



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

Concord Police Patrolmen's Association

v.

City of Concord

Case No. G-0127-5
Decision No. 2018-037

Pre-Hearing Memorandum and Order

Date of Conference: March 30, 2018

Appearances: John S. Krupski, Esq., for the Complainant

Danielle L. Pacik, Esq., for the Respondent

Background:

On February 27, 2018, the Concord Police Patrolmen's Association (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the City of Concord (City) has violated RSA 273-A:3, RSA 273-A:5, and RSA 273-A:11. The Association alleges, among other things, that the City engaged in impermissible direct dealing with bargaining unit employees when it required the employees, who were injured on the job, to sign a non-negotiated "wage continuation agreement" in order to be able to use their CBA-covered sick leave for the injury-related absence. The Association also charges that the City's demand that the employees reimburse a portion of their wages after they receive workers' compensation is a unilateral change in terms and conditions of employment. The Association requests that the PELRB find that the City has committed an unfair labor practice and order the City to cease and desist from any further violations.

The City denies the charges and asserts, among other things, that “injury leave” is different from “sick leave,” that the CBA does not address “injury leave,” which is governed by the City ordinance, and that under that ordinance, the City provides a pay supplement when the workers’ compensation payment is less than the weekly base pay. The City also claims that it has utilized a “wage continuation agreement” since 1994, that this agreement allows an employee to continue receiving pay during the settlement of a workers’ compensation claim and only requires that the employee reimburse the City for any wage payment in excess of the employee’s base weekly pay, and that the City credits back all applicable sick and annual leave once reimbursement of payment is received. The City requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

Whether the District violated RSA 273-A:3, RSA 273-A:5, and/or RSA 273-A:11.

Witnesses and Exhibits

As outlined in the parties’ Pre-Hearing Worksheets. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.

Decision

1. “Parties” means the Association, the City or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. As discussed at the pre-hearing conference, the hearing scheduled for April 13, 2018 is cancelled. On or before **April 6, 2018**, the parties shall submit at least 5 proposed hearing dates in May or June, 2018 that are acceptable to both parties.

3. Under Admin. Rule Pub 201.02 (b) (4), a complaint must contain a “clear and concise statement of the facts giving rise to the complaint ... characterizing each particular act in terms of the specific provision(s) of RSA 273-A:5 or RSA 273-A:6 alleged to have been violated...” In this case, the Association failed to characterize each alleged act in terms of specific provisions of RSA 273-A:5 or RSA 273-A:6. Accordingly, on or before **April 16, 2018**, the Association shall file a specification characterizing each alleged violation in terms of specific provisions of RSA 273-A:5.
4. The parties shall exchange and file a joint statement of stipulated facts and their final witness and exhibit lists no later 10 days prior to the date of hearing.
5. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

So ordered.

Date: 4/2/2018



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

Distribution: John S. Krupski, Esq.
Danielle L. Pacik, Esq.