



**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. 2023-247**

**Appearances:** Timothy D. DeMaria, Complainant  
  
Takhmina Rakhmatova, Esq.  
New Hampshire Judicial Branch, For the Respondent

**Background:**

Timothy D. DeMaria filed an unfair labor practice complaint on May 22, 2023. He is involved in an Appeals Board proceeding under the collective bargaining agreement (CBA) between the New Hampshire Judicial Branch (NHJB) and the State Employees' Association of NH, SEIU Local 1984 (Union). In substance, Mr. DeMaria alleges non-compliance with hearing timelines applicable to the Appeals Board proceeding per CBA Article V (B), in violation of RSA 273-A:5, I (h)(to breach a collective bargaining agreement). In his brief, Mr. DeMaria amended the request for relief in his complaint to the following:

- A. Make findings of fact and rulings of law that the Public Employer and named Respondents have violated RSA 273-A:5, I (h), and in so doing have engaged in a prohibited unfair labor practice, for all the reasons presented by the undersigned; and
- B. Order such other relief as the PELRB deems necessary, in accordance with RSA 273-A:6, VI (e).

The NHJB denies the charge. The NHJB argues the PELRB lacks jurisdiction as the Union and the NHJB agreed in the CBA that the Appeals Board, and not the PELRB, has jurisdiction

over issues involving the interpretation of the CBA that may arise in an appeal of an adverse action under CBA Article V (B). The NHJB also maintains the complaint is otherwise insufficient to prove the NHJB breached the CBA and committed an unfair labor practice in violation of RSA 273-A:5, I (h).

The PELRB pre-hearing order<sup>1</sup> identified the following issues in this case:

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.

At the pre-hearing conference, the parties agreed to submit this case for decision on stipulated facts, exhibits and briefs, all of which were duly filed by August 15, 2023. We have reviewed the parties' submissions, and our decision is as follows.

#### **Findings of Fact**

1. The NHJB is a public employer within the meaning of RSA 273-A.
2. The Union is the exclusive representative of certain employees of the NHJB, including Court Assistants III.
3. The NHJB and the Union are parties to a CBA which covers the bargaining unit that includes Court Assistants III.
4. Mr. DeMaria was employed by the NHJB as a Court Assistant III in the 9th Circuit

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<sup>1</sup> See PELRB Decision No. 2023-141 (June 23, 2023).

Court-Manchester beginning on November 5, 2021.

5. On March 31, 2023, the Administrative Authority discharged Mr. DeMaria from employment with the State of New Hampshire.

6. On April 12, 2023, pursuant to CBA Article V(B)(i), the Union, on behalf of Mr. DeMaria, filed an appeal of adverse action with Director Dianne Martin of the Administrative Office of the Courts (AOC).

7. On April 26, 2023, pursuant to CBA Article V(B)(ii), Director Martin notified the Union that she declined to recommend to the Administrative Authority that the relief requested be granted and that Kelly Friberg, NHJB Executive Assistant, AOC, would begin making arrangements for a hearing, pursuant to the terms of the CBA.

8. CBA Article V(B)(iii) specifies the procedure for the formation of an Appeals Board.

9. On April 24, 2023, the Supreme Court appointed Superior Court Justice Lisa English to serve as the chair of the Appeals Board.

10. On April 26, 2023, the Union selected Charles McMahon as the second member of the Appeals Board.

11. On May 15, 2023, the AOC and the Union agreed to extend the timeframe for the hearing and jointly file a motion to that effect with the hearing panel to extend the notice and hearing deadlines.

12. CBA Article V(B)(v), Appeals Board Procedure, states in sub-section 3 as follows: “[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.”

13. CBA Article V(B)(ix), Scope of the Appeals Board’s Review, states, in part, as follows: “[t]o the extent an issue of interpretation of statutes or of this Agreement arises in an appeal of an adverse action, the appeals board shall have jurisdiction to decide the issue.”

14. On May 23, 2023, the Union and the AOC filed a Joint Request for Postponement of the notice and hearing on the appeal of the adverse action until June 30, 2023.

15. On May 24, 2023, the Appeals Board consisting of Justice English and Mr. McMahon granted the request.

16. On June 1, 2023, Justice English and Mr. McMahon selected Rudy Ogden, Deputy Commissioner of the NH Department of Labor, as the third member of the Appeals Board.

17. Pursuant to CBA Article V(B)(v), on June 21, 2023, the AOC issued a written notice specifying that the hearing on the appeals of adverse action will be conducted on July 20, 2023.

### **Decision and Order**

#### **Decision Summary:**

Pursuant to the terms of the CBA, the Appeals Board, and not the PELRB, has jurisdiction over issues which arise in the course of an appeal of an adverse action involving the interpretation of scheduling and docket requirements imposed by CBA Article V(B). Additionally, Mr. DeMaria, individually, lacks standing to maintain this breach of collective bargaining agreement claim in violation of RSA 273-A:5, I (h). The complaint is dismissed.

#### **Jurisdiction:**

The PELRB has primary jurisdiction of alleged RSA 273-A:5 unfair labor practices. See RSA 273-A:6, I. However, the PELRB does not have jurisdiction over Mr. DeMaria's complaint for the reasons explained below.

#### **Discussion:**

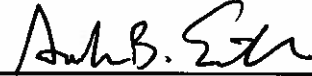
Upon review of CBA Article V (B), we find the parties to the CBA (the Union and the NHJB) agreed to have the Appeals Board's jurisdiction include issues involving the interpretation of the CBA which may arise in an appeal of adverse action. The complaint in this case is based upon alleged violations of CBA Article V (B) which have arisen during the course of an appeal of

an adverse action and, as such, are matters that fall within the scope of the Appeals Board's jurisdiction. Accordingly, we will not reach or decide the merits of Mr. DeMaria's complaint, consistent with the principle that the PELRB "will honor the plain language of the parties' agreement." *Appeal of Silverstein*, 163 N.H. 192, 196 (2012)(holding PELRB lacks jurisdiction to interpret CBA and decide disputes covered by CBA when the last step of the grievance procedure is final and binding). Moreover, the CBA itself is an agreement between the Union and the NHJB, and it is the Union, not Mr. DeMaria, that has the right to maintain a sub-section (h) breach of collective bargaining agreement claim against the NHJB, subject to an exception not applicable to this case. See, e.g., *Dillman v. Town of Hooksett*, 153 N.H. 344, 346 (2006)(stating exception to standing rule exists when union has breached its duty of fair representation); *Appeal of Eric Johnson*, 169 N.H. 598 (2013)(reviewing elements of union breach of duty of fair representation claim). In this case, the Union is not a party to these proceedings, perhaps because, as per the stipulations, the Union and the NHJB jointly requested the changes to the hearing timeline about which Mr. DeMaria now complains. However, the fact that the Union has not proceeded with a sub-section (h) breach of collective bargaining agreement claim does not give Mr. DeMaria the right to pursue such a claim on his own.

In accordance with the foregoing, the complaint is dismissed.

So ordered.

September 19, 2023

  
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Andrew B. Eills, Esq.  
Chair/Presiding Officer

By unanimous vote of Chair Andrew B. Eills, Esq., Board Member Carol M. Granfield, and Alternate Board Member Glenn Brackett.

Distribution: Timothy D. DeMaria  
Takhmina Rakhmatova, Esq.

