



### BACKGROUND

The State Employees Association of New Hampshire, S.E.I.U. Local 1984 (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire (State) and its Department of Transportation (DOT) on April 24, 1997 alleging violations of RSA 273-A:5 I (e) and (i) relating to a refusal to bargain and a unilateral change in working conditions when the Department changed its turnpike pass privileges for certain of its employees. The State filed its answer in this matter on May 9, 1997 after which it was heard by the PELRB on July 15, 1997.

### FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of personnel employed by its Department of Transportation within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, SEIU Local 1984, is the duly certified bargaining agent for personnel employed by the State at its Department of Transportation.
3. The State and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1995 through June 30, 1997, since renegotiated for a successor term prior to its June 30, 1997 expiration date.
4. By their pleadings, the parties state and admit, respectively, that RSA 237:12 III provides:

The commissioner of the department of transportation shall issue appropriate identification for turnpike employees and employees of state liquor stores on the turnpike, when said employees have to use the turnpike to get to their places of employment. Such identification shall permit toll-free use of the New Hampshire turnpike system only to the extent required by an employee covered in this paragraph to get to and from his place of employment.

The also agree that the conditions and requirements set forth in RSA 237:12 III have been in force since 1971, and that the statute has been in its current form since 1988. Notwithstanding the language of RSA 237:12 II, all employees who work for the DOT Division of Turnpikes at toll plazas, rest areas and maintenance sheds on toll roads have historically been issued such identification, commonly known as "green cards."

5. On December 18, 1996, John Clement, Director of Operations for DOT, sent a memo (Attachment 1 to ULP) to Peter Carlson, Administrator of Turnpikes, saying in pertinent part:

RSA 237:12 is specific in section (III) that toll exemption is only for those employees who have to use the turnpike to get to their places of employment. Consequently, toll exemption for employees who don't have to use the turnpike is not in compliance with the law. It should be noted that the intent of the law is to provide toll exemption for those employees who do not have an alternative highway, other than the turnpike, to get to their place of employment.

As a result, you are hereby directed to be in full compliance in administering RSA 2327:12 by offering toll exemption to only those employees that are required to use the turnpike to get to, and from, their place of employment. In accordance with this directive, toll exemption will be restricted to:

1. Turnpike employees at the following facilities
  - a. Hampton Maintenance
  - b. Hampton Toll Main
  - c. Hampton Toll Ramp
  - d. Rochester Toll
  - e. Dover Toll
  
2. Liquor Store employees at the Hampton stores on 1-95 only

3. Employees of Syntonic in connection with maintenance of the turnpike toll collection system

This directive had an effective date of January 6, 1997. It resulted in approximately 212 of the 450 green cards which had been issued being recalled.

6. Laura McCarthy is a Toll Attendant II and has worked for the Turnpike for 11 years. She testified that the purpose of the "green card" was to get to and from her place of employment with our paying the toll. Likewise, she would have expected to pay the toll on her day off, on vacation or for personal travel. Such was the policy even before 1987 when the green cards were initially issued, except then the pass privilege was accorded depending on a "free sheet" versus a green card. She explained that green cards were recalled from employees who had an alternative route to their place of employment, regardless of how long, how inconvenient or how congested that alternate route happened to be.
7. Theresa LaBlanc works at the Seabrook Rest Area on I-95, northbound. She lives in Rochester and passes three (3) toll areas en route to the Seabrook Rest Area. Toll costs are \$2 each way. When she was hired, she was given a green card and used it daily to go to work. She took this particular job knowing there would be no tolls to and from her place of employment. When hired, she understood pass or "green card" privileges to be part of her job and was told so by a supervisor, Dave Ross. Since the green cards were recalled, she has attempted to use alternate routes which are available. This has increased her commute time from 45 minutes to over an hour and has caused her to go via Massachusetts, i.e., to cross the state line and come back on the northbound lane. This change is costing her more than \$40 per month, even if she utilizes tokens. LeBlanc's supervisor also lost her green card notwithstanding that she is responsible for delivering the payroll to toll areas.

8. The State takes the position that the revocations or recall of cards only applied to those employees who had an alternative route to their job sites. The State also takes the position that the blanket issuance of passes or "green cards" in 1987 was pursuant to RSA 237:12 IV, not RSA 237:12 III, and, since it has not been subsequently confirmed and enacted by the legislature ("general court" in the statute), then the passes issued thereunder must be invalid and require recall.

#### DECISION AND ORDER

Given the evidence, inclusive of Joint Exhibit No. 1, and the testimony, we ascribe a different interpretation to RSA 237:12 III and IV than what the State has offered. First, RSA 237:12 III speaks to employees who, under certain circumstances, may be issued identification cards or passes. There are two conditions precedent: they must be employees either of the turnpike or of the state liquor stores and they must use the turnpike to get to and from their places of employment. These conditions have been enacted by the legislature and require no "next session" confirmation by the general court, as suggested by RSA 237:12 IV.


Contrast this to RSA 237:12 IV which is neither employee related nor site specific, i.e., the privilege is not restricted to get to or from one's place of employment. Thus, we see RSA 237:12 III as controlling the employees in question here, not RSA 237:12 IV. If this be the case, no follow-on act by the legislature is required and, it follows, the green cards issued under RSA 237:12 III are not invalid for want of a subsequent enactment.

Next, we look to the duration of the green card policy. The parties have agreed the statute dates to 1971 and that its wording has been consistent since 1988. (Finding No. 4.) There have been three negotiated CBA's since then (89-91, 93-95 and 95-96) when, from the evidence presented to us, the parties acquiesced to the green card policy. As LeBlanc testified, it became an inducement to accepting certain positions when employees realized that toll road travel to and from work sites would not be a cost coming from their pockets.

A policy of nine years' duration over the lives of all or part of four different CBA's has become a bona fide past practice. There is no question that the change complained of, revocation of green cards, was a term and condition of employment. Implementation of the revocation policy immediately impacted wages earned by the employees who lost those cards. Some were also impacted by longer commutes and others were impacted by a change in terms and conditions of employment which were different than what they were told they would be at the time of hiring. The change complained of was effective January 6, 1997, mid-term to the parties 1995-1997 CBA. It was a unilaterally implemented change to terms and conditions of employment which was not negotiated. Thus, it is also an unfair labor practice in violation of RSA 273-A:5 I (e) and also RSA 273-A:5 I (i) to the extent it invalidated the past practice of "green card" passes for the employees in question. We find the rescinded benefit to have been a term and condition of employment and direct the parties to revert to the *status quo* and commerce bargaining forthwith before there are any further deviations from that *status quo*.

So ordered.

Signed this 8th day of August, 1997.

  
EDWARD J. HASELTINE  
Chairman

by unanimous vote. Chairman Edward J. Haseltine presiding.  
Members E. Vincent Hall and William Kidder present and voting.