



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Troopers Association  
and Trooper Debra Winters

Complainants

v.

New Hampshire Department of Safety,  
Division of State Police

Respondent

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Case No: P-0754-16

Decision No. 2006-197

APPEARANCES

Representing the New Hampshire Troopers Association:

James W. Donchess, Esq.

Representing the Division of State Police, State of New Hampshire:

Marta A. Modigliani, Esq.

BACKGROUND

The New Hampshire Troopers Association (hereinafter "the Association") filed an unfair labor practice complaint on October 14, 2005 alleging that the New Hampshire Department of Safety, Division of State Police (hereinafter "Division") committed an unfair labor practice in violation of RSA 273-A:5 I (h) by breaching the collective bargaining agreement ("CBA") between the Association and the Division in refusing to allow Trooper Debra Winters her right to shift bid onto the same shift as her husband who is the supervising sergeant of that shift. The Association alleges that such action breaks with past practice and constitutes a discriminatory act as defined in the Human Rights Act, RSA 354-A:7, which prohibits discrimination based upon marital status and gender.

As remedies, the Association requests that the PELRB declare that the Division has committed an unfair labor practice by refusing to allow Trooper Winters to be awarded a shift bid like the other troopers at Troop A.

The Division filed a response to the Association's charge on October 31, 2005, as well as a Motion to Dismiss. The Division denies that it has committed any improper labor practice. In answering further, the Division states that Trooper Winters has been allowed to shift bid for all bid rotations that have been made available to all troopers at Troop A since her permanent assignment effective on November 26, 2004. In its Motion to Dismiss, the Division asserts, among other things, that the Association's grievance is defective because (1) Trooper Winters failed to file a Step I or Step II grievance in accordance with the contract, and (2) the grievance as presented to the Director of State Police was deficient of any notice as to what Article(s) and Section(s) of the CBA are alleged to have been violated by the Division. The Division requests that the PELRB grant its Motion to Dismiss; or, in the alternative, declare that the New Hampshire Department of Safety, Division of State Police did not commit an unfair labor practice.

The Association filed its objection to the Division's Motion to Dismiss on November 15, 2005. The Association states, *inter alia*, that the Division's position ignores the plain language of the CBA providing that at each step it is the response of the employer that triggers the employee's obligation to elevate the grievance to the next step. The Association also disputes various factual allegations made in the Division's motion.

The instant dispute is presented to the PELRB as the final step of the parties' contractual grievance procedure. In accordance with Section 14.5.1 of the parties' CBA, "the decision of the [PELRB] shall be final and binding." A pre-hearing conference was conducted on January 4, 2006 and, following a series of continuances, a final hearing was scheduled for October 31, 2006 at PELRB offices in Concord, New Hampshire to consider the Division's Motion to Dismiss and, if necessary, the merits of the Association's claim.

At the outset of the hearing, the parties informed the PELRB that they had reached a tentative settlement that would resolve the matter in dispute, but needed time for the Association Board to meet and approve the settlement. Presumably the Division's agreement was conditional upon ratification by the Association's Board. The parties requested that the hearing not go forward to allow this settlement effort to proceed.

#### ORDER

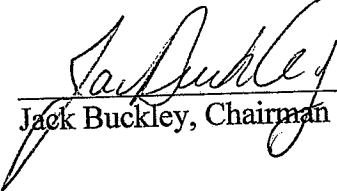
The PELRB agreed to overrule the initiation of a hearing at this time and ordered as follows:

- (1) This matter is continued for a period of thirty (30) days to allow settlement by the parties.

- (2) The parties shall inform the PELRB via e-mail immediately following their resolution of the matter after which the PELRB shall dismiss the matter and mark its docket as "matter settled by parties, no further proceedings."
- (3) If neither party has filed a request for a hearing prior to the expiration of that thirty (30) day period, the matter shall be administratively dismissed.

So ordered.

This 2nd day of November, 2006

  
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Jack Buckley, Chairman

By unanimous decision. Jack Buckley presiding. Richard E. Molan and James M. O'Mara, Jr. present and voting.

Distribution:

James Donchess, Esq.  
Marta Modigliani, Esq.