



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State of New Hampshire,  
Department of Corrections Local 1984, SEIU

Petitioner

v.

State Employees Association of New Hampshire  
SEIU Local 1984

Respondent

Case No. S-0376-15

Decision No. 2005-121

State Employees Association of New Hampshire,  
SEIU Local 1984

Complainant

v.

State of New Hampshire,  
Department of Corrections

Respondent

Case No. S-0376-16

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The State of New Hampshire, Department of Corrections (hereinafter "the State") filed an Appeal and Declaratory Ruling Request (Case No. S-0376-15) on June 13, 2005 requesting, pursuant to Pub. 206.01, that the Public Employee Labor Relations Board (PELRB) declare an arbitrator's award void and in violation of fundamental due process. More specifically, the State alleges that State Employee's Association, SEIU Local 1984, (hereinafter "the Union") met with the arbitrator, *ex parte*, on February 14, 2005, who heard evidence and later rendered a decision. The State contends that the decision rendered by the arbitrator and participated in by the Union is illegal and a violation of the parties contract because, among other things, the case had not been

referred to arbitration by the Labor-Management Committee and the decision adds terms to the contract.

On June 28, 2005, the Union filed a Motion to Dismiss the State's Appeal and Declaratory Ruling Request, stating, *inter alia*, that pursuant to Pub. 206.01(c)(2) the matter should be dismissed because it has already been the subject of a previous ruling on the merits, citing the PELRB's Decision No. 2005-011. The Union submits that in said decision, the PELRB required the parties to engage the assistance of an arbitrator in resolving all of the issues contained in that case, including the grievance that was the subject of the February 14, 2005 arbitration. The Union also argues that the arbitrator's decision was within the scope of the power granted to him through the terms of the parties' CBA and the due process was granted to the State. In this regard, the Union asserts that the State's failure to partake in the arbitration process was due to a miscalculation on its' attorney's part.

The Union then filed an unfair labor practice complaint on June 30, 2005 alleging that the State has violated RSA 273-A:5 I (c), (e), and (h) by failing to implement or comply with the March 25, 2005 award issued by the arbitrator (Case No. S-0376-16). It states that on or about February 14, 2005, the State's representative, Attorney John Vinson, failed to appear at the scheduled arbitration hearing and that thereafter, on March 25, 2005, the arbitration decision was issued in accordance with Article 14.5 of the parties' contract. As alleged by the Union, to date the State has failed to comply with the arbitrator's decision despite the parties' agreement under the contract to abide by all arbitration decisions. The Union submits that the arbitrator's award requires the State to post a position vacancy, including the specific rank, facility, unit, shift, days off and position number, and that thus far it has failed to do so. Accordingly, the Union requests that the PELRB (1) find that the State has violated RSA 273-A by failing to implement the arbitration decision; (2) order the State to immediately cease and desist from such violation; (3) order the State to immediately implement the arbitrator's decision; and (4) order the State to pay damages to the Union of all costs of the instant action, including reasonable attorney's fees.

The State filed its answer denying the Union's charge on July 15, 2005. The State asserts, *inter alia*, that it is not in violation of RSA 273-A:5 and references its arguments set forth in Case No. S-0376-15, including the allegations that the arbitration decision is void and unenforceable because it is *ultra vires* and the result of *ex parte* communications. Accordingly, it requests, among other things, that the Union's unfair labor practice charge be dismissed and that the PELRB order such other relief as it deems just.

A pre-hearing conference was conducted by the undersigned-hearing officer at the offices of the PELRB on August 26, 2005. Both parties were represented by counsel. Following discussions between counsel and the hearing officer relative to the processing of the instant matters, counsel for the State indicated that he would confer with his client and contact the PELRB and Union counsel later that day regarding certain issues raised in Case No. S-0376-15 of a procedural nature, and certain collateral/jurisdictional issues raised in the State's answer in Case No. S-0376-16. In an e-mail message of that day (and in a signed copy of the same e-mail dated August 30, 2005), State's counsel withdrew Case No. S-0376-15. In a telephone conference call conducted by the hearing officer on September 7, 2005 with both parties' counsel, State's counsel indicated that the collateral/jurisdictional issues raised in paragraph 2 of

the State's answer in Case No. S-0376-16 would not be pursued in the instant proceeding. Accordingly, it was stipulated that the sole matter for determination by the PELRB concerns the enforceability of the arbitrator's March 25, 2005 award.

PARTICIPATING REPRESENTATIVES

For the Union: Lorri Hayes, Esquire

For the State: John Vinson, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

Whether or not the State has committed an unfair labor practice in violation of RSA 273-A:5, I (c), (e), and/or (h) by failing to implement the March 25, 2005 arbitration award?

If so, what shall be the remedy?

WITNESSES

For the Union:

1. Charles Boyajian
2. Gary Smith
3. Michael Ryan
4. Lisa Currier
5. Any DOC witness

For the State:

1. Lorri Hayes
2. Lisa Currier
3. Sara Willingham
4. Randy Hunneyman
5. Jane Coplan

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.
2. 3/25/05 Arbitrator's Award
3. E-mail correspondence between the parties
4. Other exhibits as determined and identified pursuant to Paragraph 3 of the Decision section below.

### For the Union:

None other than those marked as "joint" above.

### For the State:

None other than those marked as "joint" above.

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

No hearing is scheduled at this time.

## DECISION

1. In accordance with N.H. Code Admin. R. Pub. 201.05, the public employer "shall display copies of any complaint filed by it or against it...at locations where such employees work not later than the date on which it files its answer with the board or on which it receives the answer of the charged party..."
2. Upon discussion between the parties' counsel and the hearing officer during the pre-hearing conference, the parties stipulated to presenting the instant matter to the hearing officer for decision through written submissions.
3. It was further stipulated that the parties' counsel shall meet, or otherwise confer, in order to compose a mutual statement of agreed facts and exhibits. The parties' counsel shall both execute the "Stipulation of Facts and Exhibits" and file said document with the PELRB on or before **September 12, 2005**. Relative thereto, unless notified to the contrary, a telephone conference call is presently scheduled to

be conducted by the hearing officer with the parties counsel on **September 14, 2005 @ 10:00 AM.**

4. The parties' counsel shall thereafter file their respective supporting memorandums of law with the Board on or before **October 14, 2005.**
5. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined that a hearing is necessary prior to a final determination on the merits.
6. In the event that it is determined that an evidentiary hearing is necessary, the parties' counsel shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing 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 8<sup>th</sup> day of September, 2005.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:  
Lorri Hayes, Esquire  
John Vinson, Esquire