



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of NH, SEIU Local 1984

v.

State of New Hampshire Department of Health and Human Services

Case No. G-0148-8
Decision No. 2021-031

Pre-Hearing Memorandum and Order

Date of Conference: March 2, 2021

Appearances: Sean Bolton, Field Representative/Negotiator, for the Complainant
Stacie M. Moeser, Esq., for the Respondent

Background:

On January 29, 2021, the State Employees' Association of NH, SEIU Local 1984 (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the State of New Hampshire Department of Health and Human Services (State) had violated RSA 273-A:5, I (g)(to fail to comply with this chapter or any rule adopted under this chapter (e)(to refuse to negotiate in good faith...); (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) when it withdrew its grievance decision five months after it granted an employee's grievance. The Association alleges as follows: (1) an employee filed a grievance under the parties' collective bargaining agreement (CBA) concerning "placing the employee at a different step following changes to her positions"; (2) at Step III of the

grievance procedure (Agency Head), the grievance was granted by the employer on July 31, 2020; (3) on December 21, 2020, the DHHS Commissioner withdrew the Step III Decision stating that a “state agency commissioner does not have the authority to issue independent decisions affecting matters of compensation under Article 14.4 of the [CBA]” and that “we have been advised that DHHS does not have the authority to make the final decision at step III in this matter”; and (4) the position taken by the State renders a major portion of the contractual grievance procedure “unworkable and moot” and constitutes a violation of RSA 273-A:4¹ and RSA 273-A:5, I (g), (h), and (i). The Association requests, among other things, that the PELRB (1) find that the State committed an unfair labor practice and acted in bad faith “when by its actions, it abrogated the Parties’ CBA and rendered the agreed upon grievance procedure unworkable and moot”; and (2) order the State to “reinstate the July 31, 2020 grievance decision issued in accordance with the Parties’ grievance procedure.”

The State denies the charges and asserts that the DHHS “lacks the authority to grant the step increase to this employee through the grievance procedure without the authorization of the Department of Personnel under Article 19.2.1(b)” of the CBA. The State also claims that the DHHS “lacks the authority to interpret the CBA because the interpretation of the CBA for the State, by statute, is committed to the manager of employee relations in order to ensure consistent contract application across the state.”

Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (g), (h), and (i) as charged by the Association.

Decision

1. “Parties” means the Association, the State or their counsel/representative appearing in the

¹ RSA 273-A:4 provides in part that “[e]very agreement negotiated under the terms of this chapter shall be reduced to writing and shall contain workable grievance procedures.”

case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.

2. Based on the parties' Joint Pre-Hearing Worksheet and the discussion at the pre-hearing conference, it appears that there are no issues of relevant and material fact in dispute in this case and the parties agree that the hearing is unnecessary. See Admin Rules Pub 201.06 (a) and Pub 203.05 (b). The parties' request to submit this case on stipulated facts, exhibits, and briefs is granted and the proposed briefing schedule is approved. Accordingly, the March 21, 2021 hearing is cancelled.
3. The parties shall file a joint statement of stipulated facts and exhibits no later than **March 16, 2021**. The parties shall file opening briefs on or before **March 31, 2021** and reply briefs, if any, on or before **April 14, 2021**.

So ordered.

Date: 03/02/2021


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

Distribution: Sean Bolton, Field Representative/Negotiator
Stacie M. Moeser, Esq.

