



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of the	*	
New Hampshire Public Utilities Commission	*	
	*	Case No. S-0419-1
and	*	
	*	
State Employees' Association of NH, Inc.,	*	Decision 2008-004
SEIU Local 1984	*	
	*	

ORDER RE REQUEST FOR REVIEW OF DECISION OF HEARING OFFICER

On January 4, 2008, the State Employees' Association of NH, Inc., SEIU Local 1984 ("SEA") filed a Request for Review of Decision of Hearing Officer pursuant to Pub 205.01. The SEA seeks review of PELRB Decision No. 2007-174 (12-11-2007) issued by Executive Director Mitchell acting as a hearing officer. The SEA submitted a supplemental pleading on January 7, 2008. The petitioners filed a response on January 4, 2007. In substance, the hearing officer determined that this matter should continue to election as required by the court remand order.¹ The hearing officer also determined that RSA 273-A:11, I (b) did not bar the present election proceedings because the court specifically remanded the matter "for a new election." The hearing officer also determined that there was otherwise no contract which could serve as a bar to these election proceedings.

The board finds that the hearing officer properly relied on the New Hampshire Supreme Court's remand order as an independent basis for denying the SEA's request to defer election proceedings in this matter to the summer/fall of 2008. The board interprets the court's order on remand to mean that the board should promptly schedule and conduct a new election. In its May 18, 2007 brief to the court, the SEA concluded by stating that "the SEA respectfully requests the Public Employee Labor Relations Board's Order should be reversed, remanded, *and a new election should be scheduled.*" (emphasis added) The board does not understand the court's order to mean that the board should conduct further hearings to determine anew whether the petitioners are eligible for an election under the provisions of RSA 273-A:11, I (b) when the

¹ On December 6, 2007, following the pre-election conference, the PELRB issued a Notice of Decertification Election setting the election date for January 9, 2008.

basis for the court's order was that the board did not compel the release of employees' home addresses prior to the first election.

Alternatively, and assuming that it is proper for the board to consider whether there is a contract bar under RSA 273-A:11, I (b) at this juncture, the board finds that the hearing officer properly concluded that the 2007-2009 Collective Bargaining Agreement does not bar these election proceedings because the State of New Hampshire, Public Utilities Commission is not party to the 2007-2009 CBA.² This is evident from the record before the hearing officer, which consisted of the SEA's reference to the 2007-2009 CBA and its statement in its November 28, 2007 pleading that "there currently exists a valid Collective Bargaining Agreement between the State of New Hampshire and certain classified employees of the State of New Hampshire." While accurate, this statement does not demonstrate a collective bargaining agreement between the SEA and the State of New Hampshire, Public Utilities Commission, nor does the 2007-2009 CBA itself. There is no issue of material fact as to this question based upon the record submitted to the hearing officer.³ The SEA's claim of mistake of material fact, without some meaningful basis in the record, is insufficient to justify or require a de novo hearing under Pub 205.01 (c).

In its January 4, 2008 Request for Review under Pub 205.01, the SEA in effect seeks to supplement its November 28, 2007 Objection to the Conduct of a Pre-Election Hearing⁴ with the following statement:

The SEA pointed out to the hearing officer that a contract is on file that covers certain classified employees and the SEA now clarifies that it is the SEA's position that the State/SEA Master Agreement (2007-2009) covers and applies to the employees subject to the election petition(s) filed in this case. The SEA represents to the Board that the State, through the attorney general's office, has confirmed that the Master Agreement does cover those employees.

The board's receipt and consideration of additional or different information in a Pub 205.01 review beyond that contained in the record upon which the hearing officer based his decision, such as that contained in the quoted excerpt from the SEA's January 4, 2008 filing, is not appropriate. Moreover, the board approves the hearing officer's decision even with consideration of the new information presented in the SEA's January 4, 2008 Request for Review under Pub 205.01. The relevant legal inquiry is whether the State of New Hampshire, Public Utilities Commission is a party to the 2007-2009 CBA, not whether an unnamed representative of the attorney general's office believes PUC employees are covered by the 2007-2009 CBA. The SEA does not support the opinion from the attorney general office with any documentation. In fact, the relevant documentation, such as the actual 2007-2009 CBA and the 2005-2007 CBA, conflicts with this assertion. The State of New Hampshire, Public Utilities Commission was clearly named as a party to the 2005-2007 CBA, but is not named as a party to

² The board notes that the 2005-2007 and 2007-2009 CBAs, which are on file with the PELRB, are part of the record in this case.

³ The SEA did not seek a hearing in connection with its November, 2007 objections, nor does it appear that a hearing was needed given the content of the SEA's pleadings.

⁴ Under Pub rules, pre-election meetings are conferences, not hearings.

the 2007-2009 CBA. The reason for this change, as recognized by the SEA, is the result of the October 2006 decertification election in which a majority of the voting PUC bargaining unit employees voted against having the SEA continue as their exclusive representative. A consequence of this vote was the exclusion of the PUC from the 2007-2009 CBA. The board takes official notice of the 2007-2009 and 2005-2007 CBAs and the record in PELRB Case No.s S-0437-1 and S-0438-1, which is a recent PELRB case also involving the SEA and the 2007-2009 CBA. See PELRB Decision No. 2007-153 and Joint Exhibits F and G.⁵ The content of these Joint Exhibits together with the 2007-2009 and 2005-2007 CBAs makes clear that the PUC was intentionally excluded from the 2007-2009 CBA. We do not find that any mistake in material fact is present, even considering the SEA's representations concerning the State, through the attorney general's office.

Accordingly, upon review and in accordance with the provisions of Pub 205.01⁶, the board approves the hearing officer's decision.

So ordered.

Signed this 8th day of January, 2008.

/s/ Jack Buckley

Jack Buckley

Chair

By unanimous decision. Chair Jack Buckley. Alternate Member Kevin E. Cash and Member James M. O'Mara Jr. present and voting.

Distribution:

Sara Willingham, Manager of Employee Relations, State of NH

Thomas Getz, Commissioner, Public Utilities Commission

John S. Krupski, Esq.,

Jody O'Marra, Petitioner

Lynn Fabrizio, Petitioner

⁵ Copies of Joint Exhibits F and G are attached as Addendum One and Two to this order.

⁶ The SEA filed its Request for Review pursuant to Pub 205.01 and the board finds that Pub 205.01 applies to and controls its review of the hearing officer's decision.

ADDENDUM ONE



The State Employees' Association of New Hampshire, Inc.

Service Employees' International Union, Local 1984

AFL-CIO, CLC

June 22, 2007

Dear SEA/SEIU Local 1984 Member:

On Thursday, June 14, 2007 the SEA Collective Bargaining Senate and the SEA Council met in joint session to receive a bargaining report from the Master Bargaining Team. The details are included in this packet. *Bold italics text* is new contract language, plain text is current contract language, and ~~struck through text~~ is language that will be deleted from the contract. Sections of the current master contract not referred to herein remain unchanged.

The SEA Bargaining Senate & Council reviewed this material and has referred it to a ratification vote by the general membership with a recommendation that the agreement be accepted.

You will find in this packet the changes to the proposed 2007-2009 Collective Bargaining Agreement. You will also find a ballot and a self-addressed return envelope. In accordance with the Collective Bargaining Policy each member will have seven (7) days from the date of mailing to return the ballot to SEA/SEIU Local 1984.

The enclosed ballot may be returned one of two ways:

BY MAIL: Ballots must be postmarked on or before Friday, June 29, 2007 to be counted.

IN PERSON: The ballot must be delivered to the SEA Office at 105 North State Street, Concord, NH before the close of business at 5:00 PM on Friday, June 29, 2007 to be counted.

Voting on your contract is one of the ultimate benefits of union membership. The SEA Bargaining Senate and Council voted to recommend that members approve this new agreement and the Master Bargaining Team supports that recommendation.

If you have any questions about the enclosed information please do not hesitate to call the SEA Office at 271-3411 or 800-852-3737. In the coming days, we will be holding several informational sessions on the agreement at worksites throughout the state. I encourage you to attend one. Please contact the SEA Office for the date, time and location of one being held near you.

Sincerely yours,

Diana Lacey, Chairperson
Collective Bargaining Team

P.O. Box 3303, Concord, NH 03302-3303
Office at 105 North State Street



Telephone (603) 271-3411
Fax (603) 271-3500

2007 – 2009 Collective Bargaining Tentative Agreement Changes

Note: Language that is being stricken from the sub unit is ~~crossed-out~~ and new language is **bolded and italicized**.

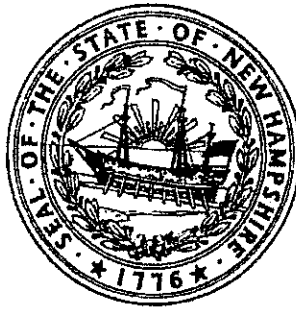
- 2.4.1 **Privatization and Contracting Out:** The Parties recognize the Employer's right to direct and control state services and the Association's interest in the effect of those activities on unit employees *subject to the following:*
- ~~To that end,~~ The Employer agrees to provide the Association with a minimum of a ~~thirty (30)~~ **forty-five (45)** days prior notice and an opportunity to consult and offer alternatives prior to issuing a Request for Proposal (RFP) concerning contracting out or privatizing existing state services that would result in the layoff of ~~current full-time unit employees, or in the~~ **a reduction in the base hours or wages of current full-time unit employees, or would result in a contract that would place current full-time unit employees under the supervision of a contractor.**
 - The Employer shall not prohibit any contractor from hiring unit employees ~~unless law or ethics policies prohibit it who were laid-off as a result of contracting out or privatization.~~
- 3.2 **Member and Employee Reports:** The Employer agrees to provide payroll deduction information to the Association on a computer disk or other mutually agreed format at least biweekly for the administration of dues deductions and Association programs. In addition, the Employer shall notify the Association of all newly hired full-time employees, the names and business addresses of all permanent unit employees, and employees who have terminated state service at least monthly on a computer disk, or other mutually agreed format. These reports shall include, at least, the following:
- employee's name
 - employee's home address for Association members only
 - ~~employee's work e-mail address if applicable~~
 - employee's state identification number for ~~Association members only~~
 - employee's payroll number
 - employee's labor grade and step
 - employee's salary schedule
 - employee's business address
 - employee's job classification
 - employee's date of employment
- 3.2.1 **The Association shall provide a written notice to the Employer that is suitable for inclusion in the "check message" on employee paychecks/advice that informs employees that the Association is the exclusive bargaining representative for all unit employees and therefore requires access to the employee for Association correspondence. The Employer agrees to place the message on employee paychecks/advice quarterly at the request of the Association.**
- 3.4. Use of Facilities: The Association ~~committees or~~ chapters shall be allowed the use of facilities of the Employer for meetings providing that written approval of the Employer is secured subject to the following conditions:
- Such Employer facilities are available and their use for such meetings would not conflict with the Employer's business.
 - Such approval shall be subject to such other reasonable conditions as may be imposed by the Employer.
 - Such approval, if given, will be limited to members of the ~~committee~~ **Association**, full and part-time bargaining unit employees, Association staff members, and guests.
 - Nothing in this provision shall be construed as a limitation of the rights of the Association, its chapters or committees to utilize the Employer's facilities that are otherwise available for public use.
- 3.10 **Employee Orientation: Full-time unit employees shall be entitled to an Department Employer orientation program within thirty (30) calendar days of hire. ~~and/or orientation handbooks. The orientation may be presented in written form, by video, in person or by any combination of presentation methods.~~ The Employer shall inform new full-time unit employees that the department Association is a bargaining unit represented by the State Employees Association of New Hampshire, Inc. the exclusive representative of all unit employees and provide information on all benefit programs provided by the Employer. The Employer agrees to distribute informational packets provided by the Association to new employees. The Association shall be allowed to make a presentation, consistent with other vendor presentations, at group orientations programs offered by the Employer. The presentation may be up to one half hour in duration and shall be conducted by an Association staff person. If no group orientation program exists in a unit, an Association staff person is unable to attend the orientation, an Association staff person shall have access to all new employees for up to one half hour at the convenience of the Employer within thirty (30) calendar days following the orientation. This provision shall also apply to regularly scheduled part-time unit employees, however the presentation method shall be at the Employer's choice.**
- 3.12 **Access to Employer Intranet Website: The Employer agrees to provide the Association access to the Employer's intranet website, currently known as Sunspot, on a read-only basis. Such access shall be provided to the Association in a manner that preserves the security and integrity of the Employer's system.**
- 6.1.3. The basic work period for every full-time law enforcement employee in state classified service in each unit shall consist of ~~one hundred seventy-one (171)~~ **one hundred sixty (160)** hours in a twenty-eight (28) consecutive day period. The basic work period for every full-time fire protection employee in state classified service in each unit shall consist of two hundred twelve (212) hours in a twenty-eight (28) consecutive day period.
- 6.5 **Flexible or Alternative Schedules:** Nothing in the Agreement shall prevent the Employer and an employee, or group of employees, with the prior notice and approval of the Parties, from mutually agreeing to flexible or alternative work schedules. This shall include "Baylor" plan type schedules at direct care institutions. **Employees shall have the right to request a flexible or alternative schedule and to receive a timely response from the Employer.**
- 8.1. **Overtime Rates:** Law enforcement employees and fire protection employees, in recognition of their off-duty availability, shall receive wages equal to the wages listed for their respective position in Appendix A plus ten percent (10%) or twenty percent (20%) as indicated in Appendix C. The 10% and 20% additions to wages are in lieu of any compensation for recall status and the Parties agree that employees covered by this provision are expected to be available for return to duty during off-duty hours when notified of the expectation.
- The maximum hours agreed to for law enforcement employees is ~~one hundred seventy-one (171) hours~~ **one hundred sixty (160) hours** in a twenty-eight (28) consecutive day period unless otherwise indicated in the Agreement.
- 10.8. **Blood Donations and Bone Marrow Registry Testing:** Full-time or regularly scheduled part-time employees shall not be unreasonably denied time off without loss of pay or leave for the purpose of making blood donations ~~or undergoing bone marrow registry testing.~~
- 10.15 **Any full-time employee of the State who is a member of the National Guard or of a reserve component of the armed forces of the United States shall be entitled to military leave when such duty is in conflict with the employee's regular work schedule. The employee, regardless of funding source, shall be entitled to fifteen (15) days of paid military leave per training year to engage in temporary active duty when such duty is in conflict with the employee's work schedule.**
- In time of armed conflict, members of the National Guard or Armed Forces Reserves who are assigned duties related to notification of next of kin, ceremonial or funeral details shall be released from their regular duties without loss of leave or pay. Such employees shall provide their supervisor with notice as soon as possible as to the date and expected duration of such assignments.
- 11.1.3. **Payment:** Upon retirement under the provision of RSA 100-A:5 and RSA 100-A:6 only, or upon eligibility under RSA 100-A:5 but electing to receive a lump sum payment in lieu of an annuity, an employee shall receive payment in a sum equal to 44-7% ~~50%~~ of the number of sick leave days remaining to the employees credit. However, the total number of days eligible for payment shall not exceed ~~thirty (30)~~ **sixty (60)** days.

- 11.1.4. **Payment:** Upon retirement under RSA 100-A:5 or 6 or termination as a result of a reduction in force, an employee shall receive payment in a sum equal to ~~41.7%~~ **50%** the number of sick leave days remaining to the employees credit. However, the number of days eligible for payment shall not exceed ~~forty (40) sixty (60)~~ days.
- 11.2 **Allowable Uses:** An employee may utilize his/her sick leave allowance for absences due to illness, injury, or exposure to contagious diseases endangering the health of other employees when requested by the attending physician, medical and dental appointments with prior approval, or death in the employee's family and shall be deducted from his/her allowance on the basis of work days and not calendar days.
- An employee may utilize up to five (5) days of sick leave per fiscal year for the purpose of providing care to an ill or injured family member who is "incapable of self-care" within the meaning of the Family and Medical Leave Act (FMLA), or to accompany such person(s) to healthcare provider visits.
- In addition to the five (5) days authorized above, an employee may utilize up to fifteen (15) days of sick leave per fiscal year for the purpose of providing care to an ill or injured family member who has an FMLA-qualified illness or injury and is "incapable of self-care" within the meaning of the FMLA. This leave shall be counted as part of the employee's FMLA leave entitlement.*
- 11.2.2. **Family:** For the purpose of administering Articles 11.2 and 11.2.1, family shall be defined as: wife, husband, *same sex domestic partner*, children, *the minor or dependent children of the same sex domestic partner*, mother-in-law, father-in-law, parents, step-parents, step-children, step-brother, step-sister, foster child, grandparents, grandchildren, brothers, sisters, legal guardian, daughter-in-law, and son-in-law. This definition may be expanded to include other persons at the discretion of a requesting employee's supervisor on a case by case basis. If the supervisor agrees to expand the definition at the request of a subordinate employee, the number of days granted, up to five (5) days, shall also be at the discretion of the supervisor.
- 11.2.3 **Employees may utilize up to twelve weeks of non-intermittent sick leave for the birth of their baby or adoption of their child. The leave, if taken, shall be taken immediately following the birth or adoption and shall be counted as part of employee's Family Medical Leave Act (FMLA) entitlement.**
- 11.2.4 **Workers Compensation:** *An employee who is absent due to a compensable work injury shall continue to have health and dental benefits paid, and shall not have seniority, increment, longevity or leave accrual dates changed. Actual leave accrual will resume on the employee's return to work.*
- 12.1. **Stewards:** The Employer agrees to recognize the Steward(s) duly authorized by the Association in accordance with the following schedule.

Adjutant General, Dept. of		3
Administrative Services, Dept. of	2	
Agriculture, Dept. of		1
Banking Department	1	
Corrections, Dept. of	1	
State Prison for Men	6	
State Prison for Women		3
Lakes Regional Facility		3
North Country Correctional Facility	3	
Secure Psychiatric Unit		3
Field Services, Div. of		5
Cultural Resources, Dept. of		1
Education, Dept. of		4
Employment Security	8	9
Environmental Services, Dept. of		
Air Resources Division		1
Water Division		2
Waste Management Division	1	
Office of the Commissioner	1	
Fish and Game, Dept. of		3
Health and Human Services, Dept. of	24	
Glenciff Home for the Elderly	1	2
Juvenile Justice Services, Div. for	4	
New Hampshire Hospital		5
Information Technology, Office of	4	
Insurance Department	1	
Labor Department		1
Liquor Commission		7
N.H. Community Technical College System		8
Pari-Mutuel Racing Commission	1	
Public Utilities Commission		1
Resources & Economic Development, Dept. of	3	
Revenue Administration, Dept. of	1	
Safety, Dept. of		5
9-1-1 Emergency Communications, Bureau of	2	
Emergency Management		1
State Planning, Off. Of	1	
Supervisory Unit		2
Sweepstakes Commission		1
Transportation, Dept. of	13	
Treasury		1
Veterans Home		2
		3

- 12.3. **Use of Work Time:** The Employer shall authorize a reasonable amount of time during the regular working hours without loss of time or pay, **and make reasonable adjustments to the Steward's workload**, to permit the Steward to carry out their responsibilities in accordance with the provisions of this Agreement. ~~The Association agrees that it shall guard against the use of excessive time in handling such responsibilities. Each Steward, before carrying out his/her responsibilities in accordance with the provisions of this Agreement leaving his/her assigned work area to transact appropriate Association business, shall first obtain the consent (which consent shall not be unreasonably withheld) of his/her immediate supervisor which shall not be unreasonably withheld.~~ Upon entering a work area, other than their own, the Steward shall first advise the appropriate supervisor of his/her presence and specify the name(s) of the employee(s) to be contacted.
- 13.3. **Access to Aid, Information:** The Employer agrees to maintain first aid kits located in secure but readily accessible areas. All on-the-job injuries, regardless of seriousness, shall be reported to the Supervisor. The names and telephone numbers of emergency services, e.g. police, fire, licensed ambulance services and the poison control center at ~~Mary Hitchcock Hospital~~ shall be posted on official bulletin boards.
- 16.8. **Employee Permanent Status:** *Notwithstanding any rule to the contrary, an agency appointing authority may request approval from the Division of Personnel for permanent status for any probationary employee prior to the end of that employee's probationary period but not sooner than six months following that employee's date of hire. This provision shall not apply to employees in positions for which a year-long training or evaluation period is required.*
- 19.2.1. a **Notwithstanding any Rule to the contrary, nothing in this Agreement shall prevent the Employer from requesting higher step placements from the Division of Personnel for unit employees who are promoted, demoted or transferred into another position within their own unit or in a different unit.**

ADDENDUM TWO



To: Hon. Sylvia B. Larsen, President
New Hampshire State Senate
Chair, Joint Committee on Employee Relations

From: State Negotiating Committee - Clifton Below,
Commissioner, PUC

Adm.

Monica Ciolfi, Risk & Benefits

Insurance
Sec. of State

Alex Feldvebel, Dep. Com.,
Thomas Manning, Asst.

Earl Sweeney, Asst Com., Safety
Steve Taylor, Com., Agriculture
Sara Willingham, Mgr. of Emp. Rel.

Re: Tentative Collective Bargaining Agreements
for the Biennium ending June 30, 2009

Date: June 25, 2007

The State Negotiating Committee, representing Governor Lynch and the State of New Hampshire, began negotiations with all unions representing classified state employees over wages hours and conditions of employment within the meaning of RSA 273-A on January 18, 2007. Those unions are:

The State Employees' Association of NH, Inc. - SEIU Local 1984, representing most classified state employees except those in the Departments of State and Justice, the PUC, small boards & commissions and those represented by the Troopers and the NEPBA. The New Hampshire Troopers Association, representing State Police Non-commissioned Officers (Trooper - Sergeant)
The New England Police Benevolent Association, representing Fish & Game Officers (Local 40); Fish & Game Officer Supervisors (Local 45);

NH Highway Patrol Officers (Local 50); and, NH Highway Patrol Officer Supervisors (Local 55).

As of June 25, 2007, the State has reached tentative agreements with the State Employees' Association of New Hampshire, Inc. - SEIU Local 1984 and Local 40 of the New England Police Benevolent Association. We, the State, believe we are very close to agreement with the NH Troopers Association and

Local 45 of the New England Police Benevolent Association. Locals 50 and 55 of the New England Police Benevolent Association have a few unresolved issues that we hope to reach agreement upon in the very near future.

The wage proposal that has been accepted by the unions with which the State has tentative agreements calls for a \$.51 per hour increase effective July 6, 2007, a 3.5% increase effective January 4, 2008 and a 5.5% increase effective January 2, 2009. The unions that have not reached agreement have been offered the same wage proposal. The State believes that the wage proposal is not an impediment to achieving agreement with the other unions.

The health insurance proposal that has been accepted by the unions with which the State has tentative agreements calls for a dollar contribution to the cost of the health plans offered by the state in the amounts of \$25.00 per subscriber per pay period effective with the payroll commencing July 6, 2007 and \$30.00 per subscriber per pay period effective with the payroll commencing January 2, 2009. There is also a change to higher office co-payments, \$10 for Primary Care Physician visits and \$20 for Specialist visits, effective January 1, 2009. The unions that have not reached agreement have been offered the same health proposal with the exception of one union with which the State had reached a different health plan agreement in 2005. The State believes that the health proposal is not an impediment to achieving agreement with the other unions.

In addition to the changes in wages and health benefits, the parties have been able to reach agreement on the issue of domestic partner benefits, additional opportunity to care for ill or injured dependents, parental leave, law enforcement work schedules, and parking relief for

employees who work in the downtown Concord area. The parking agreement is a cost item and will cost \$100,000.00 per fiscal year.

We respectfully request your favorable consideration of these agreements.

RSA 273-A states: *The joint committee on employee relations shall hold hearings on all collective bargaining agreements with state employees and on all fact-finders' reports relative to the collective bargaining process with state employees and shall submit any recommendation on such agreements or reports to the members of the senate and the house of representatives.* The State asks whether a new hearing will be required for each additional agreement with unions still in negotiation or whether this hearing will suffice assuming that the economic settlements are within the parameters we have discussed today.