



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire,
Local 1984, SEIU

Complainant

v.

State of NH Department of Corrections

Respondent

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Case No. S-0376-14

Decision No. 2005-046

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The State Employee's Association, SEIU Local 1984, AFL-CIO (hereinafter "the Union") filed an unfair labor practice complaint on October 31, 2003 alleging that the State of New Hampshire, Department of Corrections (hereinafter "the Employer") has committed unfair labor practices by continually breaching terms of the parties' contractual grievance procedure. More specifically, the Union claims that the Employer has violated RSA 273-A:5 I (e), (g) and (h) by its actions, and inaction, in the processing of grievances. First of all, the Union alleges that since October 2004 the Employer has failed to schedule Step 2 and Step 3 meetings in accordance with Article XIV of the contract. It contends that this has happened on many occasions, including, but not limited to, grievances filed on behalf of Correctional Officers Steven Britton, Jeffrey Dionne and Roger Provost. Second, the Union alleges that Attorney John Vinson, counsel for the Employer, has refused to appear at scheduled arbitration hearings despite the fact that he had previously agreed to do so.

Third, the Union references a grievance meeting held on December 1, 2004 in which Commissioner Stephen Curry described the parties' CBA as being "a piece of crap." The Union asserts that this statement is indicative of the fact that the grievance process is not respected and will not be adhered to by the Employer, and therefore constitutes a violation of RSA 273-A:5. Finally, the Union claims that the Employer has failed to mutually agree upon an arbitrator or an arbitration date for upwards of twelve grievances. Based upon the foregoing, the Union requests that the PELRB (1) order the Employer to cease and desist in its violation of RSA 273-A:5 and

the parties' CBA, (2) require the Employer to follow the grievance process under the contract and conduct Step II and Step III meetings, (3) require the Employer to fully process grievances through the arbitration stage, and (4) order the Employer to reimburse the Union for its' costs in bringing this action, including the reasonable market value of attorney's fees.

The Employer filed its answer denying the Union's charge on March 11, 2005. The Employer denies that it has breached RSA 273-A:5 I or Article XIV of the CBA. As preliminary issues, it states that employees in the rank of Sergeant and above exercise significant discretion and belong in a separate bargaining unit from that of the Union's. It also maintains that the Union cannot represent professional employees without a separate vote of the professional and non-professional employees. Since the Employer has no knowledge that such a vote was ever held, its' official position is that the Union does not represent the professional employees.

As to the merits of the Union's complaint, the Employer asks that it be dismissed. On a case-by-case basis, the Employer offers explanations as to the manner in which particular grievances were processed. As to the alleged lack of Step II hearings, the Employer notes that the Commissioner already recognized the problem and addressed the issue prior to the filing of the instant complaint. Regarding his own alleged failure to proceed with an arbitration case, the Employer's counsel submits that the same matter was before the PELRB and that it was moot. Moreover, according to the Employer, under the CBA it is not the duty of the Employer to schedule an arbitrator but instead that of the State Labor Management Committee (LMC). With respect to the LMC itself, the Employer requests that the PELRB issue an order preventing corrections employees on the State LMC from acting on cases that involve the Department of Corrections based upon the apparent conflict of interest.

In reference to the alleged statement of the Commissioner, while the Employer admits that the statement was made, it denies that such conduct constitutes a violation of RSA 273-A:5. It offers the clarification that the Commissioner was expressing his opinion about certain inartfully drawn contract language and not about the CBA as a whole. The Employer states that discussions were open and frank during the meeting, which was actually held on November 22, 2004, and it questions why the instant venue was chosen to raise this issue other than to be inflammatory. As to the grievances pending arbitration, the Employer answers that it has attempted in good faith to arbitrate these cases, which concern lateral transfers. On the other hand, it submits that the delay of arbitrations on some cases was done at the suggestion of the Union. The Employer maintains that it has attempted to have the State LMC comply with the contract and that the process is proceeding.

By way of further answer, the Employer expresses its belief that the instant complaint is part of a concerted effort by the Union to violate RSA 273-A:5 II (d) and interfere with the collective bargaining process. Accordingly, it requests that the Board issue a cease and desist order against the Union pursuant to Pub 304.02 and RSA 273-A:6, III. It also asks that the Board not certify the Union regarding professional employees until a separate vote is taken, that the Board order the Union to cease and desist from including or enrolling supervisory employees, and that the Board direct the Correction's employees on the State LMC to recuse themselves from acting on Correction's cases.

Whereas a Notice of Hearing and Pre-Hearing Conference was duly issued by the PELRB, and no correspondence was subsequently received from either party requesting a continuance, the matter proceeded as scheduled on March 28, 2005. Although counsel for the Employer was present, a representative for the Union did not arrive until the conference had been completed.

PARTICIPATING REPRESENTATIVES

For the Union: None

For the Employer: John Vinson, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Has the Employer violated RSA 273-A:5 I (e), (g) and/or (h) by continuously breaching provisions of the parties grievance procedure, including:
 - (a) Disregarding the specific language that requires the parties to meet at Step 2 and Step 3 of the grievance procedure?
 - (b) Through its attorney, John Vinson, refusing to appear at arbitration hearings after mutually agreeing to go forward with the scheduled hearing?
 - (c) A statement by Commissioner Stephen Curry during a grievance presentation that the CBA "is a piece of crap."?
 - (d) Failing to agree upon an arbitrator or an arbitration date on upwards of twelve (12) separate grievances?
- (2) Whether the Union has engaged in unfair labor practices in violation of RSA 273-A:5, II (d), by attempting to improperly influence the collective bargaining process.¹
- (3) Whether the Board should not certify the Union as representing professional employees until a separate vote is taken by both professional and non-professional employees.²
- (4) Whether certain members of the Union should be excluded from the bargaining unit based upon their supervisory status.³
- (5) Whether corrections employees who are members of the Labor-Management Committee must recuse themselves from arbitration cases regarding the Department of Corrections.⁴

¹ As raised in the Employer's answer to the Union's complaint.

² As raised in the Employer's answer to the Union's complaint.

³ As raised in the Employer's answer to the Union's complaint.

⁴ As raised in the Employer's answer to the Union's complaint.

WITNESSES

For the Union:

None Submitted.

For the Employer:

1. Sara Willingham, Manager of Employee Relations, State of NH
2. Lisa Currier, Human Resources Director, NH Dept of Corrections
3. Bruce Cattell, Warden, Northern NH Correctional Facility
4. Stephen Curry, Commissioner
5. Randy Hunneyman

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. Parties' collective bargaining agreement, July 1, 2001 – June 30, 2003.

For the Union:⁵

1. ⁶E-mails regarding Boyajian arbitration, dated 12/15/04 and 12/16/04
2. E-mails regarding Boyajian arbitration, dated 2/13/05 and 2/14/05
3. Affidavit of Thomas McCabe, dated 12/1/04
4. 1/3/05 Letter to Sara Willingham from Gary Smith.
5. 1/5/05 Letter to G. Smith from S. Willingham.
6. 1/26/05 Letter to G. Smith from S. Willingham.
7. Arbitration requests dated 1/31/05.
8. 2/11/05 Letter to S. Willingham from Commission Stephen Curry.

For the Employer:

1. Modification of Certified Bargaining Unit – Case No. S-0414
2. 9/23/04 letter to Capt. T. Kozikowski from Officer G. Wilkins
3. 12/10/04 Memo to Officer G. Wilkins from Major R. Cunningham

⁵ During the pre-hearing conference, Counsel for the Employer indicated that he had no objection to the various documents attached to the Union's complaint being designated as the Union's exhibits.

⁶ Attachment A to the Union's complaint is the parties' CBA, which is designated herein as Joint Exhibit 1. Attachment B is PELRB Decision No. 2005-011, to which the Board may take official notice per Pub 203.02(g)(2).

4. 12/07/04 Letter to Officer S. Britton from Warden B. Cattell
5. 12/29/04 Letter to Officer G. Wilkins from Deputy Warden Crompton
6. 1/5/05 Step III Letter to Commissioner Stephen Curry from Officer G. Wilkens
7. 3/4/05 Letter to Officer Steve Britton from Comm. Curry
8. 12/19/04 Step I Letter to Lt. Dan Torres from Officer G. Wilkens
9. 1/4/05 Letter to Officer J. Dionne signed by Deputy Warden Crompton.
10. 1/6/05 Step III Letter to Comm. Curry from Officer G. Wilkens
11. 10/14/04 Letter to Comm. Curry from G. Smith.
12. 1/25/05 Letter to Officer R. Provost from Comm. Curry.
13. 10/25/04 Letter to Sergeant Gary Smith from Comm. Curry.
14. 10/8/04 Email to John Vinson from Mike Ryan.
15. Email between John Vinson, Lori Hayes and Mike Ryan.
16. 2/14/05 Email from John Vinson.
17. 2/11/05 Letter to Sara Willingham from Comm. Curry.
18. 1/31/05 Letter to Comm. Curry and G. Smith from Sara Willingham.
19. 2/18/05 Letter to Comm. Curry from Sara Willingham.
20. 1/3/05 Letter to Officer Tower from Comm. Curry.
21. 9/04 Emails between Vinson, Currier, Smith, McCabe, and Hayes.
22. 1/5/05 Letter to Gary Smith from Sara Willingham.
23. 2/28/05 Letter to Sara Willingham from Comm. Curry.
24. 3/4/05 Letter to Commissioner Stephen J. Curry from Sara Willingham.
25. SEIU Local 1984 Contract Campaign 2003.
26. 3/5/05 Concord Monitor Article "Corrections Relations a Tinderbox."
27. SEIU Local 1984 Article "1997: Action Leads to Corrections Subunit Victory."

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 being set aside for this hearing is one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than **April 1, 2005**.

DECISION

1. The PELRB Hearing Officer will conduct a supplemental pre-hearing conference with the parties' counsel, via telephone conference call, on **March 30, 2005 at 1:30 PM**.
2. The parties' representatives shall meet, or otherwise confer, on or before **April 1, 2005** 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 no later than **April 4, 2005**.

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. 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:

April 5, 2005 @ 9:30 AM

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

So ordered.

Signed this 29th day of March, 2005.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Lorri Hayes, Esquire
John Vinson, Esquire