



State of New Hampshire
Public Employee Labor Relations Board

Ellen Read

v.

Cooperative Alliance for Seacoast Transportation

Case No. G-0279-1
Decision No. 2019-150

Pre-Hearing Memorandum and Order

Date of Conference¹: June 20, 2019

Appearances: Gary Snyder, Esq., for the Complainant
Patrick L. Egan, Esq., for the Respondent

Background:

On February 22, 2019, Ellen Read filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Cooperative Alliance for Seacoast Transportation (COAST) had violated RSA 273-A:5, I (a), (b), and (c) when it terminated her employment in retaliation for her union organizing efforts. Ms. Read alleges, among other things, that (1) in the summer of 2018, she began advocating for unionization of the COAST employees; (2) she actively participated in organizing efforts, including collecting authorization cards, discussing unionization with other employees, organizing meetings, and writing and distributing union flyers; (3) on October 17, 2018, the COAST suspended her and issued her a "final warning" in retaliation for her union activity; (4) in November of 2018, the COAST placed her on paid administrative leave pending internal investigation related to her organizing efforts;

¹Per the COAST's request, the pre-hearing conference was conducted telephonically.

(5) the COAST issued several memos discouraging employees from organizing and providing false information regarding union fees; and (6) on January 18, 2019, the COAST terminated Ms. Read's employment.² Ms. Read argues that the COAST discriminated against her for the purpose of discouraging union membership and interfered with employees' statutory right to organize, and that the COAST's actions had a chilling effect on all employees who wanted to unionize. Ms. Read requests that the PELRB find that the COAST committed an unfair labor practice and order the COAST (1) to cease and desist from further violations, (2) to print and distribute "a retraction of its inflammatory and inaccurate memos," and (3) to reinstate her with full back pay and benefits and otherwise make her whole.

The COAST denies the charges and argues that the PELRB lacks jurisdiction over Ms. Read's complaint on the ground that the COAST is not a public employer within the meaning of RSA 273-A:1, X. On June 17, 2019, the COAST filed a motion to dismiss on this basis.³ The COAST also claims, among other things, that it was not aware that Ms. Read was involved in union organizing efforts; and that Ms. Read was disciplined and, eventually, terminated for violations of the COAST policy and not in retaliation for her union activity. The COAST requests that the PELRB dismiss the complaint.

Issues for Determination by the Board.

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

² On March 4, 2019, the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA) filed a Petition for Certification seeking to represent certain COAST employees. On March 15, 2019, the SEA withdrew its petition. See PELRB Decision No. 2019-062 (March 20, 2019).

³Ms. Read's attorney orally objected to the motion to dismiss at the pre-hearing conference but a written objection is still required.

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. 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 Ms. Read, the COAST or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. Ms. Read shall file her written objection to the pending motion to dismiss on or before **July 2, 2019**.
3. Both parties indicated that multiple hearing days are required in this case and requested that the hearing be scheduled during the week of September 24, 2019 or during the week of September 30, 2019. The hearing is scheduled for October 1 & 2, 2019, at 8:30 a.m. See Hearing section below.
4. On or before **August 30, 2019**, the parties shall file:
 - a. Updated and final witness lists which shall include a summary of the testimony that will be elicited from each witness. This information will assist the presiding officer in managing the hearing process;
 - b. Joint statement of stipulated facts; and
 - c. Final exhibit lists.
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

Unless otherwise ordered, the hearing in this case will be held on **October 1, 2019, at 8:30 a.m. and, if necessary, continue on October 2, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 7 hours for each day. If either party believes that additional time is required, a written notice of the need for additional time, together with a detailed explanation of the basis for the request, shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 6/26/2019


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

Distribution: Gary Snyder, Esq.
Patrick L. Egan, Esq.
Matthew C. Chambers, Esq.