Reverses PELRB Decision 2021-028.

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THE SUPREME COURT OF NEW HAMPSHIRE

Public Employee Labor Relations Board
No. 2021-0248

APPEAL OF STATE OF NEW HAMPSHIRE
(New Hampshire Public Employee Labor Relations Board)

Argued: March 15, 2022
Opinion Issued: July 21, 2022

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DONOVAN, J. The State appeals an order of the New Hampshire Public Employee Labor Relations Board (PELRB) ruling that the State committed unfair labor practices, in violation of RSA 273-A:5, I (2010), when the Governor: (1) sent an email to all state employees concerning collective

bargaining negotiations involving the State; and (2) refused to send the report of a neutral fact finder to the Executive Council for its consideration. We conclude that the State did not commit unfair labor practices and that the PELRB erred by concluding otherwise. Accordingly, we reverse and remand.

I. Facts

The following facts were found by the PELRB or are otherwise undisputed. The Unions — State Employees' Association of New Hampshire, SEIU Local 1984 (SEA) and New England Police Benevolent Association, Locals 40 and 45 (NEPBA) — represent several state employee bargaining units. In December 2018, the Unions and the State began negotiating a multi-year collective bargaining agreement. After the negotiations reached an impasse, the parties proceeded to impasse resolution procedures and engaged a neutral fact finder to assist them with resolving their disputes. See RSA 273-A:12 (Supp. 2021). In November 2019, the fact finder issued a report making recommendations for resolving the impasse.

The State rejected the fact-finder's report and recommendations, and NEPBA accepted them. The State also submitted an alternative proposal, which the Unions declined. In late 2019, SEA announced its intention to hold a membership vote on the report pursuant to RSA 273-A:12, II. On December 3, 2019, prior to its membership vote, SEA held an informational meeting with its members regarding the negotiations. Approximately ninety minutes before the informational meeting, the Governor sent an email to all state employees — including employees of the bargaining units represented by the Unions — concerning the fact-finder's report and the State's proposal. The full text of the Governor's email is set forth in the Appendix to this opinion.

Following the Governor's email, SEA began receiving inquiries from its members regarding the fact-finder's report. According to SEA, the "[c]allers were angry and confused," and "[m]any believed the Governor tried to mislead them to get them to vote against the fact-finder's report." Ultimately, SEA's members voted to accept the report. On December 5, the State posted a link to the Governor's email on an internet portal accessible by state employees. On December 18, the Governor announced that he would not send the fact-finder's report to the Executive Council pursuant to RSA 273-A:12, II.

Thereafter, the Unions filed unfair labor complaints with the PELRB alleging that the State committed unfair labor practices when the Governor sent the email to state employees and refused to send the fact-finder's report to the Executive Council. The PELRB consolidated the cases, and, in February 2021, issued an order ruling that the State engaged in unfair labor practices in violation of RSA 273-A:5, I. The PELRB concluded that the Governor's email constituted direct dealing, see RSA 273-A:5, I(e), and interfered with union members' rights and the administration of union business, see RSA 273-A:5,

I(a), (b). The PELRB also concluded that the email constituted a direct presentation to union members in violation of RSA 273-A:12, I(a), and, thus, was an unfair labor practice under RSA 273-A:5, I(g).

With respect to the Governor's refusal to send the fact-finder's report to the Executive Council, the PELRB concluded that the Governor was obligated to send the report pursuant to RSA 273-A:12, II, and, therefore, his refusal to do so was also an unfair labor practice. See RSA 273-A:5, I(g). The State filed a motion for reconsideration, which was denied. This appeal followed.

II. Standard of Review

RSA chapter 541 governs our review of PELRB decisions. See RSA 273-A:14 (2010). We will not set aside the PELRB's order except for errors of law, unless we are satisfied, by a clear preponderance of the evidence, that such order is unjust or unreasonable. Appeal of SEA (Sununu Youth Services Center), 171 N.H. 391, 394 (2018); see RSA 541:13 (2021). The PELRB's factual findings are presumed prima facie lawful and reasonable. Appeal of SEA, 171 N.H. at 394; see RSA 541:13. Accordingly, our task is not to determine whether we would have found differently or to reweigh the evidence, but, rather, to determine whether the PELRB's findings are supported by competent evidence in the record. Appeal of SEA, 171 N.H. at 394.

Resolving this appeal also requires that we interpret several provisions of RSA chapter 273-A. Statutory interpretation presents a question of law, which we review de novo. See Appeal of New England Police Benevolent Ass'n, 171 N.H. 490, 493 (2018). When examining statutory language, we ascribe the plain and ordinary meaning to the words used in the statute. Id. We do not consider words and phrases in isolation, but, rather, within the context of the statute as a whole. Id. We construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. Id. Furthermore, we interpret 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. Id. If the language of the statute is clear and unambiguous, we will not look beyond the language of the statute to determine its meaning. Id. at 493-94.

III. Analysis

A. Governor's Email

The State first argues that the PELRB erred by ruling that the Governor's email interfered with state employees' rights and the administration of union business in violation of RSA 273-A:5, I(a) and (b). We agree.

RSA 273-A:5, I, prohibits public employers from, among other things, "restrain[ing], coerc[ing] or otherwise interfer[ing] with its employees in the

exercise of the rights conferred by this chapter," RSA 273-A:5, I(a), and from "dominat[ing] or . . . interfer[ing] in the formation or administration of any employee organization," RSA 273-A:5, I(b). In Appeal of City of Portsmouth, Board of Fire Commissioners, 140 N.H. 435 (1995), we addressed the issue of "what speech constitutes 'interference' within the meaning of RSA chapter 273-A." Appeal of City of Portsmouth, 140 N.H. at 438. In that case, the PELRB ruled that a public employer violated RSA 273-A:5, I(a) and (b) when the employer made statements to a local newspaper about her views on union activities. Id. at 436-37. In reaching its decision, the PELRB determined that the employer's statements had "a disruptive effect" on union members and the administration of union business by "creat[ing] doubt in the effectiveness and truthfulness of the union leadership." Id. at 437 (quotations omitted). We reversed the PELRB's ruling, holding that, because the employer's statements "did not contain elements of 'intimidation, coercion, or misrepresentation,'" the employer did not violate RSA 273-A:5, I(a) or (b). Id. at 439. We further explained that, under RSA 273-A:5, I(a) and (b), "[p]roof of disruptive effect, whether intended or not and whether justified or not, does not amount to, or rise to the level of, interference." Id. (quotations omitted).

Similarly, in Appeal of AFL-CIO Local 298, 121 N.H. 944 (1981), we held that a public employer did not violate RSA 273-A:5, I(a) and (b) by mailing a letter to its employees three days before a union representation election. AFL-CIO Local 298, 121 N.H. at 946-47. We reasoned that the letter "did not contain any threats that employees would lose their jobs or be the victims of retaliation by the [employer]." Id. at 946. We also rejected the union's argument that "it did not have sufficient time to respond to the [employer's] letter by mailing a rebuttal letter," noting that RSA 273-A:5 does not impose "reasonable time, place and manner limitations" and citing the PELRB's observation that "there was no evidence that personal delivery to employees or other means of communications were not available [to the union] up to and including the day of election." Id. (quotation and emphasis omitted).

In light of our decisions in Appeal of City of Portsmouth and Appeal of AFL-CIO Local 298, we conclude that the Governor's email did not violate RSA 273-A:5, I(a) and (b). The email "did not contain any threats that employees would lose their jobs or be the victims of retaliation" if they voted in favor of the fact-finder's report. AFL-CIO Local 298, 121 N.H. at 946; see Appeal of City of Portsmouth, 140 N.H. at 439. That the Governor sent the email shortly before SEA's informational meeting is insufficient to constitute interference, as RSA 273-A:5 does not contain "reasonable time, place and manner limitations" and there is no evidence that SEA lacked an opportunity to respond to the Governor's email prior to the membership vote. AFL-CIO Local 298, 121 N.H. at 946. Indeed, the record demonstrates that SEA had an opportunity to respond to the Governor's email at the informational meeting, which was intended to inform SEA's members about the fact-finder's report and the State's proposal "so that [they could] make an educated decision."

(Quotation omitted.) Moreover, to the extent that the Governor's email may have caused anger and confusion among some of SEA's members, we have held that "[p]roof of disruptive effect" is insufficient to constitute interference. Appeal of City of Portsmouth, 140 N.H. at 439 (quotation omitted).

Nonetheless, the Unions argue that "the Governor's comments were at minimum a misrepresentation," and, therefore, the email constituted interference. We disagree. As explained above, in Appeal of City of Portsmouth, we held that an employer's communication with its employees does not constitute interference under RSA 273-A:5, I(a) and (b) unless it "contain[s] elements of intimidation, coercion, or misrepresentation." Appeal of City of Portsmouth, 140 N.H. at 439 (quotation omitted). A misrepresentation is a false factual assertion. See Black's Law Dictionary 1091 (9th ed. 2009) (defining "misrepresentation" as "an assertion that does not accord with the facts"). However, for the purposes of RSA 273-A:5, I(a) and (b), the fact that an employer's communication may contain a misrepresentation is not alone sufficient to establish that the communication constitutes interference. In such cases, we must consider whether the misrepresentation has a tendency to coerce employees or to unduly influence unions in their formation or administration. See RSA 273-A:5, I(a)-(b); see also 48A Am. Jur. 2d Labor and Labor Regulations § 1336, at 215 (2005) ("[T]he issue is not the label placed on the employer's action, but whether the action tends to coerce or not or, considered from the employees' point of view, whether the action had a reasonable tendency to coerce . . . ."); 48A Am. Jur. 2d Labor and Labor Regulations § 1478, at 305 ("Employer domination or interference . . . pertains to undue employer influence upon labor organizations in connection with the collective-bargaining process.").

To support their argument, the Unions point to the Governor's statement that, upon receiving the fact-finder's report, he "instructed State negotiators to put forward a proposal that was nearly identical to the fact-finder's conclusions and heavily favored the union leadership's requests." The Unions also rely upon the Governor's statement that the State's proposal included "nearly all the fact-finder's recommendations, with the exception of a single recommendation to re-open an old contract that had previously been agreed upon in good faith by all parties." The Unions argue that these statements were misrepresentations because, when considered in light of the specific items that the Governor identified in the email as part of the State's proposal, they "severely downplay[ed] the value and significance of the State's wage proposals compared to what the fact finder recommended." The Unions further argue that the email misstated the extent to which the State would have absorbed increased healthcare costs under the State's proposal.

Even assuming that the Governor's email misrepresented the extent to which the State's proposal differed from the fact-finder's report, we conclude that any such misrepresentation was not part of an attempt to coerce

employees to reject the fact-finder's report or otherwise to exert undue influence upon SEA's membership vote. Although the Governor expressed his "hope" that the Unions would "reconsider the many valuable benefits that the state's proposal offers to state employees," his email did not expressly characterize the State's proposal as superior to the fact-finder's report, and it did not expressly urge employees to vote against the report. Nor did the Governor specifically identify his misgivings with the report, noting only that the State's proposal excluded "a single recommendation to re-open an old contract." Nothing in the Governor's email attempted to portray the excluded recommendation as disadvantageous to employees. To the contrary, the Governor stated that "the fact-finder's report is fair and shares my appreciation for [the employees'] hard work and commitment to our state." Thus, even if the Governor minimized some of the differences between the State's proposal and the fact-finder's report, he did not represent the report as less favorable to employees than the State's proposal. We therefore conclude that, because the statements did not have a tendency to intimidate or coerce employees to reject the fact-finder's report or otherwise to unduly influence SEA's membership vote, the statements did not constitute interference under RSA 273-A:5, I(a) and (b).

SEA also points to the Governor's statement that the fact finder "worked to help [the parties] reach a compromise." It argues that this statement was a misrepresentation because, "at the time of sending the email, no compromise had been reached, and the parties were still at an impasse." Again, we disagree. Contrary to the Unions' argument, this statement did not suggest that, at the time the Governor sent the email, the parties had reached an agreement. Rather, the statement merely described the fact finder's role in the negotiations. Moreover, the Governor expressly stated in the email that the State had reached an agreement with only two of the unions and that it was still negotiating with "the remaining unions." Thus, when considered in light of the rest of the email, this statement was not a misrepresentation. We therefore conclude that the PELRB erred by ruling that the Governor's email constituted interference in violation of RSA 273-A:5, I(a) and (b).

Next, the State challenges the PELRB's ruling that the Governor's email constituted direct dealing in violation of RSA 273-A:5, I(e). RSA 273-A:5, I(e) prohibits public employers from "refus[ing] to negotiate in good faith with the exclusive representative of a bargaining unit." Accordingly, a public employer must refrain from negotiating with any union member who is not designated as an exclusive representative. Appeal of Town of Hampton, 154 N.H. 132, 134 (2006). "Dealing directly with employees is generally forbidden because it seriously compromises the negotiating process and frustrates the purpose of RSA chapter 273-A." Id. (quotation and brackets omitted). However, an employer does not commit a per se unfair labor practice by merely communicating with its employees. Id. "The fundamental inquiry . . . is

whether the employer has chosen to deal with the Union through the employees, rather than with the employees through the Union." N.L.R.B. v. Pratt & Whitney Air Craft Div., 789 F.2d 121, 134 (2d Cir. 1986) (quotation omitted).

We conclude that the Governor's email did not constitute direct dealing in violation of RSA 273-A:5, I(e). Although, as the Unions point out, the Governor sent the email directly to state employees during the course of the negotiations, the email did not contain threats of retaliation or job loss. Cf. Appeal of Franklin Education Assoc., 136 N.H. 332, 335-37 (1992) (concluding that school board engaged in direct dealing when it sent contracts directly to teachers, without consulting the union, offering lower wages and "indicat[ing] that the teachers could not refuse to sign without risking their jobs"). Nor did the Governor blame the Unions for the impasse or solicit feedback about state employees' views on the negotiations. Cf. Ryan Iron Works, Inc. v. N.L.R.B., 257 F.3d 1, 7 (1st Cir. 2001) (concluding that employer engaged in direct dealing when he "told [an employee] that the failure of negotiations was the Union's fault and actively solicited . . . input" on other employees' views).

Nor, for that matter, did the Governor "encourage employees to come directly to [the State] if they were unhappy with [the Unions]." Americare Pine Lodge Nursing v. N.L.R.B., 164 F.3d 867, 880 (4th Cir. 1999). To the contrary, the Governor acknowledged the Unions' role in the negotiations, announcing that the State had reached an agreement with two other unions and expressing his "hope that the remaining unions will reconsider" the State's proposal. Cf. id. When considered as a whole, nothing in the email indicates that the Governor intended to bypass the Unions and negotiate directly with union members. We therefore conclude that the PELRB erred by ruling that the Governor's email constituted direct dealing in violation of RSA 273-A:5, I(e).

Nonetheless, SEA argues that the Governor's email was direct dealing because, in its view, the email was contrary to RSA 273-A:12, I(a), which sets forth the first step of impasse resolution. The statute provides:

> I. (a) Whenever the parties request the board's assistance or have bargained to impasse, or if the parties have not reached agreement on a contract within 60 days, or in the case of state employees 90 days, prior to the budget submission date, and if not otherwise governed by ground rules:
>
> > (1) The chief negotiator for the bargaining unit may request to make a presentation directly to the board of the public employer. If this request is approved by the board of the public employer, the chief negotiator for the board of the public employer shall in turn have the right to make a

> presentation directly to the bargaining unit. The cost of the respective presentations shall be borne by the party making the presentation.
>
> (2) The chief negotiator for the board of the public employer may request to make a presentation directly to the bargaining unit. If this request is approved by the bargaining unit, the chief negotiator for the bargaining unit shall in turn have the right to make a presentation directly to the board of the public employer. The cost of the respective presentations shall be borne by the party making the presentation.

RSA 273-A:12, I(a). If neither party requests the opportunity to make a direct presentation pursuant to RSA 273-A:12, I(a), the parties proceed to the second step of impasse resolution, mediation and fact finding, see RSA 273-A:12, I(b).

SEA argues that, by enacting RSA 273-A:12, I(a), "the legislature chose to limit direct presentations to employees and prohibited them generally, choosing instead to only permit direct presentation to employees under specific limited circumstance[s] described [in the statute]." In SEA's view, "if direct presentation is permitted under these limited circumstances, but nowhere else, then it must be presumed direct presentation of bargaining proposals and issues is otherwise prohibited." Thus, SEA argues that, because the State did not request a direct presentation pursuant to RSA 273-A:12, I(a), it was prohibited from communicating directly with its employees about the negotiations during the later stages of impasse resolution. For these reasons, SEA argues that the PELRB correctly concluded that the Governor's email violated RSA 273-A:12, I(a), and, thus, was an unfair labor practice.

We disagree with the Unions' interpretation of RSA 273-A:12, I(a). The statute's plain language indicates that the legislature intended RSA 273-A:12, I(a) to encourage discussion between the parties before they proceed to mediation and fact finding, not to limit the parties' communications at later stages in the process. See RSA 273-A:12; see also Appeal of Town of Hampton, 154 N.H. at 134 ("[T]he mere act of communication by an employer with its employees is not a per se unfair labor practice under RSA 273-A:5."). Moreover, precluding public employers from communicating with their employees about the negotiations after the initial stages of impasse resolution would contravene the purpose of RSA 273-A:12 — which is to assist the parties in resolving disputes when their negotiations reach an impasse — by disrupting the "the free flow of information from both union and employer." Appeal of City of Portsmouth, 140 N.H. at 438; see also Pratt & Whitney Air Craft Div., 789 F.2d at 134 ("Granting an employer the opportunity to communicate with its employees . . . aids the workers by allowing them to make informed decisions while also permitting them a reasoned critique of their unions' performance."). We will not presume that the legislature intended

this result. See Holt v. Keer, 167 N.H. 232, 239 (2015) ("[W]e construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." (quotation omitted)).

We therefore conclude that the PELRB erred by ruling that the Governor's email violated RSA 273-A:12, I(a) and constituted an unfair labor practice in violation of RSA 273-A:5, I(a), (b), (e), and (g). Accordingly, we reverse the PELRB's decision on this issue and remand.

B. Submission to the Executive Council

The State next argues that RSA 273-A:12, II did not require the Governor to send the fact-finder's report to the Executive Council, and, therefore, his refusal to do so was not an unfair labor practice. See RSA 273-A:5, I(g) ("It shall be a prohibited practice for any public employer . . . [t]o fail to comply with this chapter or any rule adopted under this chapter."). We agree.

RSA 273-A:12, II provides:

> If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be submitted to the full membership of the employee organization and to the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law.

For "executive branch state employees," the term "board of the public employer" in RSA 273-A:12, II means "the governor and council." RSA 273-A:1, II(a)(1) (2010). In general, when interpreting statutes, we construe the phrase "governor and council" to mean "the governor with the advice and consent of the council." RSA 21:31-a (2020); see RSA 21:1 (2020).

Our decision in Brouillard v. Governor and Council, 114 N.H. 541 (1974), is instructive. In Brouillard, an advisory commission nominated four individuals to serve as Commissioner of Health and Welfare pursuant to RSA 126-A:4 (Supp. 1973), which provided, in part, that the Commissioner of Health and Welfare "shall be appointed by the governor and council from two or more nominees." Id. at 542-43 (quotation omitted). The Governor sent the nominees' names to the Executive Council, which voted favorably for two of the nominees. Id. The Governor subsequently negated the confirmations, and members of the advisory commission filed a petition for a writ of mandamus, arguing that the Council's favorable vote for one of the nominees constituted an appointment. Id. at 543-45. Rejecting the commission's argument, we explained that "a strict reading of RSA 126-A:4 (Supp. 1973) and RSA 21:31-a would indicate that a person becomes a commissioner after the Council has confirmed an appointment by the Governor." Id. at 546. Nonetheless, we

concluded that, because "this result was not contemplated by the Governor and in fact was contrary to his intention when he submitted the names of the nominees to the Council," the Council's vote was not an appointment. Id.

Applying the reasoning of Brouillard to this case, we conclude that, if the Governor rejects a fact-finder's report pursuant to RSA 273-A:12, II, the Executive Council cannot unilaterally accept the report on the State's behalf. See RSA 273-A:12, II; cf. Brouillard, 114 N.H. at 547 ("In accordance with RSA 21:31-a the sole power of appointment lies with the Governor subject to the 'consent of the council.'"). To hold otherwise would undermine the Governor's "sole authority to direct the negotiation process." Appeal of House Legislative Facilities Subcom., 141 N.H. 443, 446 (1996); see RSA 273-A:9, I (Supp. 2021) (providing that "[a]ll 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" (emphasis added)).

We further conclude that, because the Executive Council cannot override the Governor's rejection of a fact-finder's report, RSA 273-A:12, II does not require the Governor to submit the report to the Council for its consideration. See RSA 273-A:1, II(a)(1); RSA 21:31-a. Our decision in Sunapee Difference v. State of New Hampshire, 164 N.H. 778 (2013), supports this conclusion. In that case, we held that RSA 4:40, I (2020) — which governs the disposal of state-owned property — did not require the Governor to submit an amendment of the parties' lease to the Executive Council. Id. at 790-92. Interpreting "governor and council" in RSA 4:40, I, as consistent with RSA 21:31-a, we concluded that "RSA 4:40 did not require the Governor to present the proposed lease amendment to the Executive Council when he did not approve the amendment himself." Id. at 792. In so holding, we relied upon a Massachusetts case interpreting language similar to RSA 21:31-a as meaning that the Governor is not "'obliged to ask advice, in the first instance, from an official body whose opinion could never relieve him from the duty of deciding.'" Id. at 791 (quoting In re Opinion of the Justices, 78 N.E. 311, 312 (Mass. 1906)).

In light of our holding in Sunapee Difference, we conclude that, if the Governor rejects a fact-finder's report, RSA 273-A:12, II does not require the Governor to submit the report to the Executive Council. The Unions argue that Sunapee Difference is not controlling because "RSA 273-A and RSA 4:40 are substantially different in content and purpose." They further argue that RSA 21:31-a "is not definitive for all statutes" and that adopting the definition of "governor and council" set forth in RSA 21:31-a "would be inconsistent with the intent of the legislature." To support this argument, the Unions rely upon language from Appeal of Derry Education Association, 138 N.H. 69, 73 (1993), that "part of" the purpose of RSA 273-A:12 is "to broaden participation in impasse negotiations and to make the parties vulnerable to the publicity that

will no doubt attend an impasse." (Quotations omitted.) In the Unions' view, this goal "is not met if the Governor can simply choose to not submit the fact-finder's report to the council for a vote." We are unpersuaded.

RSA 4:40, I, requires submission of "all requests for the disposal or leasing of state-owned properties" to "the governor and council for approval." RSA 4:40, I. Notwithstanding this requirement, in Sunapee Difference, we concluded that RSA 4:40, I, did not require the Executive Council's consideration of a lease amendment that the Governor rejected. See Sunapee Difference, 164 N.H. at 791-92. Similar to RSA 4:40, I, RSA 273-A:12, II provides, in relevant part: "If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be submitted to . . . the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law." (Emphases added.)

We recognize that, unlike RSA 4:40, I, RSA 273-A:12, II, contains the mandatory language "shall be submitted" and "shall vote." RSA 273-A:12, II; see In the Matter of Bazemore & Jack, 153 N.H. 351, 354 (2006) ("It is a general rule of statutory construction that . . . the word 'shall' makes enforcement of a provision mandatory."). Nonetheless, as in Sunapee Difference, our construction of the phrase "governor and council," as defined by RSA 21:31-a, informs our interpretation of RSA 273-A:12, II. See Appeal of New England Police Benevolent Ass'n, 171 N.H. at 493 ("We do not consider words and phrases in isolation, but rather within the context of the statute as a whole . . . ." (quotation omitted)). That RSA 273-A:12, II mandates submission of the fact-finder's report to "the board of the public employer" does not mean that, in every case involving state employee negotiations, the "board of the public employer" includes the Executive Council. RSA 273-A:12, II; see RSA 273-A:1, II(a)(1). Moreover, because, as explained above, the Executive Council cannot unilaterally accept a fact-finder's report that the Governor has rejected, we interpret the phrase "shall vote" in RSA 273-A:12, II as referencing only the Governor under such circumstances. Thus, although RSA 4:40, I, and RSA 273-A:12, II differ "in content and purpose," our decision in Sunapee Difference is instructive.

We are also unpersuaded by the Unions' reliance upon the legislative goal described in Appeal of Derry, 138 N.H. at 73. In Appeal of Derry, we held that RSA 273-A:12, III(a) required a school board to submit a fact-finder's report "to [its] legislative body for review, but that the legislative body may not bind the parties by a vote on non-cost items." Appeal of Derry, 138 N.H. at 73. In reaching that conclusion, we rejected the school board's argument that requiring submission of a fact-finder's report to a legislative body for a non-binding vote would lead to absurd results. Id. at 72-73. We explained that "part of [RSA chapter 273-A's] purpose is to broaden participation in impasse negotiations and to make the parties vulnerable to the publicity that will no doubt attend an impasse." Id. at 73 (quotations omitted). We further

explained that requiring submission of the report to the legislative body would likely serve this goal by "heighten[ing] public scrutiny of the negotiations" and by "increas[ing] the pressure on the parties to reach agreement." Id.

We conclude that Appeal of Derry is distinguishable because it involved submitting fact-finders' reports to legislative bodies, whereas the question presented in this case involves submitting such reports to the Executive Council. Unlike the Executive Council, legislative bodies have authority to accept or reject cost items set forth in collective bargaining agreements. See RSA 273-A:3, II(b) (Supp. 2021). Because the Executive Council lacks this authority, and therefore has no further role in collective bargaining negotiations, its non-binding vote on a fact-finder's report is less likely to "increase the pressure on the parties to reach agreement." Appeal of Derry, 138 N.H. at 73. Thus, we will not assume that the legislature intended RSA 273-A:12, II to require a non-binding vote of the Executive Council on a fact-finder's report that the Governor has rejected. We therefore conclude that the PELRB erred by ruling that the Governor's refusal to send the fact-finder's report to the Executive Council was an unfair labor practice pursuant to RSA 273-A:5, I(g).

Reversed and remanded.

HANTZ MARCONI, J., and ABRAMSON, J., retired superior court justice, specially assigned under RSA 490:3, concurred; HICKS and BASSETT, JJ., dissented.

HICKS and BASSETT, JJ., dissenting. The New Hampshire Public Employee Labor Relations Board (PELRB) ruled that the State committed unfair labor practices, in violation of RSA 273-A:5, I (2010), when the Governor: (1) refused to submit the report of a neutral fact-finder to the Executive Council for a vote; and (2) sent an email to all state employees concerning collective bargaining negotiations involving the State. The majority concludes that the PELRB erred, and that the State committed no unfair labor practices. We respectfully dissent.

We agree with the majority's summary of the facts and statement of our review standards. We begin by addressing the State's argument that RSA 273-A:12, II (Supp. 2021) did not require the Governor to submit the fact-finder's report to the Executive Council for a vote, and, therefore, his refusal to do so was not an unfair labor practice. See RSA 273-A:5, I(e) & (g).

RSA 273-A:12, II provides:

> If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be

> submitted to the full membership of the employee organization and to the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law.

We agree with the majority that, in regard to "executive branch state employees," the term "board of the public employer" in RSA 273-A:12, II means "the governor and council." RSA 273-A:1, II(a)(1) (2010).

We need look no further than the plain language of the relevant statutes to resolve this issue. When read in conjunction with RSA 273-A:1, II(a)(1), RSA 273-A:12, II provides that the findings and recommendations of the fact-finder shall be submitted to the Governor and Council, which shall vote to accept or reject so much of the fact-finder's recommendations as is otherwise permitted by law. As the majority acknowledges, use of the word "shall" makes enforcement of the provision mandatory. In the Matter of Bazemore & Jack, 153 N.H. 351, 354 (2006). Here, even if we assume that the fact-finder's report was "submitted" to the Governor, it was never submitted to the Council, and the Council never had an opportunity to vote on it. Accordingly, the PELRB correctly concluded that the State failed to comply with the plain requirements of RSA 273-A:12, II.

The State argues that if the statute mandates submission of the fact-finder's report to the Council for a vote, it encroaches upon the Governor's authority under Part II, Article 62 of the State Constitution, and thereby violates the separation of powers among the three branches of state government required by the constitution. See N.H. CONST. pt. I, art. 37. The State contends that under Article 62, the full power and authority to convene the Council falls within the Governor's discretion, and requiring that the fact-finder's report be submitted to the Council for a vote "would fundamentally alter the constitutionally determined roles and responsibilities of the Governor and Executive Council and undermine the proper functioning of this body."

Article 62 provides in part: "And the Governor shall have full power and authority to convene the council, from time to time, at his discretion; and, with them, or the majority of them, may and shall, from time to time hold a council, for ordering and directing the affairs of the state, according to the laws of the land." N.H. CONST. pt. II, art. 62 (emphases added). In addition, the separation of powers provision in the State Constitution expressly recognizes that there must be some overlap among the three branches of government, and we have held that it is violated only when one branch usurps "an essential power of another." State v. Carter, 167 N.H. 161, 166 (2014). Given that statutes are presumed constitutional and will only be declared invalid upon inescapable grounds, Gen. Elec. Co. v. Comm'n, N.H. Dep't of Revenue Admin., 154 N.H. 457, 466 (2006), we are not persuaded that the statute, as we construe it, is inconsistent with Part II, Article 62. Furthermore, even

assuming that it is inconsistent as the State contends, we are not persuaded that it usurps "an essential power" of the Governor.

Despite the plain language of RSA 273-A:12, II, the majority concludes that the statute does not require the Governor to submit the report to the Council for its consideration, citing Sunapee Difference v. State of New Hampshire, 164 N.H. 778 (2013). We disagree.

Sunapee Difference dealt with the disposal or leasing of state-owned property, not labor negotiations. At issue was RSA 4:40, I (2020), which provides that requests for the disposal or leasing of state-owned properties are to be submitted "to the governor and council for approval." Interpreting that language, we noted that RSA 21:31-a (2020) defines "governor and council" as "the governor with the advice and consent of the council." We then considered a Massachusetts Supreme Judicial Court opinion holding that the Governor was not obliged to bring before the council an application for pardon when he was plainly of the opinion that no pardon should be granted. We also noted the Massachusetts court's reasoning "'that the responsibility rests primarily upon the Governor to determine as the supreme executive magistrate whether any action is called for, and what action, if any, is desirable; and that the provision for advice of council is a requirement that their approval and concurrence shall accompany the affirmative act and enter into it before it becomes complete and effective.'" Sunapee Difference, 164 N.H. at 791 (quoting Opinion of the Justices, 78 N.E. 311, 312 (Mass. 1906)). Guided by those principles, we concluded that RSA 4:40 "did not require the Governor to present the proposed lease amendment to the Executive Council when he did not approve the amendment himself." Id. at 792.

Sunapee Difference is easily distinguished from the instant case. First, RSA 273-A:12, II mandates not only that the fact-finder's report be submitted to Governor and Council, but also that Governor and Council vote to accept or reject the proposal. Nothing in the statutes construed in Sunapee Difference mandated the Governor and Council to vote to accept or reject the proposed lease amendment there at issue. Thus, unlike in the instant case, in Sunapee Difference there was no legislative mandate requiring Governor and Council to vote.

Second, our holding in Sunapee Difference did not render the references to the Council in RSA 4:40 superfluous. While our holding allowed the Governor to unilaterally determine not to approve a proposal to lease state-owned property, the Governor could not approve such a proposal unilaterally — the Executive Council retained the authority to reject such a request even when the Governor approved it. Thus, our holding did not render the statute's requirement of submission to the Governor and Council for approval a nullity — requests to dispose of or lease state-owned property require the Council's approval.

Here, in contrast, the majority's construction renders language in both RSA 273-A:1, I(a)(1) and RSA 273-A:12, II superfluous. The Governor, as chief executive, has the sole authority to direct the negotiation process. See RSA 273-A:9, I; In re N.H. Troopers Ass'n, 175 N.H. ___, ___ (decided May 12, 2022) (slip op. at 8). Thus, the Governor could, without consent of the Executive Council, approve a fact-finder's report and enter into a collective bargaining agreement with a union (subject only to approval of cost items by the legislature). If the majority is correct that there is no reason for the Governor to submit a fact-finder's report that he has rejected to the Council for a non-binding vote pursuant to RSA 273-A:12, II, it follows that there is also no reason for the Governor to submit a fact-finder's report that he has accepted to the Council pursuant to RSA 273-A:12, II in those instances in which the union's negotiating team rejects the report. What, then, is the purpose of defining "board of the public employer" as the Governor and Council, and what is the purpose of providing that a fact-finder's report be submitted to the Governor and Council for a vote? The majority's construction of RSA 273-A:12 negates any substantive role for the Council.

Similarly, the inclusion of the Council in the definition of "board of the public employee" is rendered superfluous by the majority's interpretation. The only roles assigned to the board of the public employer of executive branch state employees are the roles set forth in RSA 273-A:12. And the primary role for the board of the public employer under that statute is to consider and vote upon the fact-finder's report. Yet the majority interprets RSA 273-A:12 as not requiring the Council's participation. In essence, the majority concludes that "board of the public employer" means the Governor alone. This is contrary to our canons of statutory construction. See State v. Parr, 175 N.H. ___, ___ (decided March 17, 2022) (slip op. at 4) (stating that we must give effect to all words in a statute, and presume that the legislature did not enact superfluous words).[1]

Third, our holding in Sunapee Difference rested upon the foundation that, under the statutory scheme at issue, the responsibility lay primarily with the Governor to determine "whether any action is called for, and what action, if any, is desirable." Sunapee Difference, 164 N.H. at 791 (quotation omitted). The court declined to construe the statutory definition of "governor and council" in RSA 21:31-a ("the governor with the advice and consent of the council") as mandating that the Governor always seek the Council's advice

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[1] The majority's reliance upon Sunapee Difference is flawed because the definition of "governor and council" applicable to RSA 4:40 is not applicable here. In Sunapee Difference, we concluded that the phrase "governor and council" in RSA 4:40 meant "the governor with the advice and consent of the council." Sunapee Difference, 164 N.H. at 791; see RSA 21:31-a. Under this definition, the Council's approval and concurrence is required in order for a proposal to become effective. That definition does not apply to RSA 273-A:12, II, as it would give the Council the ability to veto the Governor's acceptance of a fact-finder's report.

before determining "whether any action is called for, and what action, if any, is desirable." In other words, the court concluded that, once the Governor determined that the proposed lease amendment should not be approved under RSA 4:40, I, it would be illogical to construe the statute as requiring him to submit the proposed amendment to the Council for a vote. See id. Quoting from the above-referenced Massachusetts case, the court noted that "[n]othing could ever be gained by asking the council to give advice under such conditions." Id. (quotation omitted).

Here, by contrast, the legislature has specifically addressed the question of whether the fact-finder's report should be submitted for a vote. RSA 273-A:12, II does not involve a responsibility that rests primarily upon the Governor to determine, "as the supreme executive magistrate," whether any action is called for, and what action, if any, is desirable. Id. (quotation omitted). Under the Public Employee Labor Relations Act, the State is "represented by the governor as chief executive," RSA 273-A:9, I. The Governor exercised his responsibility as "supreme executive magistrate" when he rejected the fact-finder's report. It was that action that triggered the requirement in RSA 273-A:12, II that the report be submitted to the Governor and Council for a vote. It is incongruous at best to construe RSA 273-A:12, II as requiring only that the Governor, who just rejected the fact-finder's report, unilaterally decide whether to submit that same report to the Council for a vote. If the statute permits the Governor, who just rejected the fact-finder's report, to unilaterally decide to take no action on that same report, then the statute serves no purpose. To paraphrase Sunapee Difference, nothing could ever be gained by requiring the Governor to "submit" a report, which he has just rejected, to himself alone, for his "vote" to accept or reject it. That would be nonsensical, yet that is how the majority construes the statute.

RSA 273-A:12 is part of a statutory scheme governing labor relations that is intended to assist parties in reaching agreement on a contract. In Sunapee Difference, we concluded, for good reason, that if the Governor did not approve of a proposal to dispose of or lease state-owned property, then nothing would be gained by requiring him to submit the proposal to the Council. That was reasonable because under RSA 4:40, the Governor's decision was final — he was under no obligation to continue to attempt to reach agreement with the party seeking to obtain or lease the property in question. Here, however, the Governor's decision to reject the fact-finder's report does not end the matter — the Governor continues to be obliged to negotiate in good faith towards the goal of reaching agreement on a contract. RSA 273-A:3, I. Submission of the fact-finder's report to the Council, resulting in the expression of the Council's position on the report, is one step mandated by the legislature to assist the parties in ultimately reaching an agreement. Even though the Governor, as chief executive, previously rejected the report, RSA 273-A:12, II still requires that the report be submitted to the Governor and Council for a vote — the advice and vote of the Council, while non-binding, may aid the Governor in

reconsidering his position or in formulating new proposals in his continuing efforts, required by RSA 273-A:3, to reach agreement on a contract. Thus, the rationale supporting the result in Sunapee Difference does not apply here, where the Governor has an ongoing duty to negotiate in good faith in order to reach agreement on a contract.

Moreover, our case law makes clear why the legislature included the requirement in RSA 273-A:12, II that the Governor and Council vote on the report. In Appeal of Derry Education Association, we considered whether RSA 273-A:12, III(a) requires a school board to submit a fact-finder's report on only non-cost items to its legislative body for review, even though the legislative body cannot bind the parties by a vote on non-cost items. Appeal of Derry Educ. Assoc., 138 N.H. 69, 73 (1993). To answer that question, we examined legislative history and determined that part of RSA 273-A:12's purpose is to broaden participation in impasse negotiations and to make the parties vulnerable to the publicity that will no doubt attend an impasse. Id. at 73. Noting that submission of the fact-finder's report to the legislative body in Appeal of Derry would likely heighten public scrutiny of the negotiations and could increase the pressure on the parties to reach agreement, we construed the statute as requiring that the report be submitted.

Here, requiring that the fact-finder's report be submitted to the Governor and Council for their consideration and a vote furthers that same purpose. As was true in Appeal of Derry, submission of the report to the Council for a non-binding vote can heighten public scrutiny of the negotiations, and the expression of the Executive Council's position on the report can increase the pressure on the parties to reach agreement. See id. Thus, it is not the case here that nothing could ever be gained by asking the Council to give advice and vote simply because the Governor has rejected the fact-finder's report. Indeed, the statutory scheme anticipates that the Governor may have already rejected the report when RSA 273-A:12, II comes into play — the statute is intended to require submission to and a vote by the Council despite the fact that the Governor has already rejected the report.

The majority attempts to distinguish Appeal of Derry on the ground that it involved submitting a fact-finder's report to a legislative body, arguing that unlike the Executive Council, legislative bodies have authority to accept or reject cost items set forth in collective bargaining agreements. See RSA 273-A:3, II(b) (Supp. 2021). The majority concludes that because the Executive Council lacks this authority, its non-binding vote on a fact-finder's report is "less likely" to increase the pressure on the parties to reach agreement. Appeal of Derry, 138 N.H. at 73. This attempt fails for two reasons.

First, the fact-finder's report in Appeal of Derry involved purely non-cost items. The court explained that the legislative body's vote on non-cost items was not binding — school boards, not legislative bodies, have authority to

negotiate and enter into collective bargaining agreements. Thus, nothing supports the majority's speculation that a non-binding vote of the Executive Council on a fact-finder's report is less likely to increase the pressure on the parties to reach agreement than the non-binding vote of the legislative body on the fact-finder's report in Appeal of Derry.

Second, it is not the court's role to second-guess the legislature. Matters of public policy are reserved for the legislature. In the Matter of Plaisted & Plaisted, 149 N.H. 522, 526 (2003). The legislature has determined that the Governor and Council "shall vote to accept or reject" the fact-finder's report, and doing so furthers the legislature's purpose in enacting RSA 273-A:12, II. Whether that legislative purpose is "less likely" to be fulfilled here than in other factual situations is not a sound reason to construe the statute so that it is directly at odds with both its plain language and acknowledged purpose.

We conclude that the plain language of RSA 273-A:12, II required submission of the fact-finder's report to the Council for a vote. Requiring such a vote furthers the purpose of RSA 273-A:12, II. Moreover, construing the statute as permitting the Governor, after rejecting a fact-finder's report, to unilaterally refer the same report to himself absent advice or input from the Council renders the statute nonsensical. Accordingly, we would affirm the PELRB's determination that the State committed an unfair labor practice when the Governor refused to submit the fact-finder's report to the Executive Council for a vote.

We now turn to the second issue presented by this appeal. The State argues that the PELRB erred by ruling that the Governor's email interfered with state employees in the exercise of their rights under RSA chapter 273-A. Again, we respectfully disagree.

RSA 273-A:5, I(e) prohibits public employers from refusing "to negotiate in good faith with the exclusive representative of a bargaining unit." "Dealing directly with employees is generally forbidden because it seriously compromises the negotiating process and frustrates the purpose of RSA chapter 273-A." Appeal of Town of Hampton, 154 N.H. 132, 134 (2006). In addition, RSA 273-A:5, I, prohibits public employers from, among other things, "restrain[ing], coerc[ing] or otherwise interfer[ing] with its employees in the exercise of the rights conferred by this chapter," RSA 273-A:5, I(a).

In Appeal of City of Portsmouth, the court addressed the issue of "what speech constitutes 'interference' within the meaning of RSA chapter 273-A." Appeal of City of Portsmouth, 140 N.H. 435, 438 (1995). As the majority explains, in that case the court held that, because the employer's statements "did not contain elements of 'intimidation, coercion, or misrepresentation,'" the union failed to demonstrate "interference . . . within the meaning of RSA 273-A:5, I(a) and (b)." Id. at 439 (emphasis added).

Here, the Unions contend that the Governor's email contained several misrepresentations, including the Governor's statement that, upon receiving the fact-finder's report, he "instructed State negotiators to put forward a proposal that was nearly identical to the fact-finder's conclusions and heavily favored the union leadership's requests," and his statement that the State's proposal included "nearly all the fact-finder's recommendations, with the exception of a single recommendation to re-open an old contract that had previously been agreed upon in good faith by all parties." The Unions further argue that the email misstated the extent to which the State would have absorbed increased healthcare costs under the State's proposal.

We note, as does the majority, that our task on appeal is not to determine whether we would have found differently from the PELRB or to reweigh the evidence, but, rather, to determine whether the PELRB's findings are supported by competent evidence in the record. Appeal of SEA (Sununu Youth Services Center), 171 N.H. 391, 394 (2018). Here, the PELRB found that the email "includes language designed to align the State's proposal with the fact finder's recommendations even though there are clear substantive differences between the two, particularly with respect to wages." This finding is supported by competent evidence in the record. Most significant is the statement in the Governor's email that the State had "proposed nearly all the fact-finder's recommendations, with the single recommendation to re-open an old contract that had previously been agreed upon in good faith by all parties." As the PELRB aptly stated, "It is difficult to reconcile this characterization with the fact that the fact finder recommended a wage increase of 2.86% in year 1 and 1.16% in year 2 whereas the proposal outlined in the Governor's email offers 1.16% in year 1 and 1.16% in year 2."

If the majority could have found that the Governor's email did not contain a misrepresentation, it would have said so. That it did not so find, is, therefore, telling. Instead, the majority concludes that "[e]ven assuming that the Governor's email misrepresented the extent to which the State's proposal differed from the fact-finder's report, . . . any such misrepresentation was not part of an attempt to coerce employees to reject the fact-finder's report or otherwise to exert undue influence upon SEA's membership vote." The PELRB ruled, however, that the email constituted "a direct presentation of the State's bargaining position to the bargaining unit made in an effort to convince employees to pressure the unions to accept the State's bargaining proposal, reject the fact-finder's report, and reject any contrary recommendations from the unions." This ruling is neither unjust nor unreasonable, and is supported by competent evidence in the record. See RSA 541:13 (2021).

The email was sent directly to bargaining unit employees using work email, and soon thereafter a link to the email was posted on the NH First web portal regularly accessed by state employees. It contained at least one

material, misleading statement. It was sent just 90 minutes before the SEA's scheduled informational meeting on the fact-finder's recommendations. It captured, as the PELRB stated, "the essence of what a bargaining presentation made directly to employees . . . might be expected to include." And it expressed the Governor's hope that a new contract <u>based on the State's proposal</u> could soon be delivered. Thus, we do not agree with the majority that the misleading statements in the email were "not part of an attempt to coerce employees to reject the fact-finder's report or otherwise to exert undue influence upon SEA's membership vote."

Because we agree with the PELRB that the State committed unfair labor practices by failing to submit the fact-finder's report to the Executive Council for a vote in violation of RSA 273-A:12 and by sending the December 3 email, we respectfully dissent.

NH Supreme Court reversed this decision on 7-21-2022. NH Supreme Court Case No. 2021-0248.

State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of New Hampshire, SEIU Local 1984, NEPBA Local 40, NH Fish & Game Conservation Officers, And NEPBA Local 45, NH Fish & Game Supervisory Officers

v.

State of New Hampshire

Consolidated Cases G-0115-9, G-0255-4, and G-0254-4
Decision No. 2021-084

Order on Motion for Rehearing

The State filed a "motion for reconsideration"[1] of PELRB Decision No. 2021-028 (February 26, 2021) on March 29, 2021. The SEA and the NEPBA Local 40 and NEPBA Local 45 have all filed objections. Motions for rehearing are governed by RSA 541:3 and N.H. Admin. Rules, Pub 205.02, which provides in part as follows:

> **Pub 205.02 Motion for Rehearing.**
>
> (a) Any party to a proceeding before the board may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order within 30 days after the board has rendered its decision and order by filing a motion for rehearing under RSA 541:3. The motion for rehearing shall set out a clear and concise statement of the grounds for the motion. Any other party to the proceeding may file a response or objection to the motion for rehearing provided that within 10 days of the date the motion was filed, the board shall grant or deny a motion for rehearing, or suspend the order or decision complained of pending further consideration, in accordance with RSA 541:5.

Upon review, the State's motion is denied.

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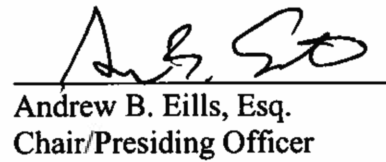
[1] We are processing the state's filing as a motion for rehearing under N.H. Admin. Rules, Pub 205.02.

So ordered.

May 11, 2021



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

Distribution: Gary Snyder, Esq.
Randy Hunneyman
Jill Perlow, Esq.
John Krupski, Esq.
Peter Perroni, Esq.

NH Supreme Court reversed this decision on 7-21-2022, NH Supreme Court Case No. 2021-0248.

State of New Hampshire

Public Employee Labor Relations Board

State Employees' Association of New Hampshire, SEIU Local 1984,
NEPBA Local 40, NH Fish & Game Conservation Officers,
And NEPBA Local 45, NH Fish & Game Supervisory Officers
v.
State of New Hampshire
Consolidated Cases G-0115-9, G-0255-4, and G-0254-4

Decision No. 2021-028

Appearances: Randy Hunneyman, Gary Snyder, Esq. and John S. Krupski, Esq., Concord, New Hampshire for the State Employees' Assoc. of NH, SEIU Local 1984

Peter J. Perroni, Esq., N. Chelmsford, Massachusetts for NEPBA Local 40 and 45, Fish and Game Department

Jill Perlow, Esq., Office of the Attorney General, Concord, New Hampshire for the State

Background:

The State Employees' Association of NH, SEIU Local 1984 (SEA) and the NEPBA Locals 40 and 45 (NEPBA) filed unfair labor practice complaints[1] against the State under the Public Employee Labor Relations Act (the "Act"). Both complaints charge that on December 3, 2019, when bargaining impasse procedures were still underway, the State violated its bargaining obligations and engaged in improper direct dealing with bargaining unit employees when the Governor emailed state employees and discussed State bargaining proposals and a fact finder's report rejected by the State. The unions also complain that the State has failed to follow the Act's

[1] The SEA complaint was filed on December 6, 2019 and amended on December 30, 2019. The NEPBA complaint was filed on February 3, 2020. The cases have been consolidated per PELRB Decision No. 2020-035.

mandatory impasse procedures because the Governor refused to submit the fact finder's report to the Executive Council. The NEPBA further contends that this refusal impaired the unions' ability to have the fact finder's report reviewed by the Legislature, the next step in the impasse process. As a result, the SEA and the NEPBA claim the State violated 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); and (g)(to fail to comply with this chapter or any rule adopted under this chapter).

As relief, the SEA requests that the PELRB: 1) find that the State committed an unfair labor practice and acted in bad faith when it engaged in "direct dealing" with bargaining unit employees and intentionally circumvented the bargaining process set forth in RSA 273-A:9 and RSA 273-A:12; 2) order the State to cease and desist from bargaining directly with the bargaining unit employees; 3) order the State to rescind any and all correspondence sent to the SEA-represented bargaining unit employees regarding bargaining proposals and the fact finder's report; and 4) order the State to submit the 2019 fact finder's report to the Executive Council for a vote in accordance with RSA 273-A:12, II. The NEPBA requests that the board order the State to: 1) cease and desist from violations of the Act; 2) comply with the Act's bargaining impasse requirements; and 3) compensate the NEPBA Locals for time spent bargaining given the State's actions.

The State denies the charges. As to the Governor's December 3, 2019 email, the State argues it was not a violation of the Act but was consistent with the Governor's rights and

responsibilities as the State's chief executive and "constitutes protected speech under the First Amendment of the U.S. Constitution, Part I, Article 22 of the New Hampshire Constitution, and RSA chapter 98-E." As to the unions' claims based on the Governor's refusal to submit the fact finder's report to the Executive Council, the State maintains that this was not required because the Governor did not accept the fact finder's recommendations. As to submission of the fact finder's report to the Legislature, the State maintains that this was not the Governor's responsibility, that in fact the State Manager of Employee Relations provided the report to the Legislature, and that the legislative oversight committee on employee relations has the official responsibility for this task.

As per PELRB Decision No. 2020-049, this case has been submitted on stipulations, affidavits, exhibits, and briefs. Our decision is as follows.

Findings of Fact

1. The State is a public employer within the meaning of RSA 273-A:1, X.

2. The SEA is the certified exclusive bargaining representative for certain state employees. The NEPBA is the certified exclusive bargaining representative for certain employees of the Department of Fish and Game.

3. The State and SEA's most recent collective bargaining agreement was executed on June 7, 2018 and "shall remain in full force and effect through June 30, 2019 or until such time as a new Agreement is executed." (2018-19 SEA CBA). The most recent collective bargaining agreements between the State and NEPBA Local 40 and NEPBA Local 45 were also executed on June 7, 2018 and each "shall remain in full force and effect through June 30, 2019 or until such time as a new Agreement is executed." (2018-19 NEPBA CBAs).

4. The parties have been in negotiations for successor agreements since December 6, 2018. The Governor has appointed a committee to represent him during negotiations which includes former Manager of Employee Relations Matthew Newland and current Manager of Employee Relations Elizabeth McCormack. Mr. Newland is chair of the Governor's negotiating committee.

5. After reaching an impasse in bargaining, the parties proceeded to mediation and then to fact finding beginning on August 1, 2019.

6. The fact finder report with recommendations was issued on November 12, 2019. It included a recommendation for a 2.86% wage increase in year 1 and a 1.16% wage increase in year 2.

7. The SEA master bargaining team and NEPBA met with the State bargaining team on November 21, 2019 to continue negotiations. The State, which had rejected the fact finder's recommendations, offered wage increases of 1.16% in year 1 and 1.16% in year 2. Both unions rejected the State's wage proposal and countered with written proposals based on the fact finder's wage recommendations. During this meeting State negotiating chair Matthew Newland stated that the Governor "would not then, or ever, voluntarily present the Fact-Finder's report to either the Governor's Council or the Legislature," something which the State's team claimed was within the Governor's constitutional authority. Mr. Newland repeatedly stated that he hoped the unions would accept the State's wage proposal as this was the "best deal they would ever receive."

8. Subsequently, the NEPBA notified the State that NEPBA Local 40 and 45 had voted to accept the fact finder's report.

9. On November 22, 2019, SEA negotiator Randy Hunneyman discussed the State's most recent wage offer and the fact finder's report with State negotiators Newland and McCormack, confirmed that the SEA bargaining team had rejected the State's most recent wage proposal, and advised that the SEA would be proceeding with a membership vote on the fact finder's report.

10. Between November 22 and December 3, 2019, the SEA sent three emails to members to provide bargaining updates and information on the fact finder's report.

11. In a November 22 email, the SEA reported the result of the November 21 bargaining session and noted that the next step in absence of an agreement with the State would be a member vote on the fact finder's report. See SEA Exhibits 1.

12. In a November 26 email, members were notified of a 6:00 p.m. informational meeting at the Department of Environmental Services auditorium on December 3 and were told that the bargaining team would be explaining the fact finder's report to members "so that you can make an educated decision." The SEA sent a reminder email about the informational meeting at 1:00 p.m. on December 3. See SEA Exhibits 2 and 3.

13. On December 3, 2019 at 4:32 p.m. the Governor sent an email to all state employees, including SEA and NEPBA bargaining unit members which provided as follows:

> Subject: Message from the Governor
>
> Dear fellow state employee:
>
> As you know, the negotiations reached a new phase when both parties received a report from an independent fact-finder who worked to help us reach a compromise. Upon receiving that report, I instructed State negotiators to put forward a proposal that was nearly identical to the fact-finder's conclusions and heavily favored the union leadership's requests.
>
> Our proposal provides you with higher wages and better benefits, almost double the $6 million authorized by the Legislature in the state budget. I believe that the fact-finder's report is fair and shares my appreciation for your hard work and commitment to our state.

We have proposed nearly all the fact-finder's recommendations, with the exception of a single recommendation to re-open an old contract that had previously been agreed upon in good faith by all parties. Our proposal includes the following items totaling $11 million in enhanced benefits:

- 1.16% wage increase in 2020 and another 1.16% wage increase in 2021
- An average of 6.4% increased costs associated with health care benefits and 2.5% increase in dental plan rates absorbed by the State with no increase to employees
- Increase hazardous duty pay by 20% (from $25 to $30)
- Double direct care pay ($5 to $10) for those working in 24 hour facilities
- Increase longevity payments 17% by $50 from $300 to a new amount of $350
- Expand insurance coverage to cover developmental disorders for children
- Expand employee discounts at State recreational areas to allow a discount for one guest.

So far, I am pleased to announce that we have reached an agreement based upon the fact-finder's recommendations with the Teamsters and the Liquor Investigators that reflects that the needs of our state employees are a top priority.

It is my hope that the remaining unions will reconsider the many valuable benefits that the state's proposal offers to state employees. It is my hope that we can deliver a new contract soon based upon our proposal that reflects our state's priorities and the hard work of our state employees.

As noted above, our proposal is estimated to cost $11 million in FY20 and FY21-$5 million more than had been allocated by the state budget. I was happy to roll up my sleeves and find the additional funding within state government because I understand that our state employees are the backbone of our state and I value your hard work.

This holiday season is a time we can all be grateful to live and work in the greatest state in the country; where we get things done for the benefit of those we serve. Thank you for all you do.

Sincerely,

Chris Sununu
Governor

14. By December 5 the Governor had posted a link to his December 3 email on the NH First web portal regularly accessed by state employees.

15. As described in statements submitted by SEA President Richard Gulla, Union Steward Laurie Aucoin, and Daniel Brennan, Vice President of SEA Chapter 17 (Department

of Transportation), by December 4 the SEA and SEA chapter leaders were hearing from members asking about the Governor's email. Callers were angry and confused since the Governor's statements conflicted with information the SEA was presenting about the impasse and the pending member vote on the fact finder's report. Many believed the Governor tried to mislead them to get them to vote against the fact finder's report. The situation created additional work for SEA chapter leaders, who had to address the member confusion caused by the Governor's email.

16. At the December 18, 2019 Executive Council meeting the Governor stated he would not bring the fact finder's report before the council for consideration.

17. On January 10 and 17, 2020 the SEA updated the State negotiating team about the status of voting on the fact finder's report.

18. On January 16, 2020 the NEPBA emailed the State to advise that NEPBA Local 40 and 45 had accepted the fact finder's report.

19. At a meeting on January 22, 2020 State negotiating team chair Newland told the union bargaining committee that the Governor had taken the action required under RSA 273-A:12, II when he stated he would not place the fact finder's report on the Executive Council agenda and cited legal authority to justify the Governor's position. Mr. Newland again promoted the State proposal which the unions had already rejected, and stated any other course of action by the Union would take many months and would not be in the best interest of employees. During this meeting the SEA reported that voting on the fact finder's report was complete and less than 1% had voted "no" on the report.

Decision and Order

Decision Summary:

The State has committed unfair labor practices in violation of RSA 273-A:5, I (a), (b), (e), and (g) given the Governor's December 3, 2019 email and the State's refusal to submit the fact finder's report to the Executive Council pursuant to RSA 273-A:12, II. The State is ordered to cease and desist from interfering with employees in the exercise of rights conferred by the Act; interfering with the administration of SEA business; making bargaining presentations to employees and discussing negotiations directly with employees except as permitted under RSA 273-A:12, I (a)(2); and refusing to follow impasse resolution procedures prescribed by RSA 273-A:12. The State shall also post this decision for 30 days in all locations where employees in bargaining units represented by the SEA and the NEPBA work and complete and file a certificate of posting provided by the board.

Jurisdiction:

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

Discussion:

One of the most fundamental tenets of collective bargaining under the Act is the requirement that the employer negotiate agreements with the duly certified exclusive representative of the bargaining unit and "refrain from negotiating with anyone other than the association's exclusive representative." *Appeal of Franklin Education Assoc.*, 136 N.H. 332, 335 (1992). The statutory bases for this rule includes RSA 273-A:3, I, titled "Obligation to Bargain," which provides that:

> It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith.

> "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

Under RSA 273-A:5, I(e) "[i]t shall be a prohibited practice for any public employer ... [t]o refuse to negotiate in good faith with the exclusive representative of a bargaining unit..." "Dealing directly with employees is generally forbidden, because it seriously compromises the negotiating process and frustrates the purposes of the statutes[2] quoted above...If an employer can negotiate directly with its employees, then the statute's purpose of requiring collective bargaining is thwarted." *Appeal of Franklin Education Assoc.,* 136 N.H. at 335 (citations omitted, footnote added.)

However, the law of direct dealing does not preclude all employer communications with employees which reference bargaining. For example, it is not direct dealing when an employer posts a letter on a department bulletin board to respond to perceived misinformation spread by the union president about past negotiations. *Appeal of the Town of Hampton,* 154 N.H. 132 (2006). In *Hampton,* after the parties had completed unsuccessful impact bargaining,[3] the police chief posted a letter to address what were "arguably inflammatory and allegedly inaccurate comments" the union president made in an email sent to all department personnel using the department's official email system. There was no direct dealing within the meaning of the Act because the chief's "letter pertained not to ongoing or future negotiations between the town and the union, but, rather, failed past negotiations." *Id.* at 135. Likewise, it was not direct dealing

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[2] RSA 273-A:1, XI; :3, I; and :5, I(e).

[3] For examples of impact bargaining see *Concord Fire Fighters Association, IAFF Local 1045 v. City of Concord,* PELRB Decision No. 2012-252 (November 13, 2012) FN 5 "The obligation of a public employer to impact bargain the effect of a decision "within [its] exclusive prerogative" can arise in a number of circumstances. See *Derry Police Patrolmen's Association, NEPBA Local 38 v. Town of Derry,* PELRB Decision No. 2011-278 (impact bargaining effect of installation of GPS devices in police cruisers); *Laconia Education Association/NEA-NH v. Laconia School District,* PELRB Decision No. 2008-204 (impact bargaining effect of schedule change); *Conway Administrator's Assoc/Teamsters Local 633 of NH v Conway School District,* PELRB Decision No. 93-33(impact bargaining effect of changes to administrative evaluations)."

when, within a few days of reaching a bargaining impasse, but before impasse proceedings had commenced, the University System of New Hampshire (USNH) sent an email to the UNH community describing the proposals it had made to the Association at the bargaining table. See *American Association of University Professors UNH Chapter v. University System of New Hampshire*, PELRB Decision No. 2007-039 (March 30, 2007). Although the board's decision does not describe the contents of the USNH email in any detail, it did enumerate a number of factors it deemed relevant to its decision:

> When evaluating allegations of "direct dealing" we examine the facts to determine the nature of the alleged direct communication and the extent of alleged dealing that would equate with a breach of the party's obligation to bargain in good faith. As to the communication, we look to a combination of factors to guide us, including but not limited to (1) the medium used; (2) the frequency of communication; (3) the timing of the communication; and, (4) the intent of the party generating the communication, to the extent it can be ascertained.
>
> As to the matter of "dealing" aspect, we also look to a combination of factors including but not limited to (1) the contents of the communication; (2) the audience to whom the communication is directed; (3) the extent to which the contents express an intent to interfere with the representative's right to exclusively represent the bargaining unit members; and (4) the effect of the communication upon members of the bargaining unit. [In addition] [t]o those general factors, since this case presents a situation involving negotiations between the parties, we also have examined the extent to which the parties' negotiations are affected.

Since these cases were decided, the legislature amended RSA 273-A:12, I (a) to add new sub-sections (1) and (2)[4] which provide as follows:

> (a) Whenever the parties request the board's assistance or have bargained to impasse, or if the parties have not reached agreement on a contract within 60 days, or in the case of state employees 90 days, prior to the budget submission date, and if not otherwise governed by ground rules:
>
> > *(1) The chief negotiator for the bargaining unit may request to make a presentation directly to the board of the public employer. If this request is approved by the board of the public employer, the chief negotiator for the board of the public employer shall in turn have the right to make a presentation directly to the bargaining unit.*

[4] Effective January 1, 2013.

The cost of the respective presentations shall be borne by the party making the presentation.

(2) The chief negotiator for the board of the public employer may request to make a presentation directly to the bargaining unit. If this request is approved by the bargaining unit, the chief negotiator for the bargaining unit shall in turn have the right to make a presentation directly to the board of the public employer. The cost of the respective presentations shall be borne by the party making the presentation.

(Emphasis added). As a result of this amendment, for the first time the Act specifically provides for a public employer[5] bargaining presentation directly to a bargaining unit if approved by the bargaining unit. The next step in the bargaining impasse process is still mediation followed by, as applicable, fact finding. See RSA 273-A:12, I(b).

In the present case, there is no dispute that the State did not follow the direct presentation to bargaining unit procedures prescribed by RSA 273-A:12, I(a)(2). Additionally, unlike the situation in *Appeal of the Town of Hampton,* 154 N.H. 132 (2006) and *American Association of University Professors UNH Chapter v. University System of New Hampshire*, PELRB Decision No. 2007-039, the Governor's December 3 email was sent while the parties were still working through statutory fact finding procedures. In other words, the December 3 email was sent in the midst of ongoing negotiations. See *Appeal of State Employees' Association of New Hampshire, Inc., SEIU, Local 1984*, 171 N.H. 490 (2018)(good faith negotiation includes the steps to resolve impasse set forth in RSA 273-A:12). Additionally, the email was sent hours before an employee informational meeting on the fact finder's recommendations at the Department of Environmental Services auditorium and, to increase exposure, was recirculated within a few days via the NH First portal. Although the recipients of the Governor's email included non-bargaining unit employees, the email was plainly directed to bargaining unit employees represented by the SEA and the NEPBA. It cannot be discounted as simply a generic informational email addressing a

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[5] The chief negotiator for the bargaining unit may also make a direct presentation to the public employer board as outline in sub-section (a)(1).

subject of general interest to all state executive branch workers. The email captures the essence of what a bargaining presentation made directly to employees under RSA 273-A:12, I (a)(2) might be expected to include. It promotes, among other things, a wage proposal which had been rejected by the SEA at the most recent bargaining session. It discusses other elements of the State's position in bargaining, including health care costs; hazardous duty pay; double direct care pay; longevity payments; insurance; and employee discounts. It includes language designed to align the State's proposal with the fact finder's recommendations even though there are clear substantive differences between the two, particularly with respect to wages. For example, the Governor's December 3, 2019 email includes the following points:

- *I instructed State negotiators to put forward a proposal that was nearly identical to the fact-finder's conclusions and heavily favored the union leadership's requests.*
- *I believe the fact-finder's report is fair and shares my appreciation for your hard work and commitment to our state.*
- *We have proposed nearly all the fact-finder's recommendations, with the exception of a single recommendation to re-open an old contract that had previously been agreed upon in good faith by all parties.*[6]

The Governor's December 3 email also had an immediate and discernible impact on employees as it caused avoidable confusion and anger about the status of negotiations and related matters among bargaining unit employees which the unions were required to address. See Finding of Fact 15.

In these circumstances, we view the December 3 email as a direct presentation of the State bargaining position to the bargaining unit made in an effort to convince employees to pressure the unions to accept the State's bargaining proposal, reject the fact finder's report, and reject any contrary recommendations from the unions. Based on the foregoing the State engaged in direct dealing with bargaining unit employees in violation of its duty to bargain in good faith

[6] It is difficult to reconcile this characterization with the fact that the fact finder recommended a wage increase of 2.86% in year 1 and 1.16% in year 2 whereas the proposal outlined in the Governor's email offers 1.16% in year 1 and 1.16% in year 2.

with the SEA and the NEPBA pursuant to RSA 273-A:1, XI; :3, I; and :5, I(e). The State also violated RSA 273-A:5, I(g)(to fail to comply with this chapter or any rule adopted under this chapter) because the State made a bargaining presentation directly to employees in violation of the requirements of RSA 273-A:12, I (a)(2). This is also a violation of RSA 273-A:5, I(a) because it is an interference with the right of employees to be represented by the bargaining unit's exclusive representative in negotiations. Additionally, when the Governor characterized the State's bargaining position relative to the fact finder's recommendation and otherwise commented on the fact finder's report, he interfered in the administration of union business in violation of RSA 273-A:5, I(b), as it was the unions' right and prerogative to evaluate and assess for employees the fact finder's report and the State's proposal.

With respect to the State's argument that the Governor's email is constitutionally protected speech, we note that the State has not cited any applicable decisions to this effect involving similar facts. While our jurisdiction is limited to a determination of whether the State's actions in this case violated the provisions of RSA 273-A as charged, we believe the framework in which collective bargaining operates under the Act, including the requirement that employers refrain from "direct dealing" with bargaining unit employees within the meaning of the law discussed in our decision, does not implicate First Amendment issues or other constitutional provisions which somehow operate to shield the State from the unfair labor practice charges that have been filed. At all times, involved State officials were acting in their official capacities and were required to discharge their bargaining obligations in accordance with the provisions of the Act.

The remaining issue in this case is whether the Governor's refusal to advance the fact finder's report to the Executive Council violated the requirements of RSA 273-A:12, II, which states:

> If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be submitted to the full membership of the employee organization and to the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law.

The "board of the public employer for executive branch state employees means the governor and council." RSA 273-A:1, II(a)(1). This provision calls for the submission of the fact finder's report to the Executive Council in the current circumstances, which was the board's ruling in a similar, earlier case. See *State Employees Association, SEIU, Local 1984 and State of New Hampshire New Hampshire Hospital,* PELRB Decision No. 2000-097 (September 15, 2000)(State's continued refusal to present the fact finder's report to the Executive Council was a failure to bargain in good faith in violation of RSA 273-A:5, I (e) and (g)).

The State attempts to distinguish the present case based on a subsequent decision in *Sunapee Difference, LLC v. State of New Hampshire,* 164 N.H. 778 (2013). *Sunapee Difference* analyzed whether Governor John Lynch was required to submit to the Executive Council a proposed lease amendment to expand the leasehold of the ski area at Mount Sunapee State Park recommended by the commissioner of the New Hampshire Department of Resources and Economic Development but which he opposed. The court noted RSA 4:40, I's requirement that "all requests for the disposal or leasing of state-owned properties shall be...[submitted] to the governor and council for approval." *Id.* at 790-91. However, citing RSA 21:31-a, which provides that "[t]he phrase '"governor and council"' shall mean the governor with the advice and consent of the council," the court ruled that RSA 4:40 "would not require the Governor to put before the Executive Council a proposed lease of state lands

that the Governor does not approve." *Id.* at 791-92. The State argues the court's analysis in *Sunapee Difference* is equally applicable to this case, and therefore the Governor had no obligation to submit a fact finder's report which he did not approve to the Executive Council, notwithstanding any requirements in RSA 273-A:12, II to the contrary.

There are obvious differences between the leasing of state property and the negotiation of collective bargaining agreements which weaken the State's argument that we should construe *Sunapee Difference* to invalidate RSA 273-A:12, II requirements in this case. Additionally, under RSA 273-A:9 the Governor "shall" negotiate the terms and conditions of employment for state employees. See, e.g., *State Employees' Association of New Hampshire SEIU Local 1984 and State of New Hampshire et. al.*, PELRB Decision No. 2020-244 (November 3, 2020).[7] The Executive Council, in contrast to other RSA 273-A:1, II public employer boards, such as a city council, board of selectmen, school board, or county commissioners, has no authority to either negotiate or ratify collective bargaining agreements and normally plays no role in the bargaining process. However, the Legislature nevertheless chose to involve the Executive Council in the event a fact finder's recommendation is rejected by either party in a case such as this one. The legislature's decision to provide for the inclusion of the Executive Council in this circumstance is consistent with one of the important purposes of RSA 273-A:12, which is "to broaden participation in impasse negotiations" and to make the parties vulnerable to "the publicity that will no doubt attend an impasse." *Appeal of Derry Education Association, NEA-NH,* 138 N.H. 69, 73 (1993)(citations omitted). See also *State Employees' Association of New Hampshire SEIU Local 1984 and State of New Hampshire et. al.*, PELRB Decision No. 2020-244 (November 3, 2020). This purpose is served, in the case of a fact finder's report rejected by the Governor, by

[7] Both the SEA and the New Hampshire Troopers' Association have filed Rule 10 Appeals of PELRB Decision 2020-244. See New Hampshire Supreme Court Case No. 2021-0027 and No. 2021-0028.

the involvement of the Executive Council[8] on the grounds that this action may, at the very least, generate discussion and input that might assist the parties in reaching agreement. It is an opportunity to advance negotiations that should be preserved and *Sunapee Difference* should not be extended to, in effect, strike down an important aspect of this statutory scheme intended to address and assist in the resolution of a bargaining impasse involving executive branch bargaining units. Accordingly, we find the State's non-compliance with RSA 273-A:12, II's requirements should not be excused, and, as a result, the State has failed to bargain in good faith and committed an unfair labor practice in violation of RSA 273-A:5, I (e) and (g).

Finally, we note that there were some references in the unions' pleadings filed that the State also interfered with the Legislature's review and vote on the fact finder's report. However, the unions did not develop or explain the basis for such a claim in their briefs. To the extent the unions are pursuing such an alleged violation we address it as follows. Submission to the Legislature is the responsibility of the legislative oversight committee on employee relations per RSA 273-A:9-b, V. Nothing prevented the unions from providing the fact finder's report to this legislative committee with a request for action based on the gridlock over submission of the report to the Executive Council. There is no suggestion that the unions attempted to do so but were rebuffed because the Governor and Council, acting as the board of the public employer for purposes of RSA 273-A:12, II, had not acted. Further, the Legislature eventually voted on the fact finder's report in June of 2020, as discussed in *State Employees' Association of New Hampshire SEIU Local 1984 and State of New Hampshire et. al.*, PELRB Decision No. 2020-244 (November 3, 2020), but the impasse has persisted. Accordingly, to the extent such a claim is pending in these consolidated cases it is denied.

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[8] Of course, contrary to the situation in *Sunapee Difference,* the Executive Council would not be involved in the present case if the Governor had approved the fact finder's recommendations.

In summary, the State has committed unfair labor practices in violation of 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); and (g)(to fail to comply with this chapter or any rule adopted under this chapter). Ultimately, the Legislature received and voted in favor of the fact finder's report but this did not resolve the impasse, and pursuant to RSA 273-A:12, IV the parties are therefore required to continue with negotiations. Accordingly, in ongoing and future negotiations, the State is ordered to cease and desist from interfering with employees in the exercise of rights conferred by the Act; interfering with the administration of union business; making bargaining presentations to employees and discussing negotiations directly with employees except as permitted under RSA 273-A:12, I (a)(2); and refusing to follow impasse resolution procedures prescribed by RSA 273-A:12. The State shall also post this decision for 30 days in all locations where employees in bargaining units represented by the SEA and the NEPBA work and complete and file a certificate of posting provided by the board.

So ordered.

February 26, 2021

/s/ Andrew B. Eills
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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