



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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P Wright, D McMenemy et al,		*
and F McGarry et al		*
	Petitioners	*
	v.	*
		*
SEA/SEIU Local 1984 and		*
State of New Hampshire		*
		*
	Respondent	*
<b>Consolidated Caption</b>		*
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Case No.s S-0433-1
S-0433-2
S-0434-1
S-0435-1
Decision No. 2007-064

**ORDER**

The March 22, 2007 pre-hearing order provided, in part, that “[o]n or before April 15, 2007 the SEA shall file a short memorandum outlining the reasons why it requires the complete personnel file of all charging parties and shall include a discussion of the relevancy of these files and whether there are any confidentiality or privacy issues implicated by its request.” The pre-hearing order also required the parties to meet and confer in an effort to stipulate to facts in this case. It was anticipated that this meeting would result in some form of a stipulation, if not a complete stipulation of the facts at issue.

On April 9, 2007 the parties filed a joint report stating they met on April 3, 2007 and no factual stipulations were reached, although the parties remain hopeful that such stipulations might yet be made. On April 16, 2007 the SEA filed its memorandum pursuant to the pre-hearing order.

As noted by the SEA in its April 16, 2007 memorandum, the State was not required to file a memorandum concerning personnel files, although the State did list personnel files as a hearing exhibit. Since the State is already in the possession, custody and control of the personnel files at issue (and the involved employees have access to their personnel files), there are reasons to distinguish between the SEA’s possible access to and use of the personnel files as hearing exhibits when compared to the State’s possible use of those files at hearings. Nevertheless, the involved employees’ interests are affected by the possible disclosure of all or portions of their personnel files at hearing in this matter, regardless of whether the disclosure is made by the State or the SEA.

The State's possible use of the personnel files was not discussed in any detail at the March 22, 2007 pre-hearing conference, except that it was noted that it was a matter that the parties were going to discuss, so the State's intended use of the personnel files is presently unclear. The April 3, 2007 meeting apparently did not resolve any issues concerning the possible use of the contents of the personnel files. Accordingly, I believe it will be helpful and useful for the State to file, on or before May 1, 2007, a short memorandum discussing the extent to which it will seek to use the personnel files as hearing exhibits. The State shall include a discussion of the relevancy of these files and whether there are any confidentiality or privacy issues implicated by its proposed use of the files. In its memorandum, the State shall refrain from disclosing, other than in a generic manner, and other than the information that is subject to public disclosure under Per 1501.01, the contents of any personnel file. Additionally, the petitioners shall file a short memorandum, on or before May 11, 2007 outlining their responses to the SEA's and the State's memoranda on the personnel file issue.

A further pre-hearing conference in this case is scheduled for May 16, 2007 at 9:00 a.m. The State shall bring the involved employees' personnel files to this pre-hearing (copies are acceptable) so that this material is available in the event I determine that a confidential review of the contents of those files on May 16, 2007 is appropriate and necessary.

So Ordered.

April 18, 2007

  
Douglas L. Ingersoll, Esq.  
Hearing Officer

John S. Krupski, Esq.  
Philip Wright  
Michael Brown, Esq.  
Sara Willingham  
Dorothy McMenemy  
Frederick McGarry