



**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.

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

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

**Decision No. 2008-173**

**Respondents**

**PRE-HEARING MEMORANDUM AND ORDER**

**Date of Conference:** August 22, 2008 at the PELRB in Concord.

**Appearances:** Robin Mongeon, Diane Allen, and Sheila Gagnon, Complainants  
Glenn R. Milner, Esq., State Employees Association  
Rosemary Wiant, Esq., State of New Hampshire

**BACKGROUND**

In several previous orders the State and the SEA's agreement as to positions within the existing state supervisors' bargaining unit was addressed. *See* Decisions 2008-148, 149, and 157. The State submitted a filing confirming that the list has been posted. The positions covered by the list include many, but not all, of the individual complainants participating in these cases. The complainants continue to maintain objections to payment of an agency fee and to the

composition of the supervisors' unit and the SEA's representation of that bargaining unit. The record reflects that the complainants' objections to the supervisors' bargaining unit include, but are not necessarily limited to, the following:

1) there is a lack of a community of interest in the supervisors' bargaining unit given that the supervisory certification includes state employees from many different departments;

2) the supervisors' bargaining unit includes supervisory employees in the same bargaining unit as the employees they supervise;

3) 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) 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.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether all of the complainants are supervisors within the meaning of RSA 273-A:8, II?
2. Whether the collection of an agency fee from the complainants is unlawful?
3. Whether the complaint is untimely?

#### DECISION

1. On or before September 10, 2008 the complainants shall each file a brief summary of their complaints. The summary should not be a replication of complainants' filings to date but a brief review of the points, issues and arguments they currently maintain in these cases. The

complainants should confer to prepare a common joint statement to the extent possible which should be included at the outset of each individual filing.

2. The parties are encouraged to file any subpoena requests on or before September 12, 2008.

3. On or before September 19, 2008 the respondents shall each file a brief reply to the complainant's summaries.

4. On or before September 19, 2008 the parties shall each file their updated witness and exhibit list.

5. On or before September 24, 2008 the parties shall prepare and submit a stipulation of facts and exhibits.

6. At this juncture it is anticipated that at the hearing the board will first consider the pending motions to dismiss. Depending upon the disposition of those motions, the board may then proceed to the merits of the complaints. As discussed at the pre-hearing conference, the complainants shall be prepared at the hearing to present offers of proof in support of their complaints concerning factual matters not already covered by the parties' factual stipulations. The board will then likely hear responsive offers of proof from the State and the SEA and thereafter proceed to receive testimony as necessary as to disputed factual issues.

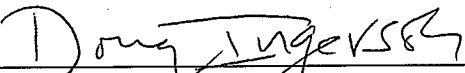
#### HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **September 30, 2008 at 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 5 hours. If either party believes that additional time is required,

written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

August 27, 2008.

  
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Douglas L. Ingersoll, Esq.  
Hearing Officer

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