties' agreement.

The PELRB cautiously approaches requests for relief involving issues that appear in clear, mutually accepted language within collective bargaining agreements or that have previously been sought as the subject of good faith negotiations between the parties. The Board takes this approach because it does not want to encourage parties to develop a course of dealings whereby positions that are not achieved at the negotiating table are subsequently sought through administrative adjudication. A review of the parties' CBA reveals that the parties have previously negotiated a mutually acceptable provision that requires the State to provide the Association only with the home addresses of members of the bargaining unit who are also members of the Association. (See Exhibit A, Section 3.2). While the evidence in the record of these proceedings does not indicate when the parties first negotiated that provision into their CBA, their request in 1999 (See Exhibit F) and subsequent collective bargaining agreement (See Attachment A) leads us to conclude that there has been at least one contract successfully negotiated between the parties since the Association made a request for the home addresses of non-Association employees. Good faith bargaining does not require that either party must accede or accept a specific proposal of the other. Therefore, to the extent that the parties might have negotiated language into a collective bargaining agreement that would result in the complete or conditioned provision of the names and home addresses of the employees at issue in this complaint, we find that the State's refusal to do so does not constitute a failure to bargain in good faith pursuant to RSA 273-A:5,I (e).

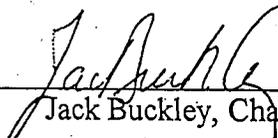
Another Association allegation is that the State's refusal to provide the requested information constitutes interference in the administration of the Association in violation of RSA 273-A:5, I(b). Besides the earlier references to Section 3.2 of the parties' collective bargaining agreement, the Association presents, as evidence, a reference to the preamble of the parties' collective bargaining agreement (Preamble, Exhibit A, p.3) which expresses, in relevant part, that the parties' intent and purpose in establishing "a basic understanding relative to personnel policy, practices and procedures and matters affecting conditions of employment with respect to which the Employer is empowered to negotiate, and to provide a means of amicable discussions and adjustment of matters of mutual interest." (Finding of Fact #5). Insufficient evidence was presented that indicated that the Association had unsuccessfully undertaken any independent effort, in fulfillment

of its stated obligation to represent all bargaining unit members, to obtain the requested information or unsuccessfully pursued any alternative means to communicate with unit members who do not belong to the Association. The Association has acted as the exclusive representative of the employees at issue in these proceedings for a significant period of time apparently without the information it now seeks to obtain from the State through these proceedings. Insufficient evidence was presented to demonstrate how the Association's administration has been interfered with by the State's refusal to provide the requested information. Insufficient evidence was presented to demonstrate that the Association had made attempts to obtain any of the requested information by any other means in order to communicate with non-members. There was no evidence presented that past attempts at communicating with non-members were unsuccessful. There was no evidence presented that other means of achieving viable communication do not exist without receiving a single list from the State. Without such evidence, we cannot conclude that the Association has proven that their desire to obtain the names and home addresses of bargaining unit members who are not also members of the Association has risen to a level where it can be determined by a preponderance of the evidence that the State has impeded the Association from fulfilling their statutory obligations.

In the present day we feel that the dissemination of a person's home address to an exclusive bargaining representative is not a mere ministerial matter but carries with it valid concerns for privacy. However, in this case, as the allegations of the complaint have been framed and with the present circumstance described by the evidence as marshaled and presented, we do not have to undertake a "balancing" test involving the privacy interest that public employees may have in their home address and the manner of communication employed by the exclusive bargaining representative with non-Association members. The application of that test may, in the future, require our analysis or analysis by another tribunal. However, on the evidence we have before us we find that, under the circumstances existing at the time of the Association's request, the State's refusal to provide the requested information did not constitute interference in the administration of the Association in violation of the above-cited RSA 273-A:5,I(b). It follows then that since we have found that the State's refusal did not violate any other statutory provisions or rules as alleged above, we also find that RSA 273-A:5,I(g) has not been violated. Therefore, the complaint is denied.

So Ordered.

Signed this 11th day of September, 2003



Jack Buckley, Chairman

By unanimous decision. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.

Distribution:

Lorri Hayes, Esquire

Laura E. B. Lombardi, Esquire