



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-0115-9

Decision No. 2020-010

Pre-Hearing Memorandum and Order

Date of Conference: January 9, 2020

Appearances: Randy Hunneyman and Gary Snyder, Esq., for the Complainant

Jill Perlow, Esq., for the Respondent

Background:

On December 6, 2019, the State Employees' Association of NH, SEIU Local 1984 (SEA) filed an unfair labor practice complaint against the State under the Public Employee Labor Relations Act. On December 30, 2019, the SEA moved to amend its complaint. See Decision Section at 2 below. In its filings, the SEA asserts that the State violated RSA 273-A:3, I, RSA 273-A:5, I (a), (b), (e), and (g), RSA 273-A:9, I, and RSA 273-A:12, II when the State engaged in impermissible "direct dealing" and refused to follow the dispute resolution process set forth in RSA 273-A:12. The SEA alleges, among other things, that: (1) during the fact-finding phase of bargaining impasse, the State by-passed the RSA 273-A:9 bargaining process and presented wage and benefits-related proposals directly to the executive branch bargaining unit employees, represented by the SEA, via email and by posting the link to this email on the NH First web portal that is used by unit employees to access time sheets and other records; (2) the email

contained the State's proposals as well as false and misleading information regarding the November 12, 2019 fact-finder's report and the state of negotiations; and (3) the State deliberately attempted to interfere with the union's vote on the fact-finder's report. The SEA also claims that: (1) RSA 273-A:12, II requires the State to submit the fact-finder's report to the Governor and Executive Council for a vote; (2) the State acted in bad faith and violated RSA 273-A:12, II when the Governor refused to present the fact-finder's report to the Executive Council for a vote; and (3) the State refused "to recognize the duly elected exclusive representative of the bargaining unit" when the Governor publicly stated that there is a difference between the "union leadership" and the "state employees." The SEA requests that the PELRB (1) find that the State committed an unfair labor practice and acted in bad faith when it engaged in "direct dealing" with bargaining unit employees and intentionally circumvented the bargaining process set forth in RSA 273-A:9 and RSA 273-A:12; (2) order the State to cease and desist from bargaining directly with the bargaining unit employees; (3) order the State to rescind any and all correspondence sent to the SEA-represented bargaining unit employees regarding bargaining proposals and the fact-finder's report; and (4) order the State to submit the 2019 fact-finder's report to the Executive Council for a vote in accordance with RSA 273-A:12, II.

The State denies the charges and asserts, among other things, that the Governor's December 3, 2019 email "was lawful, appropriate and consistent with his rights and responsibilities as chief executive of the State of New Hampshire"; that such "communications support the free exchange of information that furthers the bargaining process and promotes a stable bargaining environment consistent with the goals and purposes of the statute to assist parties in reaching an agreement"; that the email is not improper "direct dealing," nor does it interfere with the rights of the bargaining unit, "because the email was not coercive nor did it include an express or implied quid pro quo to circumvent the union"; and that the email

“constitutes protected speech under the First Amendment of the U.S. Constitution, Part I, Article 22 of the New Hampshire Constitution, and RSA chapter 98-E.”

Issues for Determination by the Board

Whether the State violated RSA 273-A:3, I, RSA 273-A:5, I (a), (b), (e), and (g), RSA 273-A:9, I, and/or RSA 273-A:12, II 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 December 30, 2019, the SEA filed a motion to amend its complaint. At the pre-hearing conference, the State indicated that it did not object to the motion to amend. The SEA’s motion to amend is granted and the complaint is hereby amended as set forth in the SEA’s motion. See Admin. R. Pub 201.04. As discussed at the pre-hearing conference, the State shall file an amended answer on or before **January 16, 2020**.
3. At the pre-hearing conference, the State expressed an interest in submitting this case for decision on stipulations and briefs. Accordingly, on or before **January 23, 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 27, 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."

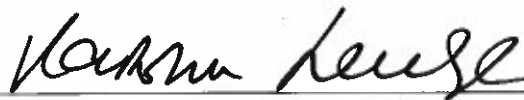
5. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper 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 **February 5, 2020, 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, 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.
Randy Hunneyman
Elizabeth McCormack, Manager of Employee Relations
Jill Perlow, Esq.