

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**State Employees' Association of New Hampshire,
SEIU Local 1984**

&

State of New Hampshire

**Case No. G-0115-3
Decision No. 2012-221**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: September 26, 2012

Appearances: Robert E. Berry, Jr., Esq. for the Complainant
Rosemary Wiant, Esq. for the Respondent

Background:

The Union filed a petition for declaratory ruling on August 29, 2012 seeking a ruling as to the applicability of RSA 273-A:1, IX (c) ("Public employee" means any person employed by a public employer except: c) Persons whose duties imply a confidential relationship to the public employer), RSA 273-A:8 (relating to the determination of appropriate bargaining units), Pub 302.05 (relating to modification of bargaining units), and several State bargaining unit certifications. The factual basis for the petition involves a dispute over whether certain positions are covered by the existing bargaining unit certifications as well as the procedure to be followed. The Union asks that the PELRB declare that a public employer like the State may not unilaterally exclude certain positions from a bargaining unit based upon the State's assessment that employees in such positions are confidential employees; declare that a petition for modification of the bargaining unit is the proper procedure for the State to follow to seek exclusion of the

positions at issue; and declare that the employees in the positions at issue are not confidential employees within the meaning of the statute.

The State asserts that it has acted properly in designating certain employees as confidential given the provisions of the parties' collective bargaining agreement as well as the statutory definition of confidential employee.

Issue For Decision:

As discussed at the pre-hearing conference, the issue for decision is the interpretation and application of the relevant bargaining unit certifications as well as the statutory provisions and rules cited by the Union given the facts of this case, which include the State's assessment and designation of a number of employees as confidential and as well as relevant provisions of the parties' collective bargaining agreement.

Witnesses and Exhibits:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing. Copies of all exhibits are to be submitted in accordance with Pub 203.02 but electronic filing of exhibits in advance of hearing is not required. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

Decision:

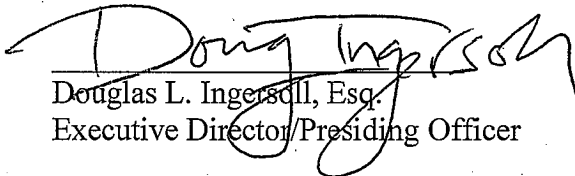
1. "Parties" means the Union, the State, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.

2. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits when possible. The electronic filing of exhibits in advance of hearing is not required in this case.
3. Final witness and exhibit lists shall be filed on or before October 11, 2012.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing will be held on **October 17, 2012 at 9:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 5 hours.

Date: September 28, 2012


Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

Distribution: Richard E. Molan, Esq.
Robert E. Berry, Jr., Esq.
Michael K. Brown, Esq.
Rosemary Wiant, Esq.

