



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEPBA, Local 250 et al

v.

State of New Hampshire, Department of Corrections

Case No. G-0109-2

Decision No. 2010-126

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: July 9, 2010

Appearances: Kevin E. Buck, Esq. for the Complainant
Lynmarie C. Cusack, Esq. for the Respondent

Background:

The NEPBA Local 250 complaint relates to ongoing collective bargaining agreement negotiations, the number of employees released from their regular duty to participate in negotiations, and the position transfer of one of the employee members of the NEPBA Local 250 bargaining team. Among other things, the NEPBA Local 250 claims the State has improperly attempted to limit the number of employees released from their regular duty to attend bargaining sessions, has interfered with the administration of the Union, and has retaliated against the bargaining unit employee who asserted his right to participate in bargaining by a position transfer. In paragraphs 12-13 of its complaint the NEPBA Local 250 claims the employee

transfer also violates Article 27 of the collective bargaining agreement. The NEPBA Local 250 claims the State has violated RSA 273-A:5, I (a), (b), (d), (h), and (i).

The State denies the charges and asserts that under RSA 273-A:11, II only a reasonable number of employees are entitled to a reasonable opportunity to participate in bargaining and that the employer's mission cannot be affected or compromised. The State also asserts that the disputed position transfer was a legitimate exercise of management rights. The State has filed a motion to dismiss, claiming that the PELRB does not have jurisdiction over the complaint, including the alleged contractual violation.

Decision

1. The NEPBA Local 250 is currently processing a grievance concerning the State's alleged violation of Article 27 of the collective bargaining agreement. At the pre-hearing NEPBA Local 250 withdrew the claim that the disputed position transfer violated Article 27 as claimed in paragraphs 12 and 13 given the pending grievance proceedings. The NEPBA Local 250 shall file a written withdrawal of this claim on or before July 15, 2010.

2. The NEPBA Local 250 requests that adjudication of the remaining statutory claims (alleged interference with Union administration and retaliation against a bargaining unit employee for exercising a statutory right to participate in contract negotiations by the position transfer) be deferred, as the outcome of the grievance proceedings may ultimately eliminate the need for further proceedings at the PELRB. The State concurs with the NEPBA Local 250's request, with the understanding that the remaining claims are still subject to a formal ruling on the pending motion to dismiss in the event the NEPBA Local 250 seeks to go forward with its complaint at the PELRB.

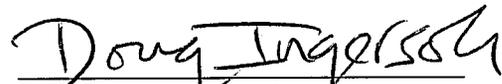
Accordingly, the adjudicatory hearing currently scheduled for July 20, 2010 is cancelled.

There shall be no further proceedings in this matter until December 1, 2010 at which time this case shall be dismissed unless the NEPBA Local 250 has filed a request for a hearing before that date or a request for an extension of the December 1, 2010 deadline is granted.

3. The parties shall otherwise promptly notify the board of any resolution the remaining claims.

So ordered.

July 9, 2010


Douglas L. Ingersoll, Esq.
Presiding Officer/Executive Director

Distribution:
Kevin E. Buck, Esq.
Lynmarie C. Cusack, Esq.

