



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

State Employees' Association of NH, SEIU Local 1984

v.

State of New Hampshire, Department of Health & Human Services

Case No. G-0148-3
Decision No. 2015-168

Appearances:

Lauren S. Chadwick, Esq.,
SEA, SEIU Local 1984
Concord, New Hampshire for the Complainant

Robert F. Berry, Jr.
State of New Hampshire, DHHS
Concord, New Hampshire for the Respondent

Background:

On August 20, 2014, the State Employees' Association of NH, SEIU Local 1984 (SEA) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the State of New Hampshire, Department of Health & Human Services (DHHS). The complaint involves bargaining unit employees of the Sununu Youth Services Center (SYSC)¹, a part of the DHHS Division for Children Youth and Family, and is based upon the following alleged incidents:

Incident #1: October 29, 2009 – DHHS laid off SYSC employee Steven Sage, Local Chapter 21 president, and repeatedly denied his job applications seeking

¹ The DHHS is a public employer within the meaning of RSA 273-A and the SEA is the certified exclusive representative of certain employees who work at the Sununu Youth Services Center (SYSC), including the employees involved in these proceedings.

promotion or transfer back into the SYSC, including at least one application in the period subsequent to February 20, 2014;

- Incident #2: April 12, 2012 - educational staff was asked to work overtime without compensation. SYSC employee Michael Fitzpatrick protested to DHHS Commissioner and Governor & Council;
- Incident #3: November 15, 2013 – DHHS denied Duane Drew union representation in meeting held on his day off to discuss an assault by a resident;
- Incident #4: December 5, 2013 – As part of an internal investigation the DHHS met with and suspended Lauren Jackson, instructed her to discontinue contact with anyone associated with the DHHS Division of Children, Youth and Families Services (DCYF) or the SYSC, and selected her union representative;
- Incident #5: December 17, 2013 – DHHS terminated Duane Drew's employment because he asserted rights under the collective bargaining agreement;
- Incident #6: February 10, 2014 – Pending an internal investigation DHHS suspended Torison Bullek and selected her union representative;
- Incident #7: February 20, 2014 – the DHHS tried to dissuade Evelyn Clark-Smith from serving as Local Chapter 21 president;
- Incident #8: February 21, 2014 – the DHHS attempted a unilateral reduction in SYSC teacher wages which was at least partially in retaliation for prior union activity and in an effort to discourage such activity; and
- Incident #9: July 22, 2014 – DHHS demoted SYSC teacher and former Chapter 21 president Michael Fitzpatrick to a non-teaching position outside of the SYSC in violation of the collective bargaining agreement and personnel rules and in retaliation for his past union activism.

The SEA charges that the DHHS discriminated against SYSC unit employees in retaliation for their union activity and for the purpose of discouraging such activity and otherwise interfered in their exercise of rights protected by the law, all in violation of RSA 273-A:5, I (a), (b), (c), (d), (g), and/or (h). The SEA requests that the PELRB find that the DHHS has violated the cited provisions of RSA 273-A:5, I and order the DHHS to cease and desist from engaging in these unfair labor practices.

The DHHS generally denies the charges. The DHHS also filed a motion to dismiss, arguing that: 1) a number of the SEA claims are barred by the six month limitation period set forth in RSA 273-A:6, VII; 2) that the PELRB lacks jurisdiction over some claims because they are within the jurisdiction of the Personnel Appeals Board (PAB) or the contractual grievance procedure; 3) that the doctrine of res judicata bars the claim described in Incident #8; and 4) that the SEA has failed to state a claim with respect to Incident #7.

In its objection to the motion to dismiss the SEA maintains that the PELRB has jurisdiction over all of the claims, including those that occurred more than six months prior to the filing of the complaint. The SEA argues that taken together all of the incidents comprise and reflect a continuing course of conduct which the PELRB should consider in deciding this case, notwithstanding the fact that many of the alleged incidents occurred outside the six month limitation period.

Hearing:

The undersigned board held a hearing on March 26, 2015² at which time we granted the motion to dismiss in part and denied the motion in part as follows:

A. Incident #8 is dismissed on res judicata grounds. The PELRB already heard and decided a case between these same parties involving the same facts. See PELRB Decision No. 2014-184 (July 31, 2014)(finding that the DHHS had committed an unfair labor practice by making a unilateral change in a mandatory subject of bargaining).

B. Incidents #2, 3, 4, 5, and 6 are barred by the RSA 273-A:6, VII six month limitation period. The portion of Incident #1 (involving employee Steven Sage) that occurred more than six months prior to the filing of the complaint is also time barred, but claims based upon his treatment within six months of the filing of the complaint will be considered.

C. The motion to dismiss is otherwise denied.

² This case was originally scheduled to be heard on September 30, 2014. However, this hearing date, and several subsequent hearing dates, were continued at the parties' request.

The hearing proceeded as to the remaining claims (Incidents 7 and 9 and a portion of Incident 1). Both parties have filed post-hearing briefs and our decision is as follows.

Findings of Fact

Evelyn Clark-Smith (Incident #7)

1. SEA bargaining unit employees are organized into local chapters, and the employees involved in this case are covered by Local Chapter 21 (Chapter 21). The local chapters have officers (such as chapter president, vice-president, secretary, treasurer, and councilors) and hold meetings. See SEA Exhibit 1 (Local Chapter 21 February 18, 2014 meeting minutes). In these meetings employees discuss issues specific to their workplace and stay informed about the conduct of general SEA business. For example, at the February 18, 2014 meeting topics discussed included updates about "LMC Meetings" (Labor Management Committee meetings per Article IV of the CBA, see Joint Exhibit 2) in areas such as safety and security of residents on furlough, residential and educational employee concerns about security, false accusations by the residents, staffing levels, greater employee involvement in the LMC, high recidivism rate, and budget issues.

2. A failure to fill vacant officer positions in a local chapter like Chapter 21 results in the dissolution of the chapter and the absorption of employees into another chapter, thereby diminishing and diluting the voice of former Chapter 21 employees in DHHS in addressing workplace issues and SEA business.

3. At the February 18, 2014 Chapter 21 meeting, outgoing Chapter president Michael Fitzpatrick, a long time SYSC teacher, talked about the need to fill vacant Chapter 21 office positions, including the office of president. He asked employees to "self-nominate," or in effect volunteer for service in the vacant leadership positions.

4. Evelyn Clark-Smith, a Program Specialist III and former Chapter 21 president, attended the meeting. No other employees were interested in the Chapter president position and so she volunteered. Clark-Smith believed the maintenance of Chapter 21 was important to SYSC employees' continued involvement in union matters and to the protection of the employees' interest in the workplace, which she described as hostile.

5. Two days later Clark-Smith was meeting with Robert Rodler (Adolescent Program Specialist and Clark-Smith's supervisor) in his office when Margaret Bishop, the Director of the SYSC, appeared unannounced. Although Bishop was not expected to participate or attend the meeting, and nor would she normally attend such meetings, she stated that she needed to speak with Clark-Smith. Bishop told Rodler he could stay if he wanted, and he did. She then told Clark-Smith that she had heard a rumor that Clark-Smith was the new Chapter president or was going to be the new president and that she was going to give her (Clark-Smith) some "friendly" advice. However, Bishop's tone of voice was stern and serious, and it was clear this was not a casual conversation.

6. Director Bishop then spent approximately 30 minutes trying to persuade Clark-Smith not to serve as Chapter president. She told Clark-Smith that it was not a good idea and it was going to affect her work. Although there was no evidence that Clark-Smith's service as president would actually impair or adversely affect her job performance, Director Bishop challenged Clark-Smith's ability to balance her work responsibilities with her Chapter president obligations. She told Clark-Smith that she was now doing well and in a good place, that she was not a good multi-tasker, and that in general serving as Chapter president would be difficult for her. She also asked Clark-Smith if she really thought acting as Chapter president was going to benefit her.

7. Initially Clark-Smith was confused and even somewhat shocked by Director Bishop's statements, and then she realized she was being told not to serve as Chapter president. She felt intimidated and did not feel free to leave the meeting room. When Director Bishop told her that acting as Chapter president would not be good for her job, Clark-Smith understood this meant her job was potentially at risk. She was particularly sensitive to this because the last time she served as Chapter president she was laid off.

8. After the meeting, Clark-Smith changed her mind about serving as Chapter president based upon Director Bishop's intervention. However, when she determined there were no other employees willing to take her place she resolved to serve as president, despite Director Bishop's admonition.

Steven Sage Claim (Incident #1)

9. In 2009 Steven Sage was laid off from his SYSC Youth Counselor III position but was able to secure a position with what is now known as the Division of Client Services, where he has received positive performance evaluations. Since then Sage has applied for a number of open SYSC Youth Counselor III positions but has not been hired. Most recently he unsuccessfully interviewed for three open Youth Counselor III positions in late winter/early spring of 2014. See Joint Exhibit 7 and SEA Exhibit 15.

10. Although Sage believes that he has not been hired because of his former service as Chapter president and his general support for union activity and SEA business, he has been told more than once that his knowledge about current SYSC practices and protocols is outdated. In December 2014, Deputy Director Boisvert emailed Sage to provide suggestions on subject matter Sage should familiarize himself with to improve his knowledge about current practices relevant to the Youth Counselor III positions. See State Exhibit E.

Michael Fitzpatrick Claim (Incident #9)

11. At the start of 2014, Michael Fitzpatrick worked as a "Teacher III" at the SYSC. He had been employed at the SYSC (and its predecessor) for approximately 25 years. As a teacher he worked a 180 day schedule and his compensation included the salary enhancement discussed in prior PELRB Decision No. 2014-184 (July 31, 2014)(see Finding of Fact 15).

12. In June of 2013, Fitzpatrick and approximately 25 other members of the educational staff signed a letter to the DHHS Commissioner complaining that Director Bishop had requested that they agree to work overtime without pay and that their failure to do so could adversely affect how the legislature treated SYSC personnel expenses in the next budget session. See SEA Exhibit 3. The letter requests that the Commissioner conduct an investigation and that "[w]hile this is happening please remove Ms. Bishop (or anyone who reports to her) from any supervisory responsibilities and all decisions regarding the SYSC."

13. In October 2013, Fitzpatrick emailed Executive Councilor Christopher Pappas and several Senators to inform them about a meeting with the Governor he attended along with SEA president Diana Lacey and co-worker Will Flowers. See SEA Exhibit 4. In his email Fitzpatrick reports that they raised concerns about the safety of SYSC residents and staff (citing staff injuries and resident fights) and concerns about alleged administrative retaliation against SYSC staff who have complained about working conditions. He also notes that they asked the Governor to support pending legislation that would reinstate the Juvenile Justice Advisory group to provide oversight of the SYSC administration.

14. On February 21, 2014, SYSC Director Penny Sampson issued a letter to SYSC staff to inform them that a portion of their compensation known as "teacher enhancements" was going to be eliminated. See State Exhibit D. In response, the SEA filed an unfair labor practice

complaint with the PELRB contesting the SYSC's right to make this unilateral change to teacher compensation. As reflected in PELRB Decision No. 2014-184, under the State's 2014-2015 budget law the legislature reduced the SYSC budget by approximately \$1.2 million, and in early 2014 the SYSC decided to satisfy the budget cut in part through the unilateral elimination of the teacher salary enhancements. The PELRB upheld the unfair labor practice charge based upon a finding that the State was not entitled to make the disputed unilateral changes to SYSC teacher compensation.

15. In April 2014, Fitzpatrick emailed Executive Councilor Pappas to advise that he and Will Flowers had testified in support of SB391 (to establish an SYSC oversight committee), and in particular had expressed the opinion that SYSC safety and security standards were not adequate to keep residents, the staff, and the public safe. See SEA Exhibit 4. He cited a specific incident involving a furloughed resident who apparently took steps to carry out a threat to obtain a gun and shoot another resident's father and several other incidents, and complained that administration was not properly addressing these situations on an internal basis and had improperly failed to notify and warn staff, the court system (Judges), and other officials external to the SYSC involved in the juvenile justice system. He also expressed continuing concern about administrative retaliation.

16. In July of 2014, the State was in the second year of the 2014-15 budget but the SYSC had only implemented approximately \$300,000 of the required 2014-15 \$1.2 million budget reduction. Based upon input from an external educational consultant (apparently from the State Department of Education) the SYSC determined which teaching positions (based upon their specific state teaching certifications) could be eliminated while maintaining requisite and desired SYSC educational certification(s). The consultant identified Fitzpatrick's position as one

eligible for elimination under this criteria. There is no evidence that the consultant knew that Fitzpatrick filled the selected position or was familiar in any way with Fitzpatrick's recent activities that were critical of the SYSC administration.

17. On July 22, 2014, nine days before the PELRB issued Decision 2014-184 (upholding the SEA's challenge to the SYSC's proposed unilateral elimination of salary enhancements), the DHHS Commissioner notified Fitzpatrick that due to the budget reduction he was being demoted "in lieu of layoff" pursuant to the personnel rules. The Commissioner assigned Fitzpatrick to a year round position as a Child Support Officer with the Division of Child Support Services in Nashua. See Joint Exhibit 7.

18. The SEA and Fitzpatrick challenged the demotion under the personnel rules and the CBA grievance procedure. The SEA argued, among other things, that Fitzpatrick's seniority within the Teacher III classification was overlooked while other teachers within the same classification were retained when they should have been subject to "layoff, or demotion in lieu of layoff" instead of Fitzpatrick. The SEA also argued that Fitzpatrick was improperly denied his right to assert "bumping" rights under personnel rules. See SEA Exhibit 8, 9 and 10. The SEA ultimately prevailed and in early 2015 Fitzpatrick was reinstated to his former SYSC teaching position and otherwise made whole.

Decision and Order

Decision Summary:

The State committed an unfair labor practice in violation of RSA 273-A:5, I (a) and (b) on account of Director Bishop's dealings and interaction with Evelyn Clark-Smith. However, there is insufficient evidence to prove that the State violated any provision of RSA 273-A:5, I with respect to Fitzgerald or Sage, and those claims are dismissed. The DHHS is ordered to post

this decision in a conspicuous place where unit employees work for 60 days and otherwise cease and desist from interfering with and becoming involved in Local Chapter 21 business and the participation of unit employees in Local Chapter 21 affairs.

Jurisdiction:

The PELRB has primary jurisdiction of all RSA 273-A:5 alleged unfair labor practices per RSA 273-A:6, I.

Discussion:

We begin by addressing the Clark-Smith claim. Under RSA 273-A:5, I (a) “[i]t shall be a prohibited practice for any public employer to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter.” Under sub-section (b) it is also a prohibited practice for any public employer “to dominate or to interfere in the formation or administration of any employee organization.” The SEA cites *AFSCME, Council 93, Local 3657/Milford Police Employees v. Town of Milford*, PELRB Decision No. 20142011-084 (March 23, 2011) as PELRB precedent favorable to the Clark-Smith claim, while the DHHS cites *Appeal of City of Portsmouth, Bd. Of Fire Commissioners*, 140 N.H. 435 (1995) for the proposition that Director’s Bishop’s behavior was within acceptable parameters under the Act.

Like the present case, *Milford* involved a charge that the employer had violated sub-sections (a) and (b). It is factually similar to the present case as it also involved an employer-employee interaction during which the employer tried to influence and direct employee involvement in, and management of, union affairs. In *Milford* voters had just rejected a fact finder’s report. Prior to the vote the union had circulated a flyer which characterized the Town Administrator’s comments to voters at an earlier deliberative session as “misleading or blatantly false.” The Town Administrator then confronted bargaining unit employees about the flyer at a

mandatory training meeting that he was not scheduled to attend. See Findings of Fact 9-10 in *Milford*. The unit employees were a "captive audience," and the Town Administrator, in a strong and forceful manner, "instructed bargaining unit employees about how they should engage with the Union and be involved in Union business and operations." We concluded that the Town had committed an unfair labor practice in violation of sub-sections (a) and (b), and explained our rationale as follows:

The Union's and bargaining unit employee's self-determination rights protected under the statute and at issue in this case are an integral part of the right of public employees to organize and act collectively in the RSA 273-A bargaining process. They include the right of the Union and bargaining unit employees to conduct their internal affairs and administer and conduct Union business and operations without unsolicited advice, instruction, criticism or other intrusions by the Town Administrator designed to influence and change how such affairs are conducted. They include the right to determine when, where and how to respond to the Town Administrator's comments made at the deliberative session. They include the right of bargaining unit employees to decide the nature and extent of their involvement in Union business and activity, if any, including their involvement in how the Union chooses to support the fact finder's recommendations and the extent to which they preview and approve specific Union activity, like the disputed flier. These are all the prerogatives of the Union and bargaining unit employees.

Portsmouth also involved sub-section (a) and (b) claims, and on appeal the court ruled in the city's favor. However, factually *Portsmouth* is distinguishable from the present case because it did not involve the kind of uninvited, direct, unusual, and prolonged interaction between a high-level employer representative like Director Bishop and a bargaining unit employee concerning the employee's decision to become active in union affairs. Instead, *Portsmouth* involved statements by a fire commissioner (Sheila Loch) critical of union leadership to a third party (a newspaper reporter during the course of an interview). The paper published an article which included the commissioner's opinion that "union leadership hurt members during recent contract negotiations." *Id.* at 346-47. This in turn raised concerns among some firefighters, prompting them to question Union leadership about the manner in which it had conducted the

referenced contract negotiations. The court summarized the PELRB's impressions and conclusions as follows:

On remand, the PELRB found that Loch's comments violated the statute when she specifically attacked the union leadership and suggested that leadership hurt members during recent contract negotiations. The board found "no evidence that [Loch's] criticism was justified," and it expressed concern about the implications of the comments for future negotiations. Finally, the board found that Loch's comments, "whether intended or not," had "a disruptive effect," "created doubt in the effectiveness and truthfulness of the union leadership," and created "confusion and interference with the administration" of the union.

Id. at 347. The court ruled that:

In finding that Loch's comments constituted interference under the statute, the PELRB erred. Proof of "disruptive effect," "whether intended or not" and whether "justified" or not, does not amount to, or rise to the level of, interference. We do not think it unusual or even unhealthy for union members to ask questions relating to the competence of, and honest representation by, their elected representatives. Moreover, Loch's comments did not contain elements of "intimidation, coercion, or misrepresentation." Consequently, we cannot say that the union demonstrated interference on the part of Loch within the meaning of RSA 273-A:5, I (a) and (b).

After due consideration of these decisions, we find that under the plain language of subsections (a) and (b), employers are not entitled to direct, thwart or suppress employee participation in union affairs by confronting them as Director Bishop did in this case. Employees like Clark-Smith and employee groups like the SEA are entitled to exercise the rights conferred upon them under the Act to engage in concerted activity to address working conditions free from employer restraint, coercion, or interference. They do not need employer approval or permission to become active in union affairs, and they do not have to fend off employer attempts to influence employee decisions about participation in such activities.

Here, Director Bishop used her position and authority to pressure Clark-Smith to change her decision to serve as Chapter president, and she succeeded, at least on a temporary basis, since after the meeting Clark-Smith tried to find a replacement. Given the circumstances and manner of this interaction, including the setting, subject matter and duration, Director Bishop's behavior

was intimidating and coercive. Bishop's attempt to dissuade Clark-Smith from union service was a one-sided "conversation" in a setting under her control. A sign of Bishop's determination is the fact that she persisted for at least 30 minutes. Clark-Smith did not feel free to leave, which was a reasonable impression for her to have in the circumstances.

The relevant backdrop of Bishop's discussion with Clark-Smith includes strong and pointed criticism by leaders of the Chapter and the SEA about the administration of the SYSC in general and Director Bishop in particular. Outgoing Chapter president Fitzpatrick had recently asked the DHHS Commissioner to conduct an investigation and remove Director Bishop "from any supervisory responsibilities" in the interim. He also sought support for legislation to reinstate the Juvenile Justice Advisory group, which would provide "oversight" of the SYSC administration (i.e. Director Bishop). If Bishop had prevailed, it could have seriously impaired the viability of Local Chapter 21 and the concurrent ability of unit employees to address SYSC working conditions. The fact that Clark-Smith ultimately elected to continue as Chapter president does not excuse Director Bishop's conduct under the applicable law. Bargaining unit employees should not and do not have to endure this type of confrontation when they choose to become more active in Union affairs.

We accordingly find that the DHHS violated the provisions of RSA 273-A:5, I (a) and (b) and committed an unfair labor practice. Clark-Smith's rights under the Act include the right to play an active role in SEA affairs, which includes service as Chapter president. Under sub-section (a) the DHHS cannot interfere with Clark-Smith's exercise of this right, but that is what happened in this case. The DHHS, by virtue of Director Bishop's behavior, also interfered in the administration of the SEA and Local Chapter in violation of sub-section (b).

This leaves the claims involving Michael Fitzpatrick and Steven Sage. The SEA argues that Fitzpatrick and Sage have both suffered adverse treatment in retaliation for their Union activity. The Findings of Fact reflect that both individuals have played an active role in Local Chapter 21, and Mr. Fitzpatrick has been a particularly vocal critic of SYSC administration. However, we conclude that there is insufficient evidence to prove the violations charged. The SEA cites RSA 273-A:5, I (a), (b), (c), (d), and (g) in its complaint, but sub-section (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter) is the most relevant to the Fitzpatrick and Sage retaliation claims. See *Appeal of Sullivan County*, 141 N.H. 82 (1996) and *Appeal of Professional Firefighters of East Derry*, 138 N.H. 142 (1994). A good summary of the legal basis for retaliation claims was provided in *State Employees' Association of NH, SEIU Local 1984 v Town of Salem et al*, PELRB Decision No. 2011-140 (May 16, 2011):

The SEA also claims that the Town interfered with Ms. Colella's statutory rights in violation of RSA 273-A:5, I (a) because it issued verbal and written warnings in retaliation for filing grievances. In cases involving alleged retaliation, the Supreme Court held that a complainant must prove illegal motivation at least to some degree. See *Appeal of Sullivan County*, 141 N.H. 82, 84 (1996). See also *AFSCME Council, Local 863/Rochester Public Works Dept., Buildings and Grounds v. City of Rochester, Dept. of Public Works and Buildings and Grounds*, Decision No. 2009-131. "[T]he union bears the burden to prove some minimal degree of proscribed motivation in order to establish an unfair labor practice under RSA 273-A:5." *Appeal of Sullivan County*, supra, 141 N.H. at 85. Furthermore, the employer can meet the union's evidence of retaliatory motivation with its own evidence; and if the PELRB finds by a preponderance of the evidence that the employer was unlawfully motivated to some degree, an employer can still avoid being adjudicated a violator by proving by a preponderance of the evidence that regardless of the unlawful motivation, the employer would have taken the same action for wholly permissible reasons. See *Appeal of Professional Firefighters of East Derry*, 138 N.H. 142, 144-45 (1994). See also *Hampton Firefighters Local 2664, IAFF, AFL-CIO, CLC v. Town of Hampton*, Decision No. 2008-068.

Based on the record we are unable to find that Sage's inability to secure another position within the SYSC was because of his prior union activity. DHHS representatives offered credible

explanations for the treatment of Sage's applications submitted in the six month period prior to the filing of this unfair labor practice complaint, and the SEA did not offer much evidence to support this particular charge beyond the fact that Sage was not selected.

We reach a similar conclusion about the Fitzpatrick claim with a few additional observations. It is true that Fitzpatrick voiced concerns about SYSC working conditions in very bold and public ways, particularly in the 2013 time period and most recently in April of 2014. He contacted the DHHS Commissioner, legislators, executive councilors, and the governor's office. However, we analyze the Fitzpatrick complaint with due regard for all the relevant circumstances, which include the fact that in July of 2014 the SYSC had only partially implemented the \$1.2 million budget reduction required by the 2014-2015 budget law. The DHHS was required to take action, including making personnel reductions as necessary, to comply with the budget law. The DHHS relied on an independent analysis of teaching positions that could be eliminated without adversely affecting the SYSC's educational certification, and Fitzpatrick's position was identified through this process. There is a lack of evidence that the DHHS proceeded to do anything other than implement personnel reductions per the consultant's recommendations. The fact that Fitzpatrick's demotion violated applicable personnel rules and/or CBA provisions was addressed and rectified through normal procedures, and he was reinstated to his teaching position and made whole in early 2015.

In conclusion we find that the DHHS committed an unfair labor practice in violation of RSA 273-A:5, I (a) and (b) on account of Director Bishop's interactions with Clark-Smith. The DHHS is ordered to cease and desist from interfering with employees in the exercise of rights conferred upon them by the Act and from interfering in the administration of the SEA and Local Chapter 21. There is insufficient evidence to prove a violation of the RSA 273-A:5, I (a), (b),

(c), (d), and (g) charges as to the Fitzpatrick and Sage and therefore those claims are dismissed.

The DHHS shall post this decision for 60 days in a conspicuous place in the workplace where SYSC unit employees work.

So Ordered.

Date: July 20, 2015.

/s/ David J. T. Burns

David J.T. Burns, Esq., Alt. Chair

By unanimous vote of Board Members David J.T. Burns, Esq. (Alt), Senator Mark Hounsell, and James M. O'Mara, Jr.

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