



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. 2019-149**

Order

I. Background:

The NHTA/Command Staff filed an unfair labor practice charge complaining that the State illegally reduced Mary Bonilla's pay following her promotion to State Police Lieutenant (effective November 9, 2018), contrary to Article 19.1-19.2.2 of the parties' 2018-19 collective bargaining agreement (CBA), CBA wage schedules, and binding past practice, and all in violation of cited sub-sections of RSA 273-A:5, I. According to the NHTA/Command Staff, the State has never promoted an individual and paid them a lower base rate. The different wage schedule placements at issue in the complaint include the following:

1. \$39.45 per hour (Labor Grade 26 – Step 6 on Detectives Wage Schedule D416), the amount Bonilla was paid immediately prior to her promotion to Lieutenant;
2. \$39.10 per hour (Labor Grade 27 – Step 4 on Command Staff Wage Schedule S416), the amount Bonilla was paid following her promotion to Lieutenant.

3. \$37.42 per hour (Labor Grade 27–Step 4 on the Troopers’ Wage Schedule S416), the amount Bonilla would have been paid prior to her promotion to Lieutenant but for her temporary assignment to the Detective position; and

4. \$40.82 per hour (Labor Grade 27 – Step 5 on Command Staff Wage Schedule S416), the amount NHTA/Command Staff claims Bonilla’s should have been paid following her promotion to Lieutenant.

Although Bonilla was continually assigned¹ to a Detective position for the ten year period immediately prior to her promotion, the State used the Sergeant wage schedule placement (#3), and not the Detective wage schedule placement (#1), to determine Bonilla’s wage schedule placement (#2) as a Lieutenant. As a result, Bonilla now earns approximately \$728 a year less than she did prior to her promotion. The NHTA/Command Staff requests, among other things, that the board order the State to make Lieutenant Bonilla whole and place Lieutenant Bonilla at Labor Grade 27 - Step 5 effective November 9, 2018.

The State answered the complaint and denies the charges. According to the State, Bonilla’s placement on the Command Staff Wage Schedule S416 is correct and was done pursuant to applicable Division of Personnel rules.² The State has also filed a motion to dismiss based on lack of jurisdiction and failure to state a claim. The State argues, in substance, that the complaint is nothing more than a challenge to how personnel rules governing wage schedule placement upon promotion were applied in Bonilla’s case, a topic within the Personnel Appeals Board’s (PAB) jurisdiction, not this board’s. Additionally, the State filed a motion to stay the hearing pending the board’s ruling on the motion to dismiss.

The NHTA/Command Staff has filed objections to both motions. The NHTA/Command Staff argues the board has jurisdiction because the filing of an unfair labor practice complaint is the final step of the CBA grievance procedure, and the complaint charges violations of sub-

¹ This temporary assignment was renewed annually at the Colonel’s discretion.

² See N.H. Admin. Rules, Per 901.08 Adjustment Due to Permanent Promotion.

sections (g)(to fail to comply with this chapter or any rule adopted under this chapter, (h)(to breach a collective bargaining agreement), and (i)(to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule). The NHTA/Command Staff requests that the board deny both motions and conduct a hearing on the complaint.

A hearing on the merits was scheduled for June 17, 2019, and it was the board's intention to take up the State's pending motions at the time of hearing, with the balance of the proceedings to be determined based on the board's disposition of the motions. Both parties appeared for hearing as scheduled, but because of the board's docket, and related scheduling and notice considerations, the hearing was limited to the motions at the parties' joint request.³

II. Discussion:

As to jurisdiction, we agree with the NHTA/Command Staff that the board has jurisdiction over unfair labor practice complaints claiming violations of the RSA 273-A:5, I sub-sections cited in the complaint. There is a claim that the State violated the CBA, including portions of Article 19 and the wage schedules, and has failed to follow a binding past practice pursuant to which unit employee always receive a pay increase upon promotion, and not a pay decrease as happened to Bonilla. The NHTA/Command Staff adhered to the grievance procedure, and is entitled to file a complaint with this board as the final step of the grievance procedure and receive a decision from the board on the complaint. However, we are aware that administration of the personnel rules is outside of the board's jurisdiction, and we will not make a determination about whether the personnel rules were violated. Instead, we will be examining

³ At the hearing the board received NHTA/Command Staff Exhibits 1-4.

whether the sub-sections of the statute cited in the complaint were violated, and our analysis will include a determination of whether the State breached the cited CBA provisions or past practice established pursuant to requirements of relevant authority.⁴

We also deny the State's request to dismiss the case because the NHTA/Command Staff has allegedly failed to state a claim under RSA 273-A:5, I. The State cites several cases involving appeals of dismissal orders in the superior court, where an alleged failure to state a claim is an affirmative defense that should be raised by an appropriate pleading. It is fair to say, without presenting a detailed overview of the differences in practice and procedure between state trial courts and this board, that cases pending before the board are meant to be heard on a relatively expedited and streamlined basis in comparison to cases processed through the state's trial courts.⁵ In this regard, and as reflected in the board's rules, practice before this board does not include the equivalent of the motion practice under consideration in the cited authorities. However, assuming for the sake of argument that the authorities cited by the State are applicable, we still decline to dismiss the case at this stage in the proceedings. Given the complaint and other filings made, and taking into consideration the arguments on the motion to dismiss, we find that a hearing is necessary as there are "issues of material and relevant fact in dispute." N.H. Admin. R. Pub 201.06 (a). See also RSA 273-A:6, II (board or its designee shall hold a hearing within 45 days under rules adopted by the board pursuant to RSA 541-A). A hearing will provide the NHTA/Command Staff with a full and fair opportunity to present all relevant evidence to support the complaint, and it will provide the board with a more complete record on which to base its decision.

⁴ Like *Appeal of N.H. Dept. of Corrections*, 164 N.H. 307 (2012).

⁵ RSA 273-A:6, II calls for a hearing within 45 days of the filing of a complaint. The hearing in this case has already been scheduled, and continued, numerous times: March 27, 2019, April 19, 2019, June 3, 2019 and June 17, 2019.

Accordingly, the motion to dismiss is denied. The motion to stay is moot; to the extent a formal order is required the motion to stay is denied. On or before July 10, 2019 the parties shall provide the board with at least three dates when both parties are available during the three week period beginning August 7, 2019.

So Ordered.

June 26, 2019

/s/ Peter G. Callaghan
Peter G. Callaghan, Esq., Chair

By unanimous vote of Alternate Chair Peter C. Callaghan, Esq., Board Member Senator Mark Hounsell, and Board Member Carol M. Granfield.

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