



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of NH, SEIU Local 1984

v.

State of New Hampshire, Department of Transportation

Case No. G-0240-2
Decision No. 2019-132

Pre-Hearing Memorandum and Order

Date of Conference: May 30, 2019

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

Background:

On April 30, 2019, the State Employees' Association of NH, SEIU Local 1984 (SEA) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the State of New Hampshire, Department of Transportation (State or DOT) had violated RSA 273-A:5, I (a), (e), (g), and (h) when it imposed a new condition of employment on DOT employees by requiring that they obtain Commercial Driver's License (CDL) medical cards¹ and changed bargaining unit employees' rates of pay. The SEA alleges, among other things, that (1) under the parties' collective bargaining agreement (CBA), Article 43.11(c), the bargaining unit employees are not required to obtain or maintain a CDL medical cards but if they do, they

¹Based on the parties' explanation at the pre-hearing conference, CDL medical cards are issued by medical professionals after a physical examination/test and certify that the drivers are medically fit for duty. The parties also stated that, although the drivers working for private companies are required, under federal law, to obtain CDL medical cards, the State and its employees are exempt from this requirement.

receive an additional pay of ten dollars per week; (2) that on April 12, 2019 the State unilaterally implemented changes to the minimum qualifications for the several bargaining unit positions, including a new requirement that CDL medical cards be acquired at the time of hire and for any positions change, such as promotion, demotion or lateral transfer; (3) that, although the current employees will not be required to immediately obtain CDL medical cards, the employees filing for a position change may no longer be eligible for the position because it now requires a CDL medical card; (4) that in the process of reclassification related to the change at issue, the State unilaterally changed wages for bargaining unit positions; and (5) that the unilateral change will impact the mandatory subjects of bargaining, including wages, the ability of bargaining unit employees to obtain promotion, lateral transfer and other position changes, and employees' bumping rights. The SEA argues that the State's actions constitute, among other things, a breach of the State's statutory duty to negotiate in good faith with the SEA over the terms and conditions of employment and a breach of the CBA. The SEA requests that the PELRB order the State to cease and desist from requiring bargaining unit employees to maintain CDL medical cards and order the State to follow the CBA, including Article 43.11 (c), and to bargain in good faith with the SEA over the wages and other terms and conditions of employment.

The State denies the charges and asserts, among other things, that "the classification and reclassification of positions is a management prerogative and not a mandatory subject of bargaining." The State also claims (1) that the new classifications/job descriptions do not conflict with the terms of the CBA; (2) that the change at issue does not apply to or impact current employees in their current positions; (3) and that the State has not yet denied any DOT employee a promotion, demotion, lateral transfer or temporary promotion as a result of the CDL medical card minimum qualification.

Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (a), (e), (g), and/or (h) as charged by the SEA.

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 SEA, 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. On May 1, 2019, the SEA filed a motion to amend its complaint by withdrawing the request that the PELRB order the State to "reverse any changes to pay related to the medical cards." The State does not object to this motion. The SEA's motion to amend is hereby granted. See Admin. R. Pub 201.04.
3. At the pre-hearing conference, the State's counsel indicated that the State would prefer to submit this case for decision on stipulated facts and briefs. As discussed at the pre-hearing, on or before **June 20, 2019**, the parties shall file a joint request, if any, to submit this matter on stipulated facts, joint exhibits and briefs. Any such request shall contain a proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.
4. On May 24, 2019, the SEA filed a motion to continue the June 25, 2019 hearing because an SEA witness is scheduled to attend an out-of-state conference from June 24 to June 26, 2019. The State assents to this motion. The motion to continue is granted. Accordingly, the hearing scheduled for June 25, 2019 is cancelled. As discussed at the pre-hearing conference, on or before **June 20, 2019**, the parties shall provide at least 5


alternative hearing dates that are acceptable to both parties. A new hearing date will be established by a subsequent notice, as necessary.

5. The time set aside for the hearing in this case 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.
6. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than 10 days prior to the date of hearing. 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.
7. 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:

May 30, 2019



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

Distribution: Gary Snyder, Esq.
Jill Perlow, Esq.
Jessica King, Esq.