



**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-0115-14**  
**Decision No. 2022-172**

Pre-Hearing Memorandum and Order

Date of Conference: October 27, 2022

Appearances: Gary Snyder, Esq., for the Complainant  
Jessica A. King, Esq., for the Respondent

Background:

On September 26, 2022, the State Employees' Association of New Hampshire, SEIU Local 1984 (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the State of New Hampshire claiming that the State violated RSA 273-A:5, I (a) ("To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter"), (e) ("To refuse to negotiate in good faith with the exclusive representative of a bargaining unit..."), (g) (To fail to comply with this chapter or any rule adopted under this chapter); and (h) ("To breach a collective bargaining agreement"). The Union alleges that: (1) in May, 2022, the State unilaterally changed a telework policy that existed since 2009 to prohibit out-of-state bargaining unit employees from working remotely; (2) this change to the telework policy is a mandatory subject of bargaining;<sup>1</sup> and (3) this change primarily affects the terms and conditions

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<sup>1</sup>Although the Union doesn't dispute that individual managers have discretion to grant or deny an employee's request to work remotely, the Union asserts that the new "universal" prohibition on out-of-state remote work is a mandatory subject of bargaining that must be negotiated and agreed upon by both parties.

of employment rather than matters of broad managerial policy because, among other things, the new policy imposes new costs to employees, hinders their "movement to a preferred location," and threatens their "job security." See *Appeal of New Hampshire Department of Transportation*, 174 N.H. 610, 618 (2021). The Union also argues that the State engaged in impermissible direct dealing when it required bargaining unit employees to sign "acknowledgement forms" agreeing to the new "terms and conditions" of employment which were not bargained for. The Union requests, among other things, that the Board find that the State committed unfair labor practices in violation of RSA 273-A:5, I (a), (e), (g), and (h) and order the State to bargain in good faith over terms and conditions of employment, including any telework policies or procedures, and to cease and desist from enforcing the new telework policy.

The State denies the charges. The State asserts as follows: (1) the telework policy is not a mandatory subject of bargaining, but is at most a permissive subject of bargaining; (2) under the language of the 2009 policy, telework was a management option and not an employee right and the duration of permission for the telework arrangement was entirely at the will and discretion of the management which retained the "prerogative to determine the time, place, and manner of the Telework agreement"; and (3) the 2009 telework policy provided that the "employee, manager, supervisor or other authorized official may terminate the Telework arrangement any time for any reason" and that "issues regarding approval for participation in the Telework program cannot be appealed, grieved nor are they subject to review." The State further asserts that: (1) it did not engage in direct dealing but simply requested employees who wished to work remotely to acknowledge that they would follow the Telework Policy when working from a remote location; and (2) this type of acknowledgement is common practice in the State.

#### Issues for Determination by the Board

Whether the State violated RSA 273-A:5, I (a), (e), (g), and/or (h) as charged by the Union.

Decision

1. "Parties" means the Union, 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. The parties agreed to submit this case for decision on stipulated facts, exhibits, and briefs and provided a proposed filing schedule. Based upon the parties' pleadings and the discussion at the pre-hearing conference, it does not appear at this time that there are any issues of relevant and material fact in dispute in this case or that an evidentiary hearing is necessary. See Admin. R. Pub 201.06 (a) and Pub 203.05 (b). The parties' agreed upon request to submit this case on stipulated facts, exhibits, and briefs is granted and the proposed briefing schedule is approved. Accordingly, the November 15, 2022 hearing is cancelled.

3. This case shall proceed according to the following schedule:

**November 15, 2022:** Deadline to file a statement of stipulated facts and exhibits. Any objection to any stipulation or non-joint exhibit shall be addressed in the opening briefs.

**December 6, 2022:** Deadline to file opening briefs.

**December 20, 2022:** Deadline to file reply briefs, if any.

So ordered.

Date:

10/27/2022



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

Distribution: Gary Snyder, Esq.  
Peter Demas, Manager Employee Relations  
Jessica A. King, Esq.