



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NH State Employees' Association, Inc.,
SEIU Local 1984

Petitioner

v.

NH Department of Health and Human Services

Respondent

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Case No. S-0308-8

Decision No. 2004-105

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

State Employees Association of New Hampshire, Inc., SEIU Local 1984, (hereinafter referred to as the "Union") filed unfair labor practice charges against the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as "the State") on May 14, 2004 alleging violations of RSA 273-A:5 I (e), (g), (h) and (i). Specifically, the Union alleges that the State has failed to comply with an arbitrator's award, issued on November 19, 2003; that awarded certain make whole remedies to the grievant, Bette Jane Riordan.

The State filed its answer on May 28, 2004. The State essentially agrees with the chronology of events as alleged by the Union and admits that an award as to damages regarding the grievant was issued on November 19, 2004. However, the State further answers that the arbitrator retained jurisdiction over the issue of the remedy and denies that it has committed an unfair labor practice.

A tele-conference was conducted on July 14, 2004 at 3:00 PM, during which both parties were represented by counsel. During the course of the pre-hearing conference, Counsel for the Union indicated his intent to file a Motion for Summary Judgment. Through discussion with the PELRB Hearing Officer, the parties reached a stipulation as to the manner in which the case shall proceed, as set forth below.

PARTICIPATING REPRESENTATIVES

For the Union: Michael C. Reynolds, Esquire

For the State: Frank D. Nachman, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

1. Based upon the stipulated facts, and any offers of proof, is the Union entitled to judgment as a matter of law?
2. Whether the actions and/or inaction of the State constitute a failure to comply with duly issued, final and binding, arbitration award and therefore violative of RSA 273-A:5, I (e), (g), (h) and/or (i)?
3. Whether the Grievant has sufficiently mitigated her damages?

WITNESSES

For the Union:

1. Bette Jean Riordan
2. Geraldine O'Connor
3. Dennis Martino
4. Robert Lettellier

For the State:

1. Sandy Platt
2. Katherine Keane
3. Dennis Martino
4. Bette Jean Riordan

Both parties reserve the right to amend their List of Witnesses in conformity with administrative Rule Pub 203.01 (b). Each party shall also file a copy of any Witness List to the PELRB at the same time they forward it to the opposing representative. 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

Joint Exhibit(s):

1. Arbitrator's Award, dated November 19, 2002
2. Arbitrator's Award, dated November 19, 2003

Union Exhibits:

1. Correspondence and memoranda between the parties

State Exhibits:

1. Correspondence and memoranda between the parties

The parties reserve the right to amend their List of Exhibits at least five (5) days prior to any evidentiary hearing, or later, upon proper showing, with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Administrative Rule 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 two (2) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION AND PRE-HEARING ORDER

Based upon discussions with the parties' representatives during the tele-conference on July 14, 2004, the Hearing Officer determines the following:

1. Counsel for the Union shall file an original and five (5) copies of the Union's Motion for Summary Judgment with the PELRB on or before **July 21, 2004**, and forward a copy of said motion to counsel for the State. Counsel for the State shall file an original and five (5) copies of the State's response to the Union's motion with the PELRB within fifteen (15) days of its' filing with the board, and forward a copy of said response to counsel for the Union.
2. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
3. The parties' representatives shall meet, or otherwise confer, in order to compose a mutual statement of agreed facts. The parties representatives shall memorialize those facts upon which they can so stipulate and file said document with the PELRB on or before **August 23, 2004**.

4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, a hearing on the Union's motion shall be held on:

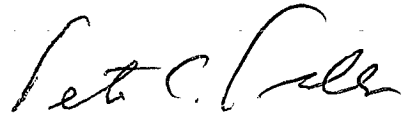
August 26, 2004 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

5. In the event a subsequent evidentiary hearing is scheduled, the party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.

So ordered.

Signed this 15th day of July, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Michael C. Reynolds, Esq., General Counsel, SEIU, SEA-NH

Frank D. Nachman, Esq., Counsel to Department of Health and Human Services