



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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New Hampshire Troopers Association

Complainant

v.

State of New Hampshire Division of State Police

Respondent

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Case No: P-0754-15

Decision No. 2004-165

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

The New Hampshire Troopers Association (hereinafter "the Association") filed an unfair labor practice complaint on September 9, 2004 alleging that the State of New Hampshire, Division of State Police (hereinafter "the State") committed an unfair labor practice in violation of RSA 273-A:5 I (h), when it began deducting more than 8 hours of annual leave and/or sick time from troopers' leave accounts for each day of annual leave and/or sick time taken. More specifically, the Association states that prior to July 1, 2004, when troopers used a day of annual leave or sick time, only eight (8) hours of annual leave or sick time was deducted from their respective leave account. Beginning with the first paycheck of July 2004, the Association avers that the State began overcharging troopers who are scheduled to work more than 8 hours per shift (i.e., 8½ or 9 hour shifts) by deducting more than 8 hours of leave (annual and sick) for each day taken. It contends that such policy is in direct violation of Article X and Article XI of the parties' collective bargaining agreement ("CBA") that require that each trooper be given a certain number of *days* of leave, a "day" constituting only eight (8) hours. As remedies, the Association requests that the PELRB (1) declare that the State has committed an improper labor practice; (2) order the State to cease and desist such acts in violation of RSA 273-A:5 I (h); (3) order the State to restore the vacation and sick time to any trooper who has been charged over 8 hours for any such leave; and (4) grant such other relief as may be just.

The State filed its' answer denying the Association's charge on September 24, 2004. While the State admits to the factual chronology of events as described in the Association's complaint, it specifically denies that it has committed any improper labor

practice. The State does not dispute that effective July 1, 2004, it began deducting leave time equal to the sum of actual hours taken for leave. It states that prior to July 1, 2004, a trooper working a 9 hour shift who took an annual leave day on a scheduled 9 hour shift would be charged only 8 hours off the trooper's annual leave credit. The State maintains that this was erroneous and that charging a sum equal to the number of leave hours used is in conformity with the CBA and Division of Personnel Rules. Accordingly, the State requests that the PELRB (1) declare that the State of New Hampshire Division of State Police did not commit an unfair labor practice by deducting leave time equal to the sum of actual hours taken, and (2) order such other and further relief as its deems just.

A pre-hearing conference before the undersigned Hearing Officer was conducted on October 6, 2004 at PELRB offices, Concord, New Hampshire. Counsel were present on behalf of both parties.

#### PARTICIPATING REPRESENTATIVES

For the Association: James W. Donchess, Esq.

For the State: Marta A. Modigliani, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

- (1) Did the State commit an unfair labor practice, within the meaning of RSA 273-A:5 I (h), by:
  - a. unilaterally reducing vacation and sick time benefits below that which is required under the parties' CBA and pursuant to past practice; and/or
  - b. deducting leave time in a manner equal to the sum of actual hours taken for leave as of July 1, 2004?
- (2) If so, what shall be the remedy?

#### WITNESSES

For the Association:

1. Trooper Lou Copponi, Association President
2. Trooper Bruce Twyon, Past Association President
3. Trooper Rich Mitchell
4. Trooper Mike Doucette (Retired)
5. Trooper John Cody

For the State:

1. Colonel Fred Booth

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 with 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

Joint Exhibits:

1. 2001-2003 Collective Bargaining Agreement
2. Prior CBAs

For the Association:

1. Documentation relating to the usage of annual leave and sick time.

For the State:

None other than those marked as joint.

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### LENGTH OF HEARING

The time set aside for this hearing will be one-half (1/2) day. 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

1. As discussed during the pre-hearing conference, the Association shall make a written request to the State by **October 11, 2004** seeking information relevant and necessary in its preparation of the instant case. The State shall

respond to the Association's discovery request on or before **October 26, 2004**. In this regard, the party representatives are encouraged to meet, or otherwise confer, for the purpose of exchanging any documents requested by the other as pre-hearing discovery and for the purpose of making a good faith effort to reach stipulations on any and all documentary evidence.

2. The parties' representatives shall meet, or otherwise confer, on or before **October 28, 2004** 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 that document with the PELRB no later than **November 12, 2004**.

3. 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.

4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

5. A final pre-trial conference will be conducted via telephone on **November 15, 2004 at 3:00 PM**. The PELRB Hearing Officer will contact counsel for the parties at that time.

6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

**November 18, 2004 @ 9:30 AM**

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

So ordered.

Signed this 7<sup>th</sup> day of October, 2004.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

James W. Donchess, Esq.  
Marta A. Modigliani, Esq.