



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. 2024-065

Appearances: Marc G. Beaudoin, Esq., and John S. Krupski, Esq.,
Milner & Krupski, PLLC Concord, NH for the Complainant

Allison B. Greenstein, Esq., and Marta A. Modigliani, Esq., NH Dept. of
Safety, and Jessica A. King, Esq., NH Dept. of Justice, for the Respondent

Background:

The New Hampshire Troopers Association (NHTA) filed an unfair labor practice complaint on October 5, 2022, 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 NHTA contends this is a violation of RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations); (g)(to fail to comply with this chapter or any rule adopted under this chapter); and, derivatively, RSA 273-A:3, Obligation to Bargain. As relief, the NHTA requests that the board find the State has committed an unfair practice, order the State to cease and desist from any further violations, and order the State to bargain in good faith over the implementation of body worn cameras (BWC).

The State denies the charge. The State says it met regularly with the NHTA, did not accept NHTA's proposal, and suggested the NHTA resubmit the proposal during regular bargaining on a successor contract. The State also questions whether implementation of the BWC policy will have any effect on the terms and conditions of employment for bargaining unit employees. The State requests dismissal of the complaint.

This case was originally scheduled for hearing on November 22, 2022, and was thereafter rescheduled several times at the NHTA's request until the board held the hearing on October 18 and December 18, 2023. Both parties filed their post-hearing briefs by February 9, 2024, and our decision is as follows.

Findings of Fact

1. The New Hampshire Department of Safety, Division of State Police (State Police), is a public employer within the meaning of RSA 273-A.

2. The NHTA is the exclusive representative of a State Police bargaining unit comprised of all sworn personnel up to and including the rank of Sergeant pursuant to an October 18, 1990, PELRB certification.

3. The State and the NHTA were parties to a 2021 to June 30, 2023, collective bargaining agreement (through June 30, 2023)(2021-23 CBA). In the fall and early winter of 2022, the parties successfully negotiated a successor contract.

4. In October of 2020, Governor Christopher Sununu issued Executive Order 2020-19 stating that the State Police should begin equipping its Troopers with cruiser cameras and body worn cameras (BWC).

5. House Bill 2, passed on June 24, 2021, included funding for BWC.

6. In August of 2021 NHTA representatives met with Peter Demas, the State Manager of Employee Relations, and Rudolph Ogden, Assistant Commissioner of the State Department of Labor, seeking to bargain over the implementation and impact of BWC. The Governor has designated Ogden, per RSA 273-A:9, as the official state negotiator to assist the Governor in the conduct of State negotiations.

7. Although serving as the official state negotiator, Ogden understood that the Governor is the state official with authority to enter into collective bargaining agreements with state bargaining units.

8. On October 12, 2021, the NHTA filed an unfair labor practice complaint (Case G-0097-30) with the board relating to the State's unilateral implementation of BWC in alleged violation of RSA 273-A:5, I (e), RSA 273-A:5, I (g), and, derivatively, RSA 273-A:3. In January of 2022, the NHTA withdraw the complaint in Case G-0097-30 based upon the following understanding recited in its motion to withdraw:

As part of the agreement, the NHTA will withdraw its Unfair Labor Practice complaint against the State without prejudice, and the State has agreed to meet with the NHTA on a monthly basis for the purpose of discussing the implementation and impact of body worn cameras on Troopers. Failure to hold a meeting due to scheduling conflicts will not be considered a violation of the agreement. Once the impact of the body worn cameras on Troopers is established, then the parties agree that they shall negotiate in good faith for what the parties agree would be fair compensation. As part of the agreement, the NHTA does not seek veto power over the implementation of body worn cameras.

The PELRB dismissed Case G-0097-30 on January 13, 2022.

9. The State Police enacted the BWC policy on April 8, 2022 (subsequently revised on July 22, 2022). Troopers had received relevant BWC training by the end of June of 2022.

10. From January through September of 2022, the parties held approximately six impact bargaining meetings to discuss BWC. Demas and Ogden served on the State's bargaining team but only Ogden communicated with the Governor's office. NHTA President Sergeant Francesco

Campo and then NHTA Executive Director Marc Beaudoin represented the NHTA in these negotiations. The NHTA proposed a lapsing additional leave benefit. The effect of the BWC on working conditions includes matters such as:

- Wearing and using BWC equipment;
- Administrative management of BWC data;
- Comprehensive documentation of Troopers' work in the different situations they encounter and address while on duty;
- Random job performance audits using BWC data which could result in discipline;
- New report writing requirements;
- Processing RSA 91-A requests for BWC data;
- Increased stress levels.

11. At the State's request, the NHTA also provided information about bargaining in other New England states over BWC.

12. A recurrent theme in the State's response to the NHTA proposal was it had not yet received sufficient information to respond, and there was not a clear connection between the claimed impact and the proposed additional leave benefit, but the State was willing to continue the discussion. In September, to advance negotiations, Campo spoke with Ogden about whether another meeting was necessary. Ogden indicated another meeting was not necessary, and he would get the NHTA an answer in two weeks.

13. Later that month Ogden shared the State's answer with Demas, who then notified Beaudoin that the State did not agree to the NHTA proposal but pointed out that the NHTA could bring it up again during regular bargaining on a successor CBA, scheduled to begin in a matter of weeks. Demas did not reveal whether the decision to reject the NHTA proposal was made by the Governor or somebody else.

14. During the hearing, Ogden testified that the NHTA proposal had been reviewed and rejected by the "decision makers" in the Governor's office, but this testimony failed to disclose

whether the Governor ever reviewed or acted on the NHTA proposal. It also did not identify the “decision makers.”

15. At hearing, the State objected to questions from the NHTA (and from the board) asking for the names of the “decision makers,” whether the Governor had reviewed the proposal, and whether the Governor had rejected the proposal. The State claimed executive privilege, and when the board overruled¹ such objections the State instructed Ogden not to answer.

16. The NHTA did not submit a BWC proposal during regular bargaining because, according to Campo, Ogden had made preliminary statements that the State would not negotiate leave benefits in this bargaining cycle. Ogden recalled making such statements later in the bargaining process, after all state bargaining unit representatives had presented their proposals.

Decision and Order

Decision Summary:

The State committed an unfair labor practice because it violated RSA 273-A:5, I (e), (g), and, derivatively, RSA 273-A:3. At the end of bargaining table discussions, Ogden represented that he would get an answer in two weeks. This, together with the fact that it is the Governor who has the authority and obligation to negotiate the terms and conditions of employment for Troopers with the NHTA, meant the State’s good faith bargaining obligations required that the Governor review and act on the NHTA proposal. This never happened. No relief is ordered beyond this finding since the NHTA had the opportunity pursue a BWC proposal in regular bargaining but did not.

Jurisdiction:

The board has primary jurisdiction of all RSA 273-A:5 alleged unfair labor practices. See RSA 273-A:6, I.

¹ See also PELRB Decisions 2023-265 (October 18, 2023) and 2023-302 (December 1, 2023).

Discussion:

The bargaining process applicable to state employees like the Troopers is covered in RSA 273-A:9, which provides in part as follows:

I. All cost items and terms and conditions of employment affecting state employees in the classified system generally shall be negotiated by the state, represented by the governor as chief executive, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.

II. To assist in the conduct of such negotiations the governor may designate an official state negotiator who shall serve at the pleasure of the governor.

Per this provision of the statute, and as Ogden acknowledged at hearing, the Governor is the individual with the authority to enter into collective bargaining agreements with state bargaining units. There is no position or public official with bargaining authority between the state's official negotiator (Ogden) and the Governor, nor does the statute otherwise provide for the delegation by the Governor of any portion of his negotiation obligations to others, such as the unnamed decision makers referenced at hearing.

Like all public sector bargaining unit representatives and employers in New Hampshire, the State and the NHTA are required to bargain in good faith pursuant to RSA 273-A:3, I, which provides in relevant part as follows:

It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

As to the BWC policy, the State was not under any obligation to negotiate its decision to adopt and implement a BWC policy. See, e.g., *Appeal of New Hampshire Department of Transportation*, 174 N.H. 610 (2021) and *Appeal of State*, 138 N.H. 716 (1994). The NHTA does

not contend otherwise. However, the State's right to adopt the new BWC requirement during the term of the 2021-23 CBA was subject to an obligation to impact bargain the effect this decision will have on the Troopers' working conditions. See, e.g., *Concord Fire Fighters Association, IAFF Local 1045 v. City of Concord*, PELRB Decision No. 2012-252 (November 13, 2012)(impact bargaining effect of mandatory Rapid Sequence Intubation (RSI) certification requirement); *Derry Police Patrolmen's Association, NEPBA Local 38 v. Town of Derry*, PELRB Decision No. 2011-278 (November 8, 2011)(impact bargaining effect of installation of GPS devices in police cruisers); *Laconia Education Association/NEA-NH v. Laconia School District*, PELRB Decision No. 2008-204 (October 10, 2008)(impact bargaining effect of class schedule change); *Conway Administrator's Assoc/Teamsters Local 633 of NH v Conway School District*, PELRB Decision No. 93-33 (March 19, 1993)(impact bargaining effect of changes to administrative evaluations); *Rochester Federation of Teachers, Local 3606, AFT, AFL-CIO v. Rochester School District*, PELRB Decision No. 1999-040 (May 12, 1999)(topics protected under managerial policy exception are subject to impact bargaining because employer unilateral action changed working conditions); and *Hudson Federation of Teachers, AFT, AFL-CIO, Local No. 2263 v. Hudson School Board*, PELRB Decision No. 86-64 (October 14, 1986)(school board ordered to participate in impact bargaining to include discussion about impact of schedule change).

The BWC policy at issue in this case did effect Troopers' working conditions to the extent that impact bargaining was in order. In September, seven months after impact bargaining over the BWC began, Ogden told Campo he would get the NHTA an answer within two weeks. The only individual in State government with the authority to provide this answer was the Governor. Both the NHTA and the board asked Ogden simple and direct questions to confirm the

Governor's involvement and decision. Because of the State's ensuing instructions to Ogden not to answer, we learned only that unnamed "decision makers" in the Governor's office had rejected the NHTA impact bargaining proposal.

We decline to equate such unnamed decision makers with the Governor. Further, under the applicable bargaining law, the State is not free to substitute unnamed "decision makers" for the Governor in the statutory bargaining process. Since unnamed decision makers have no collective bargaining authority under RSA 273-A:9, any action such decision makers might have taken is not the equivalent of action by the Governor and cannot be considered a duly authorized response to the NHTA's proposal. This means, after numerous impact bargaining sessions, the State never accepted or rejected the NHTA's proposal. However, at some reasonable point in the bargaining process, which in this case had clearly arrived by September, a party with the authority to act is required to notify the other party to the negotiations whether a proposal is accepted or rejected. The State's failure to do so in this case is a violation of its good faith bargaining obligations, and the State has, therefore, committed an unfair labor practice in violation of RSA 273-A:5, I (e), (g), and, derivatively, RSA 273-A:3. We will not, however, order the resumption of impact bargaining when the NHTA had the opportunity to continue to pursue a BWC proposal in regular bargaining but chose not to do so.

So Ordered.

Date: April 24, 2024

/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.

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