



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of NH, SEIU Local 1984

v.

State of New Hampshire, Liquor Commission

Case No. G-0202-5
Decision No. 2018-095

Pre-Hearing Memorandum and Order

Date of Conference: June 28, 2018

Appearances: Gary Snyder, Esq., for the Complainant
Nancy Smith, Esq., and Jill Perlow, Esq., for the Respondent

Background:

On May 24, 2018, the State Employees' Association of NH, SEIU Local 1984 (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the State of New Hampshire, Liquor Commission (State) had violated RSA 273-A:5, I (a), (b), and (c) when it terminated the employment of union steward Garrett Boes in retaliation for his participation in protected, concerted union activity, including his participation in a union meeting, his work as a union steward, and his utilization of a union-related leave. The Union alleges, among other things, that at the union meeting, attended by Executive Councilor Volinsky and Mr. Boes, the bargaining unit employees expressed concerns about the Liquor Commission's handling of bulk sale transactions. This led to Councilor Volinsky's visit to the Keene Liquor Store where he witnessed a bulk sale transaction, after which he wrote a letter to Governor Sununu and the Attorney General's Office alleging systemic violations by the Liquor

Commission of the law regarding large volume sales transactions. The Union alleges that Mr. Boes's participation in this meeting was a protected, concerted activity and that he was fired in retaliation for his involvement in the events that led to Councilor Volinsky's letter to the Governor and the Attorney General's Office. The Union claims that the State disciplined Mr. Boes more severely than other employees involved in bulk sale transactions because of his union activity, such as his recent six months union-related leave, his request for another union-related leave, and his work as a union steward. The Union requests that the PELRB order the State to reinstate Mr. Boes and to cease and desist from restraining, coercing or interfering with its employees in the exercise of their statutory rights and from interfering with the union activity and/or administration.

The State denies the charges and claims, among other things, that Mr. Boes's termination was based on a violation of the Liquor Commission's policies and was unrelated to his union activity. The State claims that Mr. Boes was terminated because, among other things, he conducted an illegal bulk sale transaction, instructed a subordinate employee to assist him in doing so, permitted two people (Executive Councilor Volinsky and Union President Rich Gulla) to enter the Keene Liquor Store stockroom contrary to the Liquor Commission policies, and refused to answer questions about these events truthfully. The State also argues that the PELRB lacks jurisdiction over the Union's claims because the Union failed to exhaust administrative remedies under RSA 273-A:6, I which states in part that "no complaint may be filed with the board for violation of RSA 273-A:5, I (c) or (d) until the complainant has exhausted the administrative remedies provided by statutes other than this chapter." The State asserts that in this case, the administrative remedy is provided by RSA 21-I:58, which allows a state employee to appeal the application of the State personnel rules to the Personnel Appeals Board (PAB), and

that Mr. Boes's PAB appeal of his termination is currently pending. The State also argues that the Union's subsection (a) and (b) claims should be dismissed along with the subsection (c) claim because the allegations under (a) and (b) are identical to, and inextricably intertwined with, allegations under (c).

Issues for Determination by the Board.

1. Whether the PELRB has jurisdiction over the Union's claims.
2. Whether the State violated RSA 273-A:5, I (a), (b), and/or (c) as charged by the Union.

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 Union, 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. At the pre-hearing conference, the State indicated that it intended to file a motion to continue the hearing because several of the State's witnesses are not available to attend the hearing on July 26, 2018. The Union did not object to the continuance. Following the pre-hearing conference, the State filed an assented to motion to continue the hearing. This motion was granted. See PELRB Decision No. 2018-093 (July 5, 2018). The new hearing date will be established by a subsequent notice.

3. In the Joint Pre-Hearing Worksheet, the State listed an excerpt of video recording as an exhibit. As discussed at the pre-hearing conference, any relevant video recording shall be transcribed and submitted in paper form.
4. The parties shall exchange and file a statement of stipulated facts and their final witness and exhibit lists no later than 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.

Hearing

The hearing scheduled for July 26, 2018 has been continued. See PELRB Decision No. 2018-093. The new hearing date will be established by a subsequent notice. The time set aside for this hearing is 6 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least ten days prior to the date of hearing.

So ordered.

Date:

7/9/2018



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

Distribution: Gary Snyder, Esq.
Nancy Smith, Esq.
Jill Perlow, Esq.