



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 complaints¹ 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 statutes² 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

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 subsections (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 employer⁵ 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

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 Council⁸ 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).

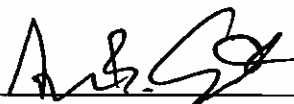
Finally, we note that there were some references in the unions' pleadings filed that the State also interfered with the Legislature's review and vote on the fact finder's report. However, the unions did not develop or explain the basis for such a claim in their briefs. To the extent the unions are pursuing 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.

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



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.