



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of New Hampshire, SEIU Local 1984

v.

State of New Hampshire

Case No. G-0115-8

Decision No. 2020-009

Pre-Hearing Memorandum and Order

Date of Conference: January 9, 2020

Appearances: Gary Snyder, Esq., for the Complainant

Erik Bal, Esq., for the Respondent

Background:

On November 22, 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 had violated RSA 273-A:5, I (e), (h), and (i) when the State Department of Health and Human Services (DHHS) refused to fulfill the terms of an arbitrator's award. The SEA claims, among other things, that the arbitrator found that the State violated the premium pay terms of the 2018-19 collective bargaining agreement (CBA) and ordered the State to pay employees premium pay or compensatory time at the rate of time and one-half for all hours worked during a holiday, as opposed to just 8 or 7.5 hours as the State has paid in the past. The arbitrator also concluded that the award did not create a new appropriation. The SEA also claims (1) that after the issuance of the arbitrator's award, the State Manager of Employee Relations issued a memorandum instructing various agencies, including the DHHS, to ignore the award

and continue to limit the holiday premium pay to 8 hours per employee when any additional pay would require an additional appropriation; and (2) that, as a result, some DHHS employees were not paid in accordance with the arbitrator's award. The SEA requests that the PELRB enforce the CBA and the arbitrator's award and order the State to make all affected employees whole by either issuing back-pay or compensatory time for any lost wages.

The State denies the charges and asserts, among other things, that the State has been in compliance with the arbitrator's award and that all DHHS employees are paid in accordance with the CBA. The State also argues that (1) the arbitrator's award is binding only if it does not require an additional appropriation; (2) when an additional appropriation is required to implement the award, the award becomes advisory; (3) the arbitrator went beyond the scope of his authority when he concluded that the award did not create a new appropriation; and (4) the arbitrator was incorrect when he found that compensatory time is not a cost item and does not require an additional appropriation. The State requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (e), (h), and/or (i) 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. At the pre-hearing conference, the SEA indicated that it recently discovered new information possibly showing that all DHHS employees who worked on a holiday were

paid in accordance with the arbitrator's award. However, the SEA asserts that it needs more time for further discovery; and the SEA still claims that the memorandum issued by the Manager of Employee Relations constitutes an unfair labor practice. As discussed at the pre-hearing conference, the State shall provide to the SEA the requested information regarding the DHHS employees' holiday pay on or before **January 13, 2020**. The SEA shall then file a motion to amend its complaint in accordance with Admin. R. Pub 201.04. on or before **January 16, 2020**.

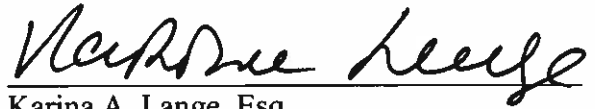
3. At the pre-hearing conference, both parties expressed an interest in submitting this case for decision on stipulations and briefs. Accordingly, on or before **January 16, 2020**, the parties shall file a joint request, if any, to submit this case for decision on stipulated facts, joint exhibits, and briefs. Any such request shall contain a proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.
4. In the event the parties elect to proceed to a hearing, the parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later **January 21, 2020**. 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. All non-joint exhibits on the lists of exhibits shall be pre-marked as either "ID" (if objected to) or "Full by Agreement."
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 **January 30, 2020, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 hours. 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: 1/10/2020



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

Distribution: Gary Snyder, Esq.
Elizabeth McCormack, Manager of Employee Relations
Erik P. Bal, Esq.