



**State of New Hampshire**  
Public Employee Labor Relations Board

**New Hampshire State Police Command Staff,  
New Hampshire Troopers Association**

v.

**State of New Hampshire, Department of Safety  
Division of State Police**

**Case No. G-0222-6  
Decision No. 2019-057**

**Pre-Hearing Memorandum and Order**

**Date of Conference:** March 14, 2019

**Appearances:** John S. Krupski, Esq., for the Complainant  
Jill Perlow, Esq., and Marta Modigliani, Esq., for the Respondent

**Background:**

On January 30, 2019, the New Hampshire State Police Command Staff, New Hampshire Troopers Association (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the State of New Hampshire, Department of Safety, Division of State Police (State) had violated RSA 273-A:5, I (g), (h), and (i) when it breached the parties' collective bargaining agreement (CBA) and a binding past practice concerning the employees' Labor Grade/Step placement upon promotion. The Union alleges, among other things, (1) that the State promoted Sgt. Bonilla to Lieutenant placing her at Labor Grade 27 - Step 4 with a base pay rate of \$39.10; (2) that prior to her promotion, Sgt. Bonilla was at Labor Grade 26 - Step 6

with a base pay rate of \$39.45; (3) that, upon promotion, the State placed Bonilla at a wrong step; and (4) that such placement inappropriately resulted in a pay decrease of 35 cents per hour, or approximately \$728 per year. The Union grieved Bonilla's step placement alleging a violation of the CBA Article 19.2 and wage matrix. The State denied the Union's grievance and the Union filed an unfair labor practice complaint with the PELRB in accordance with the CBA grievance procedure (Article 14.5.1). The Union requests, among other things, that the PELRB order the State to cease and desist from violations of the CBA and RSA 273-A, order the State to make Lt. Bonilla whole, and order the State to place Lt. Bonilla at Labor Grade 27 - Step 5 effective November 9, 2018 (effective date of promotion).

The State denies the charge and asserts, among other things, that the PELRB lacks jurisdiction over the Union's claim because bargaining unit employees' promotions and Step placements are governed exclusively by Personnel Rules, NH. Admin. R. Per 901.08, and are within the jurisdiction of the Personnel Appeals Board under RSA 21-I:58. The State also asserts (1) that, prior to promotion, Bonilla was at Labor Grade 24 – Step 6, and not Labor Grade 26 – Step 6; (2) that, prior to promotion, Sgt. Bonilla was temporarily assigned to a Detective position which resulted in a temporary assignment to Labor Grade 26 – Step 6; (3) that, as clarified by the State at the pre-hearing conference, such temporary assignment lasted approximately 10 years, renewed annually at the Colonel's discretion; and (4) that in accordance with the Personnel Rules, Bonilla's Labor Grade/Step placement upon promotion was calculated based on her basic Labor Grade of 24, and not the temporarily-assigned Labor Grade of 26. The State also claims that the Union failed to allege sufficient facts to establish a binding past practice.

The State filed a motion to dismiss on the ground that the PELRB lacks jurisdiction over the Union's claim because this matter involves the application of the Personnel Rules which are

within the exclusive jurisdiction of the Personnel Appeals Board. The State requests that the PELRB dismiss the complaint. The Union objected to this motion, asserting among other things, that the Labor Grade/Step placement determination upon promotion is based on the established past practice and not on the Personnel Rules; and that this case involved the breach of the CBA Article 19.2 and wage matrix, which is within the jurisdiction of the PELRB.

#### Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Union's complaint.
2. Whether the State violated RSA 273-A:5, I (g), (h), and/or (i) as charged by the Union.

#### Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01.

#### 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. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than April 9, 2019. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." 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.
3. 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

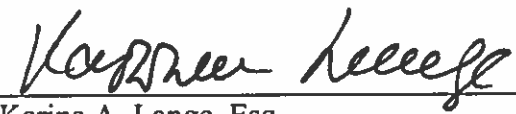
exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

Hearing

Unless otherwise ordered, the adjudicatory hearing in this case will be held on **April 19, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 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 10 days prior to the date of hearing.

So ordered.

Date: 3/14/2018

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

Distribution: John S. Krupski, Esq.  
Marta Modigliani, Esq.  
Jill Perlow, Esq.  
Nancy Smith, Esq.