



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, Local 250

v.

State of New Hampshire Department of Corrections

Case No. G-0109-4

Decision No. 2011-054

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: February 17, 2011

Appearances: Kevin E. Buck, Esq. for the New England Police Benevolent Association, Local 250

Lynmarie C. Cusack, Esq. for the State of New Hampshire Department of Corrections

Background:

The New England Police Benevolent Association, Local 250 (Association) filed an unfair labor practice complaint against the State of New Hampshire Department of Corrections (State) on January 7, 2011. The Association claims that the State committed an unfair labor practice in violation of RSA 273-A:5, I (e) (to refuse to negotiate in good faith ...) and (g) (to fail to comply with this chapter ...) when it unilaterally changed the manner in which it compensated the bargaining unit members for working on legal holidays. The Association requests that the PELRB find that the State violated RSA 273-A:5, I (e) and (g); and order the State to cease and

desist, to return to the status quo procedure for paying for holidays, to continue negotiations, and to pay costs, including attorney's fees, incurred by the Association.

The State denies the charges and asserts that, prior to the change, the State's payroll system was not applying the collective bargaining agreement (CBA) provisions correctly and the manner of compensating for working on holidays as applied now complies with the intent of the CBA.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the State committed an unfair labor practice in violation of RSA 273-A:5, I (e) and/or (g) when it changed the manner in which it compensates the bargaining unit members for working on legal holidays.

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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. 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. 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.

DECISION

1. "Parties" means the Association, the State, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.

2. Although the Association has alleged violations of RSA 273-A:5, I (e) and (g) only, it appears that the claim in this case is based upon an alleged violation of the parties' CBA and, as such, is the subject to the contractual grievance process.
3. At the pre-hearing conference, the parties expressed the need for additional time to explore resolution of this dispute and to determine whether the State will implement further changes to the holiday compensation procedure which might require the parties to amend their pleadings. To that effect, the Association moved to continue the adjudicatory hearing. The State assented to the Association's motion to continue. The parties also jointly requested that the PELRB schedule a telephonic status conference.
4. The Association's assented to motion to continue the adjudicatory hearing is granted. The adjudicatory hearing currently scheduled for March 8, 2011 is hereby cancelled. The Association shall provide at least 2 alternative dates for the hearing that are acceptable to both parties no later than **February 24, 2011**.
5. The telephonic status conference is scheduled for **March 8, 2011 at 9:00 a.m.** The parties shall be prepared to discuss whether this dispute has been grieved and the result, to identify witnesses, exhibits and undisputed facts, to report the results of settlement discussions, and to address other matters which may assist and aid in the disposition of this dispute.
6. The parties shall prepare and file a comprehensive statement of stipulated facts no later than 10 days prior to the date of adjudicatory hearing.
7. The parties shall exchange and file a final witness and exhibit lists no later than 10 days prior to the date of adjudicatory hearing.

8. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

HEARING

The date for the adjudicatory hearing shall be established by subsequent notice. The time set aside for this hearing is 5 hours.

So ordered.

February 18, 2011


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Kevin E. Buck, Esq.

Lynmarie C. Cusack, Esq.