



**State of New Hampshire**  
Public Employee Labor Relations Board

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

v.

**State of New Hampshire**

**Case No. G-0115-13**  
**Decision No. 2021-215**

Pre-Hearing Memorandum and Order

Date of Conference: December 21, 2021

Appearances: Gary Snyder, Esq. for the Complainant  
Jessica A. King, Esq., for the Respondent

Background:

On November 19, 2021, the State Employees' Association of NH, Inc., SEIU Local 1984 (SEA) filed an unfair labor practice complaint against the State under the Public Employee Labor Relations Act, claiming violations of RSA 273-A:5, I (a), (b), (e), (g), and (h). The complaint concerns certain<sup>1</sup> salary increases, or enhancements, for recruitment purposes the State made pursuant to RSA 99:8 at a time when the parties were actively engaged in bargaining and/or impasse proceedings. The SEA contends the State's actions involved a mandatory subject of bargaining (wages), and the State violated its duty to bargain in good faith over the terms and conditions because the State proceeded with unilateral action under RSA 99:8 instead of

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<sup>1</sup> Provided to: mental health workers at the Dept. of Corrections (29 positions); Office of Professional Licensure and Certification employees (2 positions); and HHS-DCYF CPSW's, Supervisor IV and VI (392 positions).

addressing the subject wage enhancements in bargaining and impasse proceedings. The SEA also contends the State has subverted the bargaining process, restrained and interfered with the right of unit employees to bargain wage changes, dominated and interfered with the administration of the SEA, and violated Article 19, and related appendices, of the parties' collective bargaining agreement.

As relief, the SEA requests that the board: 1) find that the State has committed unfair labor practices as charged; 2) order the State to cease and desist from all future wage enhancements or other wage changes that have not been bargained with the SEA; 3) order the State to bargain in good faith over the terms and conditions of employment, including wages; and 4) provide such other relief as may be just and proper.

The State denies that it has committed an unfair labor practice. According to the State, it was entitled to proceed with the disputed wage enhancements pursuant to RSA 99:8, Increases for Recruitment Purposes, which provides:

Upon request of the appointing authority, the governor and council are hereby authorized and empowered, notwithstanding any other provisions of the law to the contrary, upon a finding by them and a recommendation from the director of personnel that a substantial number of vacancies exist in any class of authorized positions which vacancies require an increase in salaries for recruitment of qualified personnel therefor, to increase salaries of such classified positions, any such increases to be a charge against the salary adjustment fund.

Citing the "*notwithstanding any other provisions of the law to the contrary*" language, the State argues that RSA 99:8 carves out a limited exception to its RSA 273-A obligation to negotiate changes to wages. The State further maintains that the SEA's complaint is, in substance, a challenge to the validity of RSA 99:8 and to the State's decision to proceed with wage enhancements for the purposes specified in RSA 99:8. The State argues that the interpretation and operation of RSA 99:8 are beyond the jurisdiction of this board, and the complaint should be dismissed on this basis. The State also contends that dismissal is required because, under RSA

99:8, the disputed wage enhancements have been reserved to the exclusive managerial authority of the Governor and Executive Council and are a prohibited subject of bargaining pursuant to *Appeal of State*, 138 N.H. 716, 722 (1994).

During the pre-hearing conference the need for an evidentiary hearing was discussed and it was agreed the events giving rise to the complaint and the parties' bargaining history are not contested, although the parties may not agree on the relevancy of all such matters. Accordingly, it was agreed that the hearing currently scheduled for January 13, 2022 can be cancelled, and the case submitted for decision on stipulated facts, exhibits, and briefs.

#### Issues for Determination by the Board

Whether the State committed an unfair labor practice in violation of any of the following sub-sections of RSA 273-A:5, I:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (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;
- (g) To fail to comply with this chapter or any rule adopted under this chapter; or
- (h) To breach a collective bargaining agreement.

#### Decision

1. "Parties" means the SEA, 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 agreed to submit this case on stipulated facts, exhibits, and briefs and provided a proposed filing schedule. Based on the parties' pleadings and the discussion at the pre-hearing conference, it does not appear at this time that there are any issues of relevant and

material fact in dispute in this case or that an evidentiary hearing is necessary. See Admin Rules Pub 201.06 (a) and Pub 203.05 (b). Accordingly, the January 13, 2022 hearing is cancelled.


3. This case shall proceed according to the following schedule:

<b>February 11, 2022:</b>	Stipulated facts and exhibits.
<b>March 4, 2022:</b>	Opening briefs.
<b>March 11, 2022:</b>	Reply briefs, if any.

4. Should either party subsequently determine that an evidentiary hearing may be necessary, a pleading shall be submitted providing the complete basis for such a request not later than **February 11, 2022**. Such a filing shall not suspend any deadline in this pre-hearing order.

So ordered.

Date: 12-21-2021

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

Distribution: Gary Snyder, Esq.  
Jessica A. King, Esq.  
Robyn A. Guarino, Esq.