State of New Hampshire

Public Employee Labor Relations Board

State Employees' Association of New Hampshire, SEIU Local 1984, NEPBA Local 40, NH Fish & Game Conservation Officers, And NEPBA Local 45, NH Fish & Game Supervisory Officers

v.

State of New Hampshire

Consolidated Cases G-0115-9, G-0255-4, and G-0254-4
Decision No. 2021-116

Order on Motion to Stay

On June 7, 2021 the State filed a motion to stay PELRB Decision No. 2021-028 (February 26, 2021) pending the State's RSA 541:6 appeal to the New Hampshire Supreme Court. The SEA filed an objection on June 21, 2021.

The last ten pages of the decision discusses the legal basis for our conclusion that the Governor's December 3, 2019 email to employees and his subsequent refusal to submit the fact finder's report to the Executive Council pursuant to RSA 273-A:12, II constituted unfair labor practices in violation of RSA 273-A:5, I (a), (b), (e), and (g). Our discussion includes consideration of the State's protected speech argument[1] as well as the State's position that *Sunapee Difference, LLC v. State of New Hampshire,* 164 N.H. 778 (2013) means compliance with RSA 273-A:12, II (submission of the fact finder's report to the Executive Council) is not required.

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[1] The full text of the excerpt included in the State's motion provides as follows:

> *With respect to the State's argument that the Governor's email is constitutionally protected speech, we note that the State has not cited any applicable decisions to this effect involving similar facts. While our jurisdiction is limited to a determination of whether the State's actions in this case violated the provisions of RSA 273-A as charged, we believe the framework in which collective bargaining operates under the Act, including the requirement that employers refrain from "direct dealing" with bargaining unit employees within the meaning of the law discussed in our decision, does not implicate First Amendment issues or other constitutional provisions which somehow operate to shield the State from the unfair labor practice charges that have been filed. At all times, involved State officials were acting in their official capacities and were required to discharge their bargaining obligations in accordance with the provisions of the Act.*

After finding that the State had committed unfair labor practices as charged we ordered the following relief:

> *Accordingly, in ongoing and future negotiations, the State is ordered to cease and desist from interfering with employees in the exercise of rights conferred by the Act; interfering with the administration of union business; making bargaining presentations to employees and discussing negotiations directly with employees except as permitted under RSA 273-A:12, I (a)(2); and refusing to follow impasse resolution procedures prescribed by RSA 273-A:12. The State shall also post this decision for 30 days in all locations where employees in bargaining units represented by the SEA and the NEPBA work and complete and file a certificate of posting provided by the board.*

RSA 541:18 states "[n]o appeal or other proceedings taken from an order of the commission shall suspend the operation of such order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension..." Under *Union Fidelity Life Ins. Co. v. Whaland,* 114 N.H. 549 (1974), a "presumption of reasonableness is accorded to administrative orders." In *Whaland,* the court noted that it "has been reluctant to exercise the discretion conferred by this statute" unless the party seeking a suspension of the order demonstrates "irreparable harm" which "outweighs the public interest in enforcing the order for the duration of the appeal." *Id.* (citations omitted).

In the present case, the State has not demonstrated that the relief we ordered[2] will cause irreparable harm or otherwise unfairly and adversely affect the State's interests in labor relations in general or in any ongoing collective bargaining negotiations in particular, and has not otherwise shown that justice requires a suspension of our order. We are not persuaded that a stay is necessary at this juncture for the reasons stated in the State's motion. Accordingly, the motion to stay is denied.

Date: June 30, 2021

Andrew B. Eills, Esq.
Chair/Presiding Officer

By unanimous vote of Chair Andrew B. Eills, Esq., Board Member James M. O'Mara, Jr., and Alternate Board Member Glenn Brackett

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[2] The State has already filed certificates of posting confirming that the decision has been posted in the workplace as required.