



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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

v.

**State of New Hampshire**

**Case No. G-0115-7**

**Decision No. 2014-131**

**Appearances:**

Glenn R. Milner, Esq.,  
Molan, Milner & Krupski, PLLC  
Concord, New Hampshire  
and

Lauren S. Chadwick, Esq.,  
State Employees' Association, SEIU Local 1984  
Concord, New Hampshire for the Complainant

Michael K. Brown, Esq., Senior Assistant Attorney General  
Rosemary Wiant, Esq., Assistant Attorney General  
Concord, New Hampshire for the Respondent

**Background:**

The State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA), which represents the Department of Corrections supervisors' bargaining unit,<sup>1</sup> filed an unfair labor practice complaint under the Public Employee Labor Relations Act (RSA 273-A) based upon the State's negotiations with a second Department of Corrections bargaining unit<sup>2</sup>

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<sup>1</sup> Corrections Sergeants, Lieutenants, and Captains (SEA Unit or supervisors' unit)

<sup>2</sup> Corrections Officers and Corporals (Teamsters Unit or non-supervisors' unit).

represented by Teamsters Local 633 (Teamsters). According to the SEA, the State proposed and negotiated a language change to the overtime provision in the Teamsters' collective bargaining agreement that improperly restricts and/or interferes with SEA Unit employee access to overtime work. In particular, the SEA charges that the State has violated RSA 273-A:5, I (e), (h), and (i), which provide as follows:

RSA 273-A:5, I. It shall be a prohibited practice for any public employer:

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(e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;

(h) To breach a collective bargaining agreement;

(i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

The State denies the charges. The State argues that its contract with the Teamsters Unit was negotiated in good faith, that the SEA does not have standing to challenge the State's contract with the Teamsters Unit, that any past practice relied upon by the SEA ended when the SEA's representation of both groups of employees ended, and that it is improper for the State and the SEA to negotiate terms and conditions of employment applicable to the Teamsters Unit.

The PELRB provided notice of this case to the Teamsters but the Teamsters did not take any action to intervene as a party or otherwise become involved in these proceedings. *See* PELRB Decisions 2013-231 (November 5, 2013) and 2013-239 (November 21, 2013).

During the pre-hearing phase of the case the parties agreed to submit the current dispute for decision on stipulated facts and exhibits together with written briefs. The parties submitted all material by the March 21, 2014 deadline, and the decision in this case is as follows.

## Findings of Fact

1. The State of New Hampshire Department of Corrections is a public employer within the meaning of RSA 273-A.

2. Prior to 2010, the State Employees Association, SEIU Local 1984 (SEA) was the PELRB certified exclusive representative of a unit containing all classified DOC public employees, inclusive of Corrections Officers, Corporals, Sergeants, Lieutenants, and Captains (original SEA Unit). See PELRB Decision No. 2004-037 (May 6, 2004).

3. In 2010, following proceedings involving modification and election petitions filed by the New England Police Benevolent Association (NEPBA), the PELRB certified two new DOC bargaining units. Corrections Officers, Corporals, Sergeants, Lieutenants, and Captains positions were removed from the existing original SEA Unit and placed in the two new proposed units described in the certification petitions.<sup>3</sup>

4. One of the new bargaining units consisted of Corrections Officers and Corporals (the non-supervisors' unit), and the PELRB certified the NEPBA as this unit's exclusive representative. See PELRB Decision 2010-005 (January 5, 2010). In 2012, the Teamsters filed a petition challenging the NEPBA's representation of the DOC non-supervisors' unit and pursuant to the results of a secret ballot election replaced the NEPBA as the representative of that unit on October 4, 2012. PELRB Decision No. 2012-189 (August 6, 2012) and 2012-226 (October 4, 2012).

5. The second unit consisted of Sergeants, Lieutenants, and Captains (supervisors' unit), and the PELRB certified the SEA as this unit's exclusive representative. See PELRB Decision No. 2010-004 (January 5, 2010).

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<sup>3</sup> See PELRB Decision No. 2009-216 (October 8, 2009) and related unit composition stipulations in PELRB Cases G-0106-1 to G-0110-1.

6. The proceedings in 2010 were the second time the NEPBA had filed modification and certification petitions relating to the original SEA Unit. Earlier proceedings also resulted in the creation of two similar new DOC bargaining units, but on appeal the court reversed<sup>4</sup> the PELRB's decision to allow the representation elections to go forward, and accordingly on remand the PELRB vacated its certification orders. See PELRB Decisions 2008-013, 2008-014, and 2009-102.

7. Article 7.2 of the SEA/State DOC 2011-13 Collective Bargaining Agreement (supervisors' unit) provides as follows:

**7.2. Overtime Administration:** All overtime assignments are to be administered in accordance with the following provisions:

a. Overtime assignments are voluntary unless the number of volunteers are not sufficient to carry out the orderly transaction of business, in which case, the Employer may exercise his/her discretion to make appropriate overtime assignments.

b. Overtime assignments, to the extent possible, *shall be distributed equally among qualified employees who customarily perform the kind of work required with preference given to those employees currently assigned to the work section in which the overtime is to be worked.* (emphasis added)

c. An employee shall not be relieved of duty during the regular shift hours in his/her basic workweek in order to compensate for or offset overtime hours worked unless: (1) he/she agrees to be relieved of duty; (2) it is in the interest of the employee, the Employer or the general public to relieve the employee of duty for reason of health or safety.

Union Exhibit D (emphasis added).

8. Article 7.2 of the NEPBA/State 2011-13 Collective Bargaining Agreement (non-supervisors' unit) provides as follows:

**7.2. Overtime Compensation and Scheduling:** The compensation due to law enforcement employees who perform authorized work in excess of the maximums established by 7.1 is as follows:

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<sup>4</sup>Appeal of State Employees Association of New Hampshire, Inc., SEIU, Local 1984, 158 N.H. 258 (2009)

- a. Overtime is defined as authorized work performed in excess of eighty (80) hours in a fourteen (14) consecutive day work period.
- b. Unit employees shall be entitled to one and one half times the regular rate of compensation for each hour of overtime worked beyond 80 hours.
- c. Overtime assignments are voluntary unless the number of volunteers is not sufficient to carry out the orderly transaction of business.
- d. Overtime assignments, to the extent possible, *shall be distributed equally among qualified employees who customarily perform the kind of work required with preference given to those employees currently assigned to the work section in which the overtime is to be worked.* All overtime assignments for vacancies shall be based on last date worked and if a conflict should arise, seniority will decide the conflict.

Union Exhibit B (emphasis added).

9. In negotiating the 2013-15 contract with the Teamsters Unit the State proposed language changes to Article 7.2 (d) consisting of the substitution of "Corrections Corporals and Corrections Officers" for "employees." See Union Exhibit E. The State's proposal was made on May 7, 2013 and on that same date an SEA representative emailed the State objecting to the proposed language change, stating that it "affects the SEA DOC unit" and that "there is a Stipulated Damage Award...in which it is ruled that the state violated the SEA Collective Bargaining Agreement when the state precluded the SEA represented Corrections Sergeants, Lieutenants and Captains from participating in overtime opportunities and order (sic) back pay."

10. Despite the SEA objections the State's proposed language change to Article 7.2 (d) was incorporated in the final Teamsters/State 2013-15 contract as follows:

**7.2. Overtime Compensation and Scheduling:** The compensation due to law enforcement employees who perform authorized work in excess of the maximums established by 7.1 is as follows:

- a. Overtime is defined as authorized work performed in excess of eighty (80) hours in a fourteen (14) consecutive day work period.
- b. Unit employees shall be entitled to one and one half times the regular rate of compensation for each hour of overtime worked beyond 80 hours.

c. Overtime assignments are voluntary unless the number of volunteers is not sufficient to carry out the orderly transaction of business.

d. Overtime assignments, to the extent possible, *shall be distributed equally among qualified Corrections Corporals and Corrections Officers who customarily perform the kind of work required with preference given to those Corrections Corporals and Corrections Officers currently assigned to the work section in which the overtime is to be worked.* All overtime assignments for vacancies shall be based on last date worked and if a conflict should arise, seniority will decide the conflict.

Union Exhibit C (emphasis added).

### **Decision Summary**

The SEA's complaint is dismissed. The SEA's claims are premature and, in effect, the SEA seeks an advisory opinion based upon the potential loss of SEA DOC unit overtime work. This dismissal is without prejudice to the filing of a grievance based upon alleged violations of SEA DOC unit employees' contractual right to overtime work, including claims supported in whole or in part by past practice. We express no opinion about the merits or likelihood of success of any such grievances.

### **Jurisdiction:**

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

### **Discussion:**

Based upon our assessment of the circumstances presented by the record we are dismissing this case. Despite the manner in which the SEA has framed and characterized the dispute we find that this case is premature and not yet ripe for adjudication. Moreover, even if we were to conclude that this case is justiciable, we have reservations about the PELRB's jurisdiction to address what is, in substance, a dispute over the nature and extent of SEA DOC

unit employees' contractual rights to overtime work based upon the provisions of their own contract and past practice.

The SEA's complaint is based entirely upon the language change in the Teamsters' contract and the SEA's speculation that SEA DOC unit employees may lose overtime work as a result. There was no evidence offered into the record for the purpose of proving that any SEA DOC unit employee(s) has actually lost overtime work to which they are entitled under Article 7.2 (d) of the SEA/State CBA and/or past practice. In fact, the SEA is not claiming that SEA DOC unit employees have suffered a loss of overtime work, as can be seen in the following excerpts from the SEA's opening brief:

In this matter, the State did not negotiate in good faith. The State presented a proposal to the Teamsters which *if implemented* would grant the Teamsters' members preference over similarly situated members of the (SEA) with respect to overtime distribution at the Department of Corrections. SEA opening brief at 4 (emphasis added).

The State entered into an agreement which *could invalidate* a portion of the Association's agreement and past practice. SEA opening brief at 5 (emphasis added).

The State *potentially* unilaterally altered §7.2 (b) of the Association's CBA, involving the methods of overtime distribution, which is a mandatory subject of bargaining. SEA opening brief at 6 (emphasis added).

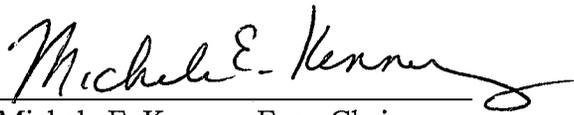
The manner in which the SEA characterizes its case in these excerpts reinforces our impression that this case is not ready for adjudication and that it was only filed because of the SEA's concerns and apprehensions about the possible loss of overtime work. However, the jurisdiction of the PELRB does not extend to the provision of advisory opinions in the context of unfair labor practice proceedings, and we find dismissal of the case is the appropriate disposition. Our order is without prejudice to the SEA's right to utilize the contractual grievance procedure, including grievance arbitration, to pursue a claim that unit employee entitlement to overtime work under Article 7.2 (d) of the SEA/State contract and/or past practice has been violated in the

event the SEA develops evidence that an actual loss of overtime work has occurred. Under the contractual grievance procedure it would then be the responsibility of an arbitrator<sup>5</sup> to interpret the SEA DOC unit contract and provisions relating to overtime work, consider and rule on past practice issues, and otherwise address the substantive arguments, as necessary, which both parties have raised in these proceedings about their respective contractual rights and obligations. We make no finding as to the merits or likelihood of success of any such grievance.

In accordance with the foregoing the SEA's unfair labor practice complaint is dismissed.

So Ordered.

May 22, 2014.

  
Michele E. Kenney, Esq., Chair

By unanimous vote of Board Members Michele E. Kenney, Esq., Carol M. Granfield, and Senator Mark Hounsell.

Distribution:

Glenn R. Milner, Esq.  
Michael K. Brown, Esq.  
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<sup>5</sup> As happened, for example, in the arbitration award submitted as Union Exhibit A in this case.