



State of New Hampshire
Public Employee Labor Relations Board

Timothy D. DeMaria

v.

New Hampshire Judicial Branch/Administrative Office of the Courts

Case No. G-0102-5
Decision No. 2023-141

Pre-Hearing Memorandum and Order

Date of Conference: June 22, 2023

Appearances: Timothy D. DeMaria, Complainant

Takhmina Rakhmatova, Esq., for the Respondent

Background:

Mr. DeMaria filed this unfair labor practice complaint on May 22, 2023, claiming a breach of collective bargaining agreement in violation of RSA 273-A:5, I (h). As reflected in the Joint Pre-Hearing Worksheet, and as discussed at the pre-hearing conference, the factual basis for the complaint is not in dispute. Mr. DeMaria was employed by the New Hampshire Judicial Branch as a Court Assistant III, a position within a Judicial Branch bargaining unit represented by the State Employees' Association of NH, SEIU Local 1984 (SEA), as per PELRB Decision No. 2018-219 (December 19, 2018). The SEA and the Judicial Branch are parties to a collective bargaining agreement in effect until June 30, 2023, or until a new agreement is reached.

On April 12, 2023, the SEA duly filed a CBA Article V appeal of adverse action (discharge) taken against Mr. DeMaria with the Director of the Administrative Office of the Courts (AOC). On April 26, 2023, the appeal advanced to the hearing phase pursuant to CBA Article V (B)(ii),

which requires the formation of an Appeals Board under CBA Article V (B)(iii). On or about May 15, 2023, the SEA and the Judicial Branch (acting through the Director) agreed to extend the timeframe for hearing beyond the 30 working days stated in CBA Article V (B)(v)(1).¹ On April 24, 2023, the New Hampshire Supreme Court appointed Superior Court Justice Lisa English to serve as chair of the Appeals Board, on April 26, 2023, the SEA selected Charles McMahon as the second member of the Appeals Board, and on June 1, 2023, Justice English and Mr. McMahon selected Deputy Commissioner of the New Hampshire Department of Labor Rudy Ogden as the third member of the Appeals Board. On May 23, 2023, the SEA and the AOC filed a Joint Request for Postponement of the notice and hearing on the appeal with the Appeals Board, a request granted by Justice English and Mr. McMahon on behalf of the Appeals Board on May 24, 2023.

The gravamen of Mr. DeMaria's complaint is the AOC's failure to arrange for a hearing within the time period specified in CBA Article V (B)(v)(1), a circumstance for which he blames the Director of the AOC and other AOC staff. He charges this is a breach of the CBA and is an unfair labor practice under RSA 273-A:5, I (h)(to breach a collective bargaining agreement). As relief, Mr. DeMaria has requested that the PELRB:

- A. Find an unfair labor practice as charged;
- B. Order the public employer and certain AOC staff to cease and desist from unlawful activity relating to this matter;
- C. Order the public employer and certain AOC staff to comply with applicable CBA provisions;
- D. Enjoin the public employer and certain AOC staff from committing future unfair labor practices, and require certain AOC staff to undergo appropriate remedial training at their expense;
- E. Require periodic reporting of compliance with RSA 273-A:5 and the CBA; and
- F. Order other relief as the PELRB deems necessary.

The Judicial Branch has answered the complaint and denies the charge. According to the Judicial Branch, the Appeals Board has the authority to postpone hearings under the CBA.

¹ Sub-section (3) of Article V (B)(v) states "[r]equests for postponement of the hearing shall be addressed to the appeals board and shall include a statement of whether the opposing party assents."

Therefore, an April 12, 2023, appeal of adverse action means a hearing date on or before May 24, 2023, unless extended by the Appeals Board. The Judicial Branch maintains that it filed a timely and joint request with the SEA to postpone the hearing, which the Appeals Board granted. Therefore, the Judicial Branch contends it has not breached the CBA as charged. Further, the Judicial Branch states that proceedings before the Appeals Board are ongoing, and Mr. DeMaria's complaint is a premature appeal of an issue that ultimately can only be filed with the New Hampshire Supreme Court, and not the PELRB.

Issues for Determination by the Board

1. Whether the matter complained about is within the PELRB's jurisdiction given the authority the SEA and Judicial Branch granted to the Appeals Board under CBA Article V.
2. Whether Mr. DeMaria can maintain this action when the SEA, a party to the CBA with the Judicial Branch, filed the appeal of adverse action, agreed to postpone the hearing timeframe, filed a joint request to postpone with the Appeals Board, and has not filed a breach of CBA claim with the PELRB on account of the CBA Article V proceedings.
3. Whether Mr. DeMaria can prove a violation of the CBA when CBA Article V (B)(v)(3) allows for the filing of postponement requests to the Appeals Board, the SEA agreed to postpone the hearing, and the SEA filed a joint request to postpone with the Appeals Board.
4. Whether Mr. DeMaria has otherwise proven a violation of the CBA as charged.

Decision

1. "Parties" means Mr. DeMaria, the Judicial Branch, 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 parties agreed this case can be submitted for decision on stipulated facts, exhibits, and briefs. Accordingly, the July 6, 2023, hearing is cancelled. The parties shall proceed with their submissions per the following schedule:

July 6, 2023: Stipulated Facts, Exhibit List and Exhibits

August 4, 2023: Opening Briefs

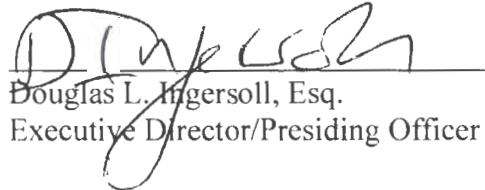
August 15, 2023: Reply Briefs

3. The parties agree that the stipulated facts shall consist of those listed in paragraph 9 of their Joint Pre-Hearing Worksheet and additional stipulations covering the Appeals Board activity since June 1, 2023.

So ordered.

Date:

6/22/2023



Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

Distribution: Timothy D. DeMaria
Takhmina Rakhmatova, Esq.