

NH State Police Command Staff, NHTA v. State of New Hampshire, Dept of Safety, Division of State Police, Decision No. 2019-149 (Case No. G-0222-6).

Background: The union claimed that the state violated RSA 273-A:5, I (g), (h), & (i) when it illegally reduced an employee's pay following her promotion to lieutenant contrary to the parties' CBA wage schedules and binding past practice. The state denied the charges and filed a motion to dismiss based on lack of jurisdiction and failure to state a claim. According to the state, the placement was correct under the Division of Personnel Rules and the complaint was nothing more than a challenge to how personnel rules governing wage schedule placement upon promotion were applied, a topic within the Personnel Appeals Board's jurisdiction, not the PELRB's. The union countered that the PELRB had jurisdiction because the filing of an unfair labor practice complaint was the final step of the CBA grievance procedure and the complaint charges violations RSA 273-A:5.

Decision: The PELRB denied the motion to dismiss. The board held that: (1) it had jurisdiction over ULP complaints claiming violations of the RSA 273-A:5, I; (2) there was a claim that the State violated the CBA and has failed to follow a binding past practice pursuant to which unit employees always receive a pay increase upon promotion and not a pay decrease as happened in this case; and (3) the union adhered to the grievance procedure and was entitled to file a complaint with this board as the final step of the grievance procedure. The board also denied the state's request to dismiss on the ground that the union had allegedly failed to state a claim. The Board noted that practice before PELRB does not include the equivalent of the motion practice and found that a hearing was necessary under RSA 273-A:6, II and N.H. Admin. R. Pub 201.06 (a) because there were "issues of material and relevant fact in dispute" and a hearing would provide the Union with a full and fair opportunity to present all relevant evidence to support its complaint and would provide the Board with a more complete record on which to base its decision.

Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.