This order affirms PELRB Decision No. 2006-169.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0114, Appeal of State Employees' Association of New Hampshire, Inc., the court on November 14, 2007, issued the following order:

The State Employees' Association of New Hampshire, Inc., SEIU, Local 1984 (SEA), appeals an order of the Public Employee Labor Relations Board (PELRB) addressing certification petitions filed by the New England Police Benevolent Association, Inc. (NEBPA). The SEA argues that the PELRB erred in: (1) denying its motion to consolidate this case with a pending unfair labor practice case against the State of New Hampshire (State); and (2) determining that a staff sergeant position should be included in a supervisory personnel bargaining unit. We affirm.

The PELRB's findings of fact are deemed prima facie lawful and reasonable, and its decision will be set aside only for errors of law or if it is shown to be unjust or unreasonable by a clear preponderance of the evidence. Appeal of White Mt. Reg. Sch. Dist., 154 N.H. 136, 138 (2006); see RSA 541:13 (1997).

At oral argument, the parties agreed that the PELRB had determined that the SEA failed to meet its burden in the unfair labor practice case and that the decision had been affirmed by this court. The SEA argued, however, that we should not apply the doctrine of mootness to bar consideration of the issue of consolidation because the issue would continue to arise in the future.

The doctrine of mootness is designed to avoid deciding issues that have become academic or dead. In re Guardianship of R.A., 155 N.H. 98, 100 (2007). Where there is a pressing public interest involved or future litigation may be avoided, a decision on the merits may be justified. Id. at 101. Because the issue of consolidation requires review of facts that are specific to each case, we decline to address consolidation in this case where the unfair labor practice claim has been finally resolved.

The SEA also contends that the PELRB erred in concluding that the staff sergeant position should be included in a supervisory personnel bargaining unit. RSA chapter 273-A gives the PELRB broad subject matter jurisdiction to determine and certify bargaining units to enforce the provisions of the chapter. Appeal of East Derry Fire Precinct, 137 N.H. 607, 609 (1993). RSA 273-A:8, II (1999) provides that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as

the employees they supervise." In East Derry, we discussed factors to be considered by the PELRB in determining whether employees were supervisory; these included their authority to evaluate other employees, their limited supervisory role and their disciplinary authority. East Derry, 137 N.H. at 610.

In this case, the PELRB applied the applicable factors, considered and resolved conflicts in testimony and reached a decision that is supported by the record. Accordingly, we affirm. See Appeal of Laconia Sch. Dist., 150 N.H. 495, 496 (2004) (when reviewing decision of PELRB, supreme court defers to PELRB's findings of fact).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk

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