



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. 2015-170

Order on Motions for Rehearing/Clarification

Both parties filed rehearing motions following the issuance of Decision No. 2015-123 (June 15, 2015) on the State's Motion for Review of Hearing Officer Decision No. 2015-028 (February 20, 2015). In Decision 2015-123 we concluded that the Executive Major is a confidential employee under RSA 273-A:1, IX (c) and should be excluded from the proposed bargaining unit. We modified the hearing officer's bargaining unit determination on that basis. We did not address the State's additional argument that if the Executive Major is not excluded as a confidential employee then the position should still be excluded as a supervisory employee under RSA 273-A:8, II. We also did not specifically address the State's Motion to Amend Motion for Review of Decision of Hearing Officer Based on Late Authority.

After an order has issued on a Pub 205.01 motion for review of a hearing officer decision, a party may then file a motion for rehearing of the Pub 205.01 decision pursuant to Pub 205.02. Relevant excerpts of these rules are as follows:

Pub 205.01 Review of a Decision of Hearing Officer.

(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...

(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...

(c) Absent a request for review, the decision of the hearing officer shall become final in 30 days.

(d) The request for review of the hearing officer's decision shall precede, but shall not replace, a motion for rehearing of the board's decision pursuant to Pub 205.02 and RSA 541-A:5.

Pub 205.02 Motion for Rehearing.

(a) Any party to a proceeding before the board may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order within 30 days after the board has rendered its decision and order by filing a motion for rehearing under RSA 541:3. The motion for rehearing shall set out a clear and concise statement of the grounds for the motion. Any other party to the proceeding may file a response or objection to the motion for rehearing provided that within 10 days of the date the motion was filed, the board shall grant or deny a motion for rehearing, or suspend the order or decision complained of pending further consideration, in accordance with RSA 541:5.

(b) Any other person, employee organization or public employer with an interest affected by any decision and order of the board may apply for a rehearing under this section in the same manner as a party to the original proceeding.

The State raises three main points in its motion. First, the State complains about a lack of a ruling on its Motion to Amend Motion for Review of Decision of Hearing Officer Based on Late Authority. We address this point by confirming that we reviewed the State's motion and considered the *Appeal of New Hampshire Retirement System* and other relevant authorities before issuing our prior order (2015-123).

Second, the State apparently seeks clarification about the Executive Major's supervisory status under RSA 273-A:8, II. Our task in acting on the State's prior motion for review of the hearing officer decision under Pub 205.01 was to determine whether to approve, deny, or modify

the hearing officer's decision to include the Executive Major in the bargaining unit. Our order modified the hearing officer decision by excluding the Executive Major position as a confidential employee. It was and is unnecessary to also address the State's additional argument that the Executive Major should be excluded as a supervisory employee as that argument is moot.

The State's third point in its current motion challenges the exclusive representative's right to represent the bargaining unit. However, the State is raising this issue and argument for the first time. It was not a subject of the hearing officer's decision, the State's prior motion for review of hearing officer decision, or our order on the State's motion for review. In fact, the State did not raise this issue or make any objection based on this argument at any point during the prior proceedings in this case. Accordingly, the State's motion for rehearing on this basis, and for all other reasons it has raised, is denied.

In its motion, the Union argues, in substance, that we erred by excluding the Executive Major position from the unit. However, for the reasons stated in our Decision 2015-123, we determined that the Executive Major position should be excluded from the bargaining unit. The Union's motion for rehearing is denied.

So ordered.

Date: July 23, 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.

Distribution: Marta A. Modigliani, Esq.
John S. Krupski, Esq.

