



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. 2008-148

SUPPLEMENT TO PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

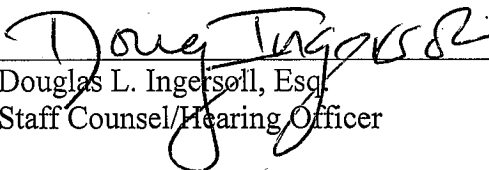
A pre-hearing was conducted in the above captioned matters on June 9, 2008 and a pre-hearing order issued. See Decision No. 2008-119. One of the matters raised by these complaints is the population of the existing certification for a bargaining unit comprised of state supervisory employees in certain departments and agencies (the "supervisors' bargaining unit"). The supervisors' bargaining unit was first certified in 1980. Amended certifications issued in 1996 and 1997. Copies of these certifications are contained in the appendix to this order.

The State and the SEA/SEIU Local 1984 have filed a mutually agreed list of all positions covered by the existing supervisors' bargaining unit. This list does not represent a change of the positions covered by the existing certification but is instead a detailed statement of the positions that are already covered by the existing supervisors' bargaining unit certification. Accordingly, formal modification proceedings are not required at this time. However, the State and the SEA/SEIU Local 1984 should be aware that the composition of a bargaining unit cannot be changed without Pub 302.05 modification proceedings, notwithstanding the SEA/SEIU Local 1984's argument to the contrary set forth in attorney Milner's Notice of Reorganization to Supervisory Unit filed on July 1, 2008.

A separate order regarding the population of the existing state supervisors' bargaining unit will issue documenting in detail the positions that are covered by the existing supervisors' bargaining unit certification. These three pending unfair labor practice complaints shall proceed to a final pre-hearing and hearing. The objections raised by the complainants to the existing composition of the supervisors' bargaining unit may be raised at the hearing on the merits of the unfair labor practice complaints. The record reflects that these objections to the supervisors' bargaining unit include, but are not necessarily limited to, the following: 1) there is a lack of community of interest in the supervisors' bargaining unit given that the supervisory certification includes state employees from many different departments; 2) that the supervisors' bargaining unit includes supervisory employees in the same bargaining unit as the employees they supervise; 3) that the same employee organization (the SEA/SEIU Local 1984) acts as the exclusive representative for the supervisors' bargaining unit and the all classified employees bargaining units in place for most, if not all, of the same state departments and agencies; and 4) that there is 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. It is noted that both the SEA/SEIU Local 1984 and the State object to and disagree with these points.

So ordered.

July 29, 2008.



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

Distribution:

Per Attached Service List

APPENDIX TO DECISION 2008-148



AMENDED May 8, 1980

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION
OF NEW HAMPSHIRE, INC.

and

STATE OF NEW HAMPSHIRE

CASE NO. S-0349

RECOGNITION OF AN EXCLUSIVE REPRESENTATIVE

(UNDER CHAPTER 490:3, NEW HAMPSHIRE LAWS, 1975)

~~A representation proceeding having been conducted in the above matter by the Public Employee Labor Relations Board, and pursuant to the authority vested in the Board and in accordance with New Hampshire Supreme Court, Decision No. 7540, November 9, 1976, SEA v. PELRB,~~

IT IS HEREBY RECOGNIZED that the supervisory employees of the following state departments; namely, Administration & Control, Banking Commission, Centralized Data Processing, Agriculture, Dept. of Employment Security, Education, Revenue Administration, Resources and Economic Development, Liquor, Health & Welfare (Division of Mental Health), (Division of Public Health), (Division of Welfare), Fish and Game Commission, Insurance Department, Laconia State School, New Hampshire Retirement System, New Hampshire State Hospital, Office of Commission Health & Welfare, Public Utilities Commission, Public Works & Highways, Safety, State Prison, Sweepstakes Commission, Water Supply and Pollution Control Commission and Water Resources, positions as listed in joint petition by and between the State Employees' Association of New Hampshire, Inc. and the State Negotiating Committee, State of New Hampshire submitted, April 8, 1980,

shall be represented by STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC., (SEA), as defined by RSA 273-A:1, IX, for the purpose of collective bargaining, settlement of grievances and other rights accompanying certification as provided for by RSA 273-A:11, effective May 8, 1980.

Edward J. Haseltine
EDWARD J. HASELTINE, Chairman

Signed on the 6th day of August, 1980



AMENDED CERTIFICATION

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION :
 OF NEW HAMPSHIRE, INC. :
 :
 and :
 :
 STATE OF NEW HAMPSHIRE :
 :

CASE NO. S-0349

RECOGNITION OF AN EXCLUSIVE REPRESENTATIVE
(UNDER CHAPTER 490:3, NEW HAMPSHIRE LAWS, 1975)

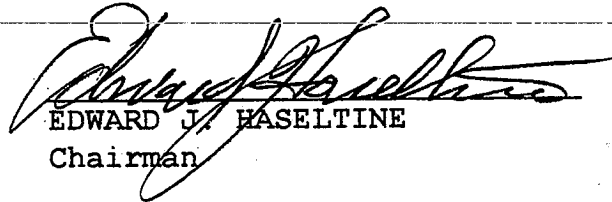
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IT IS HEREBY RECOGNIZED that the supervisory employees of the following state departments, namely:

- Administration & Control
- Banking Commission
- Centralized Data Processing
- Agriculture
- Department of Employment Security
- Education
- Revenue Administration
- Resources and Economic Development
- Liquor
- Health & Welfare (Division of Mental Health)
- Health & Welfare (Division of Public Health)
- Health & Welfare (Division of Welfare)
- Fish and Game Commission
- Insurance Department
- Laconia State School
- New Hampshire Retirement System
- New Hampshire State Hospital
- Office of Commission Health & Welfare
- Public Utilities Commission

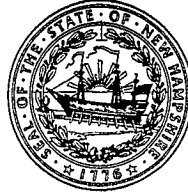
Public Works & Highways
Safety
State Prison
Sweepstakes Commission
Water Supply and Pollution Control Commission
Water Resources
Bureau of Emergency Communications

having positions as listed in a joint petition by and between the State Employees' Association of New Hampshire, Inc. and the State Negotiating Committee, State of New Hampshire submitted April 8, 1980, and as modified by joint agreement on July 18, 1996, shall be represented by STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC. (SEA), as defined by RSA 273-A:1, IX for the purpose of collective bargaining, settlement of grievances and other rights accompanying certification as provided for by RSA 273-A:11, effective May 8, 1990.



EDWARD J. HASELTINE
Chairman

Signed this 6th day of AUGUST, 1996.
Original signed on August 6, 1980.



AMENDED CERTIFICATION

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF :
NEW HAMPSHIRE, INC., S.E.I.U. :

CASE NO. S-0349

and :

STATE OF NEW HAMPSHIRE :
:

RECOGNITION OF AN EXCLUSIVE REPRESENTATIVE
(UNDER CHAPTER 490:3, NEW HAMPSHIRE LAWS, 1975)


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- New Hampshire Retirement System
- New Hampshire State Hospital

Office of Commission Health & Welfare
Public Utilities Commission
Public Works and Highways
Safety
State Prison
Sweepstakes Commission
Water Supply and Pollution Control Commission
Water Resources
Bureau of Emergency Communications
Office of the Secretary of State

having positions as listed in a joint petition by and between the State Employees' Association of New Hampshire, Inc. and the State Negotiating Committee, State of New Hampshire submitted April 8, 1980, and as most recently modified by joint agreement dated March 31, 1997, shall be represented by STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC. (SEA), S.E.I.U., as defined by RSA 273-A:1, IX for the purpose of collective bargaining, settlement of grievances and other rights accompanying certification as provided for by RSA 273-A:11, effective May 8, 1990.



JACK BUCKLEY
Alternate Chairman

Signed this 31st day of March, 1997.
Original signed on August 6, 1980.