



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of New Hampshire, SEIU Local 1984

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State of New Hampshire

Case No. G-0115-10
Decision No. 2020-242

Appearances: Randy Hunneyman and Gary Snyder, Esq. Concord, New Hampshire
for State Employees' Association of NH, SEIU Local 1984

Jill Perlow, Esq. and Erik Bal, Esq., Attorney General's Office,
Concord, New Hampshire for the State

Background:

This is a decision on a petition for declaratory ruling filed on February 14, 2020 by the State Employees' Association of New Hampshire, SEIU Local 1984 (SEA). The SEA's petition asks the board to address the following three questions:

Question 1. Does RSA 273-A:9(I) provide for individual SEA units to bargain unique cost items (that are not common to all state employees) separate from the executive branch level with the single bargaining committee representing all the unions?

Question 2. Do individual SEA represented units, that have unique (cost item) proposals, have to go into impasse and fact-finding at the same time as the executive branch union committee or can they negotiate and move into impasse and fact-finding individually?

Question 3. Can individual SEA units settle and implement their specific contracts, with cost items, if the SEA and the State are at impasse on the larger executive branch contract?

The board issues declaratory rulings pursuant N.H. Admin. Rule Pub 206, which provides as follows:

Pub 206.01 Petition for Declaratory Ruling.

(a) Any public employer, any public employee or any employee organization may petition the board under RSA 541-A for a ruling regarding the specific applicability of any statute within the jurisdiction of the board to enforce, or any rule or order of the board, by filing with the board a petition for declaratory ruling setting out:

(1) The specific statute, rule or order whose applicability is in question; and

(2) A clear and concise statement of the facts giving rise to the petition.

(b) The board shall determine within 30 days of filing whether it shall dismiss such a petition or issue a ruling, and it shall subsequently give a ruling on all such petitions properly before it as expeditiously as possible.

(c) The board shall dismiss any such petition whose subject matter:

(1) Is substantially the same as that of a petition for declaratory ruling previously dismissed; or

(2) Was the subject of a previous ruling on the merits, absent a showing that the circumstances attending the previous ruling or dismissal have changed substantially in the intervening period.

(d) The board shall determine whether briefs will assist in issuing a ruling on a declaratory ruling petition and in the event briefs will be received shall establish a schedule for their submission.

After the petition was filed the board notified the parties that it would issue a decision on the petition. See PELRB Decision No. 2020-060 (March 13, 2020). Unfortunately, proceedings in this case were delayed because of the Covid-19 State of Emergency referenced in PELRB Decision No. 2020-068 (March 23, 2020). Once the case became active again the parties agreed to submit the petition for decision on briefs, stipulations and exhibits, and all relevant filings were submitted by the September 8, 2020 deadline.

Findings of Fact

1. The State is a public employer within the meaning of RSA 273-A:1.
2. The State Employees' Association of New Hampshire, SEIU Local 1984 (SEA) is the RSA 273-A certified exclusive representative of state employees in numerous bargaining units, including employees who are covered by the SEA Department of Transportation (DOT), New Hampshire Hospital (NHH), Department of Information Technologies (DoIT), and Department of Safety (DOS) bargaining unit certifications.¹
3. Prior to 2020 the parties engaged in "sub-unit" bargaining which included the DOT, NHH, DoIT, and DOS bargaining units. SEA and State "sub-unit" bargaining involves negotiations over subjects which are unique to a particular SEA bargaining unit and which result in a sub-unit agreement. Sub-unit bargaining is conducted separately from the single employee bargaining committee negotiations that includes bargaining over the SEA and State "master agreement" applicable to all SEA represented state bargaining units.
4. An example of the SEA and State master agreement is set forth in SEA Exhibit 2 (2018-19 CBA).
5. An example of final sub-unit agreements is set forth in SEA Exhibit 4 (2019-21 Sub-Unit Agreements for 7 listed bargaining units).
6. As reflected in SEA Exhibit 4 (2019 Sub-Unit Agreements) and exhibits 1-11 attached to the SEA's amended petition for declaratory ruling, the parties' recent bargaining history and the current bargaining cycle reflect the bargaining of, and the continued submission of bargaining proposals concerning, cost items that are unique to a particular bargaining unit at the sub-unit level. For example, see:

¹ For a current inventory of State bargaining units represented by the SEA see www.nh.gov/pelrb/certifications/cert_s_z.htm.

SEA Exhibit 1 to the amended petition for declaratory ruling, dated June 17, 2013 and titled "Continuation of Sub-Unit Negotiations." It states:
"The parties agree to continue to negotiate on behalf of sub-units and acknowledge that associated cost items shall remain eligible for such negotiations with good faith bargaining in accordance with RSA 273-A. The parties retain their right to agree or disagree on individual items, and do not waive their right to mediation or fact-finding to complete sub-unit negotiations. Such negotiations shall commence within thirty days after ratification of the tentative 2013-2015 Master Agreement." (Emphasis added).

SEA Exhibit 2 to the amended petition for declaratory ruling titled "State Counter Proposal-SEA DOT Sub-Unit" tentatively agreed to by the parties on April 2, 2015 (subject to ratification and cost approval). This proposal involved an additional \$10.00 per week from the first pay period in November through the pay period that includes the last day of March to employees performing winter maintenance and ancillary activities and who are on the winter call out list who have obtained a valid CDL medical card.

SEA Exhibit 3 to the amended petition for declaratory ruling, a sub-unit DOC Supervisors/Investigators footwear allowance proposal for "all permanent Uniformed Correctional Supervisors, Sergeants and above, for the purchase of footwear in an amount not to exceed one hundred dollars (\$100) per fiscal year."

SEA Exhibit 4 to the amended petition for declaratory ruling, a sub-unit NHH proposal for a "Behavioral Health" stipend of \$25 a week.

7. After the SEA and State reached impasse on sub-unit bargaining for the DOT, NHH, DoIT, and DOS bargaining units the parties proceeded to impasse mediation, which was unsuccessful. The next step in the impasse resolution process is fact finding², and the SEA filed the following four Petitions for Appointment of a Fact Finder with the board:

PELRB Case No. G-0239-2, filed November 26, 2019 (DoIT). The listed issues in controversy are: stipends and training leave.

PELRB Case No. G-0240-2, filed November 26, 2019 (DOT). The listed issues in controversy are: stipends, tool rentals, 40 hour work week, sick leave-overtime exemption, medical cards.

² See RSA 273-A:12, I (b) and N.H. Admin. Rules Pub 305.

PELRB Case No. G-0288-1, filed November 27, 2019 (NHH). The listed issue in controversy is: stipend.

PELRB Case No. G-0246-2 (DOS). The listed issue in controversy is: time worked for OT-law enforcement pay scale.

8. On January 2, 2020 the board appointed Gary Altman to serve as the fact finder on all four cases.

9. In February of 2020 the State notified Mr. Altman and the SEA that it would not participate in fact finding with respect to cost items (e.g. wages, stipends) because, according to the State, all cost items must be negotiated through the single employee bargaining committee level, regardless of whether they are unique to a particular bargaining unit. From the record submitted, it appears this was the first time in the current bargaining cycle that the State took this position. There is also no indication in the record that the State had ever taken this position during previous bargaining cycles. As a result, Mr. Altman was compelled to suspend the scheduling and conduct of the fact finding pending a determination of the scope of the fact finding proceeding, and on February 14, 2020, the SEA filed this petition.

Decision and Order

Decision Summary:

Under RSA 273-A:9, I the SEA is entitled to bargain cost items that are unique to individual bargaining units separately from bargaining on common cost items through the single employee bargaining committee.

Jurisdiction:

The PELRB issues declaratory rulings pursuant N.H. Admin. Rules, Pub 206.

Discussion:

RSA 273-A:9, I of the Public Employee Labor Relations Act (PELRA) provides as follows:

All cost items and terms and conditions of employment affecting state employees in the classified system generally shall be negotiated by the state, represented by the governor as chief executive, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.

The PELRA definitions include *cost items* "...any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with which negotiations are being conducted" and *terms and conditions of employment* "...wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer, or confided exclusively to the public employer by statute or regulations adopted pursuant to statute." See RSA 273-A:1, IV and XI.

We interpret RSA 273-A:9, I according to the rules of statutory construction reviewed by the court in *Appeal of New England Police Benevolent Assoc., Inc.*, 171 N.H. 490 (2018):

When examining the statutory language, we ascribe the plain and ordinary meaning to the words used. We do not consider words and phrases in isolation, but rather within the context of the statute as a whole, and construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. We do not look beyond the language of a statute to determine legislative intent if the language is clear and unambiguous.

Id. at 493 (quotations and citations omitted). *Appeal of New England Police Benevolent Assoc., Inc.* also involved the interpretation of RSA 273-A:9, I's single employee bargaining committee requirements in the context of RSA 273-A:12 impasse. The court affirmed the PELRB's decision

that in the circumstances presented the five different unions³ representing state bargaining units were required to continue to negotiate through the single employee bargaining committee even after the parties' reached impasse, and stated that:

RSA 273-A:9, I, sets forth a framework for negotiations to occur between the Governor, on behalf of the State, and a single committee comprised of the exclusive representatives of all interested bargaining units *when negotiating common cost items and terms and conditions of employment.* (Emphasis added).

Id. at 494.

The issue raised by the petition for declaratory ruling is similar to the one the court addressed in *Appeal of New England Police Benevolent Assoc., Inc.*, as this case also involves the bargaining responsibilities of the single employee bargaining committee during impasse. According to the SEA, the single employee bargaining committee responsibilities do not include bargaining over cost items that are unique to an individual bargaining unit. The SEA correctly points out that the wages, or cost items at issue in this case are, by definition, terms and conditions of employment. The SEA reasons that since the second sentence of RSA 273-A:9, I specifically provides that terms and conditions of employment that are unique to a bargaining unit shall be negotiated by that bargaining unit individually (and not through the single employee bargaining committee), the subjects discussed in Finding of Fact 7 must be bargained by the individual bargaining unit (e.g. through sub-unit bargaining). The State's analysis is different. According to the State, the first sentence should be read to mean that the negotiation of all cost items is the responsibility of the single employee bargaining committee level, regardless of whether they affect state employees generally or are unique to an individual bargaining unit. Under this interpretation the second sentence should therefore be read to exclude cost items like

³ SEA, New England Police Benevolent Association (NEPBA), Teamsters Local 633, New Hampshire Troopers Association (NHTA), and New Hampshire State Police Command Staff of the NHTA.

wages from the terms and conditions of employment which are unique to an individual bargaining unit.

We read the first and second sentence of RSA 273-A:9, I together, and we also rely on the statutory definition of "terms and conditions of employment" when reading the second sentence as there is no language evincing a legislative intent to apply a different meaning. The first portion of the first sentence of RSA 273-A:9, I, "[a]ll cost items and terms and conditions of employment," is immediately followed by the phrase "affecting state employees in the classified system generally." There is no punctuation which separates the words "cost items" from what follows. The "affecting state employees in the classified system generally" language applies to "cost items and terms and conditions of employment." Therefore, all such matters "affecting state employees in the classified system generally" are reserved to the single employee bargaining committee, before and during impasse. The second sentence of RSA 273-A:9, I, is consistent with this reading of the first sentence. It states that terms and conditions of employment (the subjects listed in Finding of Fact 7) that are unique to an individual bargaining unit (e.g. which do not "affect state employees in the classified system generally") shall be negotiated at the individual bargaining unit level.

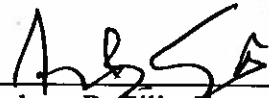
In summary, the general intent and purpose of RSA 273-A:9, I is: 1) the elevation to the single employee bargaining committee level of bargaining subjects that affect state employees in the classified system generally; and 2) the provision for the negotiation of bargaining subjects that are unique to individual bargaining units separate and apart from the single employee bargaining committee, e.g. through "sub-unit" bargaining to use the parties' parlance. This understanding of "sub-unit" bargaining under RSA 273-A:9, I is consistent with *Appeal of New England Police Benevolent Association, Inc.*, where the court interpreted RSA 273-A:9, I to mean that "common cost items and terms and conditions of employment" are subject to the

single employee bargaining committee requirement. It is also how the parties have actually structured negotiations until the current disagreement arose in February, 2020.

Therefore, our answer to Question 1 is Yes. Our answer to Question 2 is No. We provide no ruling on Question 3 as it is speculative at this point and because we trust that the parties are sophisticated enough to complete negotiations and finalize contracts without the further involvement of this board.

So ordered.

October 28, 2020



Andrew B. Eills, Esq.
Chair/Presiding Officer

By unanimous vote of Chair Andrew B. Eills, Esq., Board Member James M. O'Mara, Jr., and Alternate Board Member Glenn Brackett

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