



State of New Hampshire
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

NH Dept. of Safety - Division of State Police

Case No. G-0097-29
Decision No. 2021-123

Pre-Hearing Memorandum and Order

Date of Conference: July 14, 2021

Appearances: Marc G. Beaudoin, Esq., for the Complainant

Marta A. Modigliani, Esq., and Jessica King, Esq., for the Respondent

Background:

On June 14, 2021, the New Hampshire Troopers Association (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the State of New Hampshire Department of Safety - Division of State Police (Division) had violated RSA 273-A:5, I (h)(to breach a collective bargaining agreement) when it failed to compensate a bargaining unit employee, who was ordered to attend a hearing during his off-duty hours, in accordance with the parties' collective bargaining agreement (CBA) Article 7.6 and the existing past practice. The Association alleges as follows: (1) a bargaining unit employee, whose shift begins at 12:30 p.m., was ordered to attend a 10:30 a.m. administrative hearing; (2) the hearing ended at 11:00 a.m. and the employee went back into an off-duty status until 12:30 p.m.; (3) CBA Article 7.6 and the past practice require that an "employee who is not on duty and is required by the employer to appear in court or at an administrative hearing ... shall be compensated for all

hours worked at time and one half the regular rate and shall be granted a minimum of four (4) hours compensation"; (4) the Division refused to compensate for a minimum of four hours and instead compensated the employee for two hours, from the time of his appearance at the hearing at 10:30 a.m. to the time his shift began (12:30 p.m.); and (5) by refusing to compensate the employee for a minimum of four hours, the Division breached the parties' CBA and the past practice. The Association requests that the PELRB find that the Division has committed an unfair labor practice and order the Division to cease and desist from any further violations and to compensate the employee for the two remaining hours of the four-hour minimum.

The Division denies the charges. The Division asserts that (1) under Article 7.6, "court/administrative hearings for employees who are not on duty shall be compensated with a four (4) hour minimum when the minimum does not cover duty hours" (emphasis in original); (2) Article 7.6 applies only to employees who are not on duty, and therefore, does not apply to the subject employee after he went on duty at 12:30 p.m.; (3) the CBA language is unambiguous and the Association's "past practice theory is unavailing"; and (4) the Association failed to allege sufficient facts that the Division violated CBA Article 7.6 and RSA 273-A:5, I (h).

Issues for Determination by the Board

Whether the Division violated RSA 273-A:5, I (h) as charged by the Association.

Decision

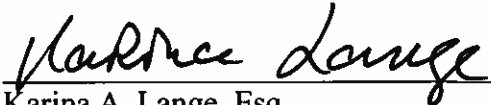
1. "Parties" means the Association, the Division or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the Division requested the continuance of the July 28, 2021 hearing to allow the parties time to exchange information related to the Association's past practice claim. The Association assented to this request. The Division's assented to request

is granted. The July 28, 2021 hearing is cancelled. On or before July 20, 2021, the parties shall provide to the PELRB a list of dates on which both parties are available for a hearing for a two-week period beginning on August 23, 2021. A rescheduled hearing date will be established in a subsequent notice.

3. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than 10 days prior to the date of hearing. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." 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.
4. 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 shall be filed with the PELRB at least 10 days prior to the date of hearing.
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 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.

So ordered.

Date: 7/15/2021



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

Distribution: Marc G. Beaudoin, Esq.
Marta A. Modigliani, Esq.
Jessica King, Esq.