



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEA, SEIU Local 1984
Complainant
v.
State of New Hampshire
Respondent

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Case No: S-0428-2

Decision No. 2006-005

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The SEA, SEIU Local 1984 (hereinafter "the Association") filed an unfair labor practice complaint on October 26, 2005 alleging that the State of New Hampshire (hereinafter "the State") committed an unfair labor practice when it withdrew its assent to an earlier agreement between the parties recognizing that the Association had reached an appropriate threshold of membership among state employees to entitle the Association to receive agency fees consistent with the parties' existing CBA. As a result, the Association claims, that the State has violated RSA 273-A:5 I (h). The Association requests that the PELRB find that the State has committed an unfair labor practice in violation of 273-A:5 I (h) and as a remedy, (1) order the State to comply with Article 5.8.1 of the Parties' Collective Bargaining Agreement; (2) order the State to reimburse SEA for agency fees not collected as a result of their non-compliance with Article 5.8.1; (3) Award the Association attorney's fees and costs for the filing of this complaint; and (4) Grant such other and further relief as may be deemed just.

On November 10, 2005 the State filed its answer asserting a general denial of the allegations contained in the Association's complaint. The State requests that the PELRB (1) dismiss the Association's complaint; (2) deny the relief sought by the Association; and (3) grant such other relief to the Town as deemed just and appropriate under the circumstances.

A pre-hearing conference was conducted by the undersigned at PELRB offices in Concord, New Hampshire on January 11, 2006.

PARTICIPATING REPRESENTATIVES

For the Association: John S. Krupski, Esq.

For the State: Michael K. Brown, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Has the Association reached the required 60% membership threshold required by Article 5.8.1 of the parties' collective bargaining agreement?
- (2) Did the State improperly classify certain employees as "probationary" in calculating the eligible number of employees for inclusion in the calculation of the 60% threshold.
- (3) If the Association has reached the required threshold, did the State commit an unfair Labor Practice in it's failure to comply with the Article 5.8.1 of the parties' collective bargaining agreement?
- (4) If so, what shall be the remedy?

WITNESSES

For the Association:

1. Thomas Manning, former Director of Personnel
2. Richard E. Molan, Esq., member of negotiating team
3. Lorri B. Hayes, Esq., Contract and Field operations administrator
4. Sara J. Willingham, Employee Relations Director
5. Gary Smith, Association President
6. Paul Stokes, former Association President
7. Dennis Martino, former Association negotiation team member
8. Brian Mitchell, Association Chief Negotiator
9. Unnamed rebuttal witnesses

For the State:

1. Karen Levchuk, Director of Personnel
2. Sara J. Willingham, Employee Relations Director
3. Mark Roth, Information Technology Manager
4. Mike Barlow, Supervisor of Financial Data Management
5. Thomas Manning, former Director of Personnel

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

For the Association:

1. Current Collective Bargaining Agreement
2. Past Collective Bargaining Agreement
3. Letter dated 6/15/05 to Governor John Lynch
4. Negotiation Notes
6. Letter dated 7/21/05 to Gary Smith
7. Letter dated 10/11/05 to Sara J. Willingham.
8. Letter dated 10/15/05 to Lorri B. Hayes, Esq.
9. Letter dated 10/21/05 to Gary Smith
10. Any and all exhibits produced by the Respondent
11. Unspecified rebuttal exhibits

For the State:

1. Letters to and from Sara J. Willingham
2. Personnel Reports (to be specified and provided to Complainant at least fifteen (15) days prior to the hearing on the merits.

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 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. The parties shall continue to meet and confer for the purposes of reviewing relevant personnel reports and association membership information.

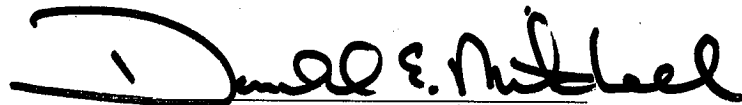
2. The parties' representatives shall meet, or otherwise confer, on or before March 31, 2006 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document, along with any corresponding exhibits, with the PELRB no later than, April 4, 2006.
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 day 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, March 15, 2006.
5. 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 11, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 11th day of January, 2006.



Donald E. Mitchell, Esq.
Presiding Officer

Distribution:

John S. Krupski, Esq.
Lorie B. Hayes, Esq.
Michael K Brown, Esq.
Sara J. Willingham