



State of New Hampshire
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

NH Dept. of Safety – Division of State Police

Case G-0097-31
Decision No. 2023-302

Order

This is an order on the State's November 20, 2023, motion for rehearing of PELRB Decision No. 2023-265 (October 18, 2023) which denied the State's Motion to Quash and Motion in Limine. By way of background, the NHTA filed an unfair labor practice complaint charging that the State failed to bargain in good faith over the effect of the State's implementation of its body worn and cruiser cameras policy on the terms and conditions of employment. The hearing in this matter began on October 18, 2023. Rudolph Ogden is the former Deputy Commissioner of the New Hampshire Department of Labor (now the Governor's legal counsel). He served as the lead state negotiator during relevant times and, together with Peter Demas, the State Manager of Employee Relations, represented the State in negotiations with the NHTA. Mr. Ogden was on the State's witness list filed on January 30, 2023, but shortly before hearing the State informed the NHTA that Mr. Ogden would not attend. The board subsequently issued a witness subpoena for Mr. Ogden pursuant to the NHTA's request submitted under N.H. Admin. Rules, Pub 203.01 (d).

The State moved to quash the Ogden subpoena, arguing that Mr. Ogden was not available, is not a necessary witness, and his testimony is "duplicative and inefficient in the

interest of administrative economy, especially as weighed against Attorney Ogden's valuable time and current role." The State also argues the NHTA seeks testimony from Mr. Ogden that is "confidential under the executive privilege, deliberative privilege, and the basic tenets of labor relations, i.e., maintaining confidential labor negotiation strategies, processes, and tactics."

The State filed a separate motion in limine asking the board to "[e]xclude any testimony, written or oral, that relates to the substance of conversations witness Peter Demas, or Attorney Ogden, may have had with the Governor's Office or who at the Governor's Office witness Peter Demas or Attorney Ogden may have communicated with, related to the Association's (bargaining) proposal regarding body cameras."

Mr. Ogden did not attend the October 18, 2023, hearing, and most of the hearing time was devoted to argument on the State's pending motion to quash and motion in limine. After listening to the parties' arguments, and following a brief recess, the board's chair issued the board's ruling:

This is how we are going to proceed. The board will deny the motion to quash and motion in limine. We will recess the hearing, and a new hearing (date) will be established by the parties and the PELRB. When the hearing resumes, we expect Mr. Ogden to attend...the State will have the right at that time to make objections to Mr. Ogden or Mr. Demas' testimony on a question-by-question basis. We will issue a written order on the motion to quash and the motion in limine along the lines I just summarized.

The next day, the board issued its written order in PELRB Decision 2023-265, which stated as follows:

The State's Motion to Quash and Motion in Limine are denied. The October 18, 2023, hearing is recessed, and a new hearing date will be established by the parties and the PELRB. When the hearing resumes, we expect Mr. Ogden to attend. The State will have the right at that time to make objections as to Mr. Ogden or Mr. Demas' testimony on a question-by-question basis.

N.H. Admin. Rule Pub 205.02, Motion for Rehearing, provides:

(a) Any party to a proceeding before the board may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order within 30 days after the board has rendered its decision and order by filing a motion for rehearing under

RSA 541:3. The motion for rehearing shall set out a clear and concise statement of the grounds for the motion. Any other party to the proceeding may file a response or objection to the motion for rehearing provided that within 10 days of the date the motion was filed, the board shall grant or deny a motion for rehearing, or suspend the order or decision complained of pending further consideration, in accordance with RSA 541:5 (emphasis added).

(b) Any other person, employee organization or public employer with an interest affected by any decision and order of the board may apply for a rehearing under this section in the same manner as a party to the original proceeding.

The "matter" to be determined in this case is whether the State committed an unfair labor practice as charged by the NHTA. As stated in our prior order, we will consider any objections the State may have to the testimony of Mr. Ogden (and Peter Demas) on a question-by-question basis. After the hearing is complete and the parties have filed any post-hearing briefs, we will issue a written decision containing findings of fact and analysis of the parties' claims and defenses, at which point we will have heard and decided this case. Until then, the State's motion for rehearing is premature. To the extent the motion is appropriately before the board at this stage in the proceedings, it is denied. The hearing is scheduled to resume on December 18, 2023, and we will proceed in accordance with this order and our prior Decision 2023-265.

December 1, 2023

/s/ Andrew B. Eills
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 A. Brackett.

Distribution: Marc G. Beaudoin, Esq.
John S. Krupski, Esq.
Jessica A. King, Esq.
Allison B. Greenstein, Esq.
Marta A. Modigliani, Esq.