



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Robin Mongeon, et al.; New Hampshire
Hospital Supervisors (Diane Allen, et al.); and
New Hampshire Hospital Supervisors (Sheila
Gagnon, et al)

Complainants

v.

Thomas S. Burack, DES Commissioner & Gary
Smith, President, SEA/SEIU Local 1984

Respondents

Case Nos. S-0439-1
S-0394-3
S-0394-4

Decision No. 2008-119

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

An earlier pre-hearing was conducted on May 13, 2008 in Case No. S-0439-1 (Mongeon et al) and a pre-hearing order issued summarizing the case. See Decision 2008-106. Case Nos. S-0394-3 and S-0394-4 were filed on April 28 and May 12, 2008 and involve claims and issues concerning agency fee deductions similar to those raised in Case S-0439-1. The list of the complaining parties has changed as Justin Souther withdrew his complaint in Case No. S-0394-3 and William Evans withdrew his complaint in Case No. S-0439-1.

On May 13, 2008 the State and the SEA filed answers in Case No. S-394-3, and the State also filed a motion to dismiss. On May 27, 2008 the State and the SEA filed answers in Case No. 2-0394-4, and the State filed a motion to dismiss on June 6, 2008. The answers and the arguments raised in the motion to dismiss are similar to those filed in Case No. 0439-1.

The undersigned Hearing Officer conducted a pre-hearing conference in all three cases on June 9, 2008 at the offices of the Public Employee Labor Relations Board in Concord.

PARTICIPATING REPRESENTATIVES

For the Complainants: Robin Mongeon
Diane Allen
Sheila Gagnon

For the State: Rosemary Wiant, Esq.
Michael Brown, Esq.
Thomas Manning, Acting Manager of Employee Relations

For the SEA: Glenn R. Milner, Esq.

DECISION

1. These case are consolidated for purposes of pre-hearing proceedings.
2. At the pre-hearing the State and the SEA reviewed the results of their efforts to identify positions currently covered by the May 8, 1980 certification issued in Case No. S-0349, as amended on March 31, 1997 (the "supervisory employee unit"), a process undertaken as a result of the May 13, 2008 pre-hearing conference in Case No. S-0439-1. As explained by the State, criteria based upon job complexity, independence of actions, and supervisory responsibility were employed to identify 1,450 "supervisory" positions. The State indicated that 160 of these 1,450 positions are confidential, resulting in 1,290 positions that are eligible for inclusion in the supervisory employee unit. The State submitted a prehearing memorandum at the pre-hearing which contains, at Exhibit D, a list of the involved positions and employees.
3. The SEA states it agrees with the methodology employed by the State in identifying state employees eligible for inclusion in the supervisory employee unit and the State's list of positions, with the exception of 1 or 2 job descriptions that require further review and discussion.
4. The SEA and the State indicated that they anticipate completing their efforts and submitting a filing, such as a modification petition, by June 30, 2008 for the purpose of amending and updating the March 31, 1997 certification.
5. The coordination of the State and the SEA's efforts with the efficient management of these pending complaints was reviewed and the parties asked to address whether procedurally the filings contemplated in the preceding paragraph should be submitted and resolved before the merits of these pending complaints are decided. I reminded the parties that the State and the SEA agreed to undertake the process of identifying positions covered by the supervisory employee certification because the result may reduce or eliminate issues raised in the complaints and on that basis I favored addressing the merits of the complaints after the process of identifying positions covered by the supervisory employee certification is completed.

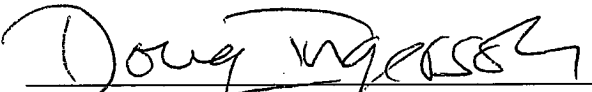
6. The SEA's position is that the merits of the complaints should be addressed after the supervisory position process is complete. The State's position is that its' pending motions to dismiss and the supervisory position process should go forward simultaneously.

7. Representatives for the complainants were provided with the opportunity to submit, by June 19, 2008, a memorandum addressing the question. At the pre-hearing their collective view appeared to be that any such proceedings should have no impact on when the merits of their respective complaints are considered. The complainants' reasoning is, in part, attributable to their position that a modification proceeding would not necessarily resolve many of the issues they have raised in their complaints. Their objections include a lack of community of interest given that the supervisory certification includes state employees from many different departments; that the updated supervisory certification will still result in supervisory employees in the same bargaining unit as the employees they supervise; that it will improperly result in the same exclusive representative acting for the supervisory and non-supervisory units; and that there is still an unfair or discriminatory difference in the treatment of employees identified as belonging to the supervisory unit and the so called "Wright" supervisors, who are the 30 employees who have been excused from the agency fee obligation because of their recently designated status as confidential employees. The SEA and the State generally object to these arguments.

8. The State and the SEA may submit a responsive filing to the complainants' submission pursuant to the preceding paragraph within 5 calendar days after the complainants' filing. Thereafter a further order will issue.

So ordered.

June 9, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

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