



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

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

**and**

**State of New Hampshire**

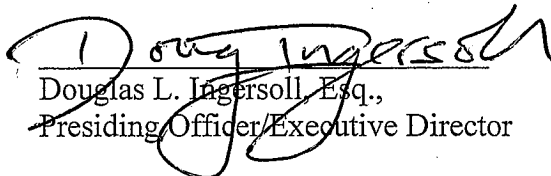
**Case No. G-0115-3  
Decision No. 2014-062**

Order

On May 28, 2013 the PELRB issued Decision No. 2013-079 in the above captioned matter. Pursuant to that decision the parties filed a Joint Final Exclusion List on February 5, 2014. See PELRB Decision No. 2014-030 (February 6, 2014). On March 10, 2014 the parties met with the undersigned at the PELRB offices and agreed to a Stipulated Process for Changing the Composition of the Exclusion List. The parties' Stipulation, a copy of which is attached, is approved.

So ordered.

Date: 3-10-2014

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

Distribution: Richard E. Molan, Esq.  
Glenn Milner, Esq.  
Michael K. Brown, Esq.  
Rosemary Wiant, Esq.

The State of New Hampshire ("State")  
and  
State Employees' Association, SEIU 1984 ("SEA")

**STIPULATED PROCESS  
FOR CHANGING THE COMPOSITION OF THE EXCLUSION LIST**

The "Exclusion List" refers to the list of position numbers that, in accordance with RSA 273-A:1, IX(c), are excluded from the definition of "public employee" because the job duties imply a confidential relationship to the public employer. Employees who fill position numbers on the Exclusion List are not members of the bargaining unit and, therefore, are not represented by the SEA.

The following outlines the process for: 1) designating particular position numbers as confidential within the meaning of RSA 273-A:1, IX(c); and 2) removing the confidential designation.

The parties shall update the exclusion list at least annually, if not more frequently, to ensure that PELRB existing bargaining unit descriptions are current.

**Adding a Position Number to the Exclusion List:**

**1. State Initiated Request**

In ordinary circumstances, an agency head sends a request to the Manager of Employee Relations asking that a particular employee/position number be designated as confidential. A request shall be in writing and shall include a description of the employee's functions, including an explanation of the reason the employee should be deemed confidential. The request shall also indicate the duration for which the employee is expected to perform those functions. A copy of the supplemental job description (SJD) must be attached to the request.

**2. SEA Initiated Request**

The SEA may seek to designate a particular position number as confidential. It shall send a written request to the Manager of Employee Relations asking that a particular employee/position number be designated as confidential. The request shall include a description of the employee's functions and explanation of the reason the employee should be deemed confidential. The request shall also indicate the duration for which the employee is expected to perform those functions. A copy of the SJD must be attached to the request.

**3. The Manager of Employee Relations shall compile any necessary supporting information, and confer with a committee consisting of: SEA President, or**

designee; SEA legal counsel, State Manager of Employee Relations, or designee; and State legal counsel. The committee will review the request according to the standard set out in *Keene State College PAT Staff Assoc. v. Univ. of New Hampshire*, PELRB Decision No. 78007 (Feb. 27, 1978) and other relevant law.

4. If the SEA and the State agree that the employee should be designated confidential, the parties shall file an "agreed-upon" updated exclusion list with the PELRB.
5. If the SEA and the State do not agree whether the employee should be designated confidential, then the party seeking the confidential status shall file a petition for declaratory ruling, pursuant to Pub 206.01. The petition shall request an expedited hearing on the issue. Pending the PELRB's decision, the employee may perform the necessary functions but may be required to execute a confidentiality agreement, obligating the employee to keep the pertinent matters confidential.
6. The SEA and the State may agree that although the employee's job functions are of a nature that would otherwise warrant confidential status, the expected duration of the assignment of those functions is too temporary to warrant modification of the bargaining unit. In such instances, the SEA and the State may agree to require the employee to execute a confidentiality agreement in lieu of modifying the bargaining unit.

#### **Removing a Position Number from the Exclusion List**

7. Requests may initiate from the State or the SEA. Any request shall be in writing, directed to the State Manager of Employee Relations, and include a description of the employee's job functions. The request shall explain why the job functions no longer require that the position be deemed confidential under RSA 273-A:1, IX(c). A copy of the SJD must be attached to the request.
8. The Manager of Employee Relations shall compile any necessary supporting information, and confer with a committee consisting of: SEA President, or designee; SEA legal counsel, State Manager of Employee Relations, or designee; and State legal counsel. The committee will review the request according to the standard set out in *Keene State College PAT Staff Assoc. v. Univ. of New Hampshire*, PELRB Decision No. 78007 (Feb. 27, 1978) and other relevant law.
9. If the SEA and the State agree that the employee should no longer be designated confidential, the parties shall file an "agreed-upon" updated exclusion list with the PELRB.
10. If the SEA and the State do not agree that the confidential designation be removed, then the party seeking the change to the employee's status shall file a

petition for declaratory ruling, pursuant to Pub 206.01. The petition shall request an expedited hearing on the issue.

**Information to be included on Requests for Expedited Hearing under this Stipulation:**

All filings shall include dates, times (including amount of time required for hearing) when both parties are available for an expedited hearing during the 30 day period following the filing of the petition, provided, however, that if the parties believe the circumstances of a particular case require they may contact the PELRB in advance of the filing to determine available dates on the PELRB hearing calendar.

Exclusion Lists shall contain Department Name/Number, Job Title, and Position Number. The parties shall file an amended Joint Final Exclusion List containing this information which the PELRB shall substitute for the List filed on February 5, 2014.

This Stipulation is subject to the approval of the PELRB and shall be maintained in the PELRB case files as a supplement to PELRB Decision No. 2014-030 (February 6, 2014), Case No. G-0115-3.

Date: March 10, 2014

State of New Hampshire:

By: Rosemary Wiant Rosemary Wiant  
(Sign & Print Name)

State of New Hampshire:

By: Michael K. Brown Michael K. Brown  
(Sign & Print Name)

State of New Hampshire:

By: Matthew J. Newland Matthew J. Newland  
(Sign & Print Name)

SEA of NH, SEIU Local 1984:

By: Diana M Lacey DIANA MLACEY  
(Sign & Print Name)

SEA of NH, SEIU Local 1984:

By: Richard E. McInnes Richard E. McInnes  
(Sign & Print Name)