



**STATE OF NEW HAMPSHIRE**  
**Public Employee Labor Relations Board**

**New Hampshire State Police Command Staff/New Hampshire Troopers Association**  
**and**

**State of New Hampshire, Department of Safety,**  
**Division of State Police**

**Case No. G-0222-1**  
**Decision No. 2015-123**

**Order on Motion for Review of Hearing Officer Decision**

The State filed a Motion for Review<sup>1</sup> of Hearing Officer Decision No. 2015-028 pursuant to Pub 205.01, which provides in part as follows:

(a) Any party to a hearing or intervenor with an interest affected by the hearing officer's decision may file with the board a request for review of the decision of the hearing officer within 30 days of the issuance of that decision and review shall be granted. The request shall set out a clear and concise statement of the grounds for review and shall include citation to the specific statutory provision, rule, or other authority allegedly misapplied by the hearing officer or specific findings of fact allegedly unsupported by the record.

(b) The board shall review whether the hearing officer has misapplied the applicable law or rule or made findings of material fact that are unsupported by the record and the board's review shall result in approval, denial, or modification of the decision of the hearing officer. The board's review shall be made administratively based upon the hearing officer's findings of fact and decision and the filings in the case and without a hearing or a hearing de novo unless the board finds that the party requesting review has demonstrated a substantial likelihood that the hearing officer decision is based upon erroneous findings of material fact or error of law or rule and a hearing is necessary in order for the board to determine whether it shall approve, deny, or modify the hearing officer decision or a de novo hearing is necessary because the board concludes that it cannot adequately address the request for review with an order of approval, denial, or modification of the hearing officer decision. All findings of fact contained in hearing officer decisions shall be presumptively reasonable and lawful, and the board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.

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<sup>1</sup> The State's motion is supported by a duly prepared transcript.

The State maintains that the hearing officer should have excluded the Executive Major position from the bargaining unit because the employee in that position qualifies as “confidential” pursuant to RSA 273-A:1, IX (c) or because the employee is a statutory supervisor under RSA 273-A:8, II. The SEA disagrees, and has asked that we uphold the hearing officer’s bargaining unit determination. We have reviewed the hearing officer’s decision in accordance with the provisions of Pub 205.01 and conclude that the Executive Major position should be excluded from the bargaining unit as a “confidential” employee and we therefore modify the hearing officer’s bargaining unit determination on that basis.

Under the Public Employee Labor Relations Act a “public employee” is “any person employed by a public employer except ... [p]ersons whose duties imply a confidential relationship to the public employer.” As discussed in the hearing officer’s decision, confidential employees “have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.” *Appeal of Town of Moultonborough*, 164 N.H. 257, 262 (2012)(affirming PELRB conclusion that the police chief’s executive assistant should not be excluded from the approved unit as a confidential employee). See also *Appeal of Town of Newport*, 140 N.H. 343 (1995)(PELRB should have excluded public works department secretary from unit as confidential employee); *Appeal of City of Laconia*, 135 N.H. 421 (1992)(PELRB should have excluded an administrative secretary position as a confidential employee); and *In re Nashua Assoc. of School Principals*, 119 N.H. 90 (1979)( PELRB’s determination that at least some of the principals in the Nashua school district should be excluded as confidential employees affirmed). “There is no set minimum or maximum number of employees who may be deemed confidential.” *Laconia* at 424.

It is true that the history of the Executive Major position during the time period prior to 2010 (and since the position was filled again in 2014) does not include active involvement in

labor negotiations, either through direct negotiations on behalf of the State or indirectly through support of the State bargaining team. However, this history is one factor to consider which must be balanced and considered in the context of other relevant evidence. It is not a determinative factor and should not be given undue weight, particularly since the Executive Major position was vacant for four years (approximately 2010 to 2014). Additionally Colonel Quinn, the current Director of the State Police, was not appointed to his position until 2010 and, subject to Executive Major Parenteau's designation as a confidential employee, plans to have the Executive Major play an active role in the bargaining process. Colonel Quinn's experience and service working for four years without the benefit of an Executive Major is relevant, and his judgment and conclusions about how Executive Major Parenteau, if designated as a confidential, non-bargaining unit employee, will provide needed additional support in labor relations in general, and in the areas of personnel management and negotiations in particular, must be taken into account.

Colonel Quinn's availability during prior negotiations was less than ideal, and the current Chief Negotiator on the State bargaining team (Matthew Newland, Manager of Personnel Relations) firmly believes that having Executive Major Parenteau as an additional resource within the ranks of sworn personnel would be a valuable and substantive improvement and addition to the State's ability to evaluate proposals, prepare appropriate responses, and otherwise generally engage in the negotiation process. However, as Mr. Newland observed, the State finds itself in a bit of a conundrum in its effort to actually enlist the service of Executive Major Parenteau in the bargaining process if actual prior service in negotiations is treated as a mandatory pre-requisite to the PELRB's designation of a particular employee as confidential. Mr. Newland also expressed the opinion that it is unfair to limit the State bargaining team to just one member of State Police sworn law enforcement personnel (the

Colonel) for support in the negotiation process. This is not an unreasonable observation given the other demands placed upon the Colonel's time and the fact that the State is only requesting that one additional sworn employee, who is second in command, be excluded from the unit as a confidential employee.

If designated as a confidential employee Executive Major Parenteau will likely assist the Colonel in a myriad of ways. This includes acting as a sounding board for the Colonel on significant personnel matters in areas like, for example, layoffs, discipline, and financial matters. He will be able to support the State bargaining team, creating more flexibility for the Colonel as he prioritizes his professional efforts. Executive Major Parenteau will also have needed independence when carrying out his broad responsibility and authority in general personnel management. Examples of his duties in these areas include his obligation to address personnel based issues with "self-generated" solutions, counseling at all levels of law enforcement personnel (including command staff) to resolve personnel problems, review and recommendation of promotional candidates, the exercise of agency wide supervision, the development and evaluation of internal personnel policies, and acting as the Division of State Police Director in the Colonel's absence.

For these reasons we conclude that the correct application of the law in this case requires the exclusion of Executive Major Parenteau from the bargaining unit on the grounds that he is a confidential employee under RSA 273-A:1, IX (c).

So ordered.

Date: June 15, 2015

*/s/ Michele E. Kenney*  
Michele E. Kenney, Esq., Chair

By unanimous vote of Chair Michele E. Kenney, Esq., Board Member Carol M. Granfield, and Board Member Richard J. Laughton, Jr.

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