

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
Before Factfinder Mary Ellen Shea

In the factfinding matter between: *
NH DEPARTMENT OF INFORMATION TECHNOLOGY, *
STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, *
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1984 *
*
and *
STATE OF NEW HAMPSHIRE *

INTRODUCTION

A factfinding was conducted in accordance with NH Laws, Chapter 273, and pursuant to NH PELRB Rule 305.03. The parties to this factfinding are the State of New Hampshire (“State”) and the State Employees Association of New Hampshire, SEIU, Local 1984, Department of Information Technology (“SEA” or “Union”) participated in a factfinding hearing on September 1, 2021. The parties negotiated a master agreement (effective July 1, 2021 through June 30, 2024), which included bargaining over state-wide contract issues as well as bargaining over issues specific to the sub-unit agreements (in this instance, the Department of Information Technology sub-unit). The parties resolved the master agreement (which includes across-the-board wage increases for all SEA employees) but reached impasse on one sub-unit issue. The parties submitted to mediation efforts in May 2021, but the sub-unit issue remained unresolved and was submitted to factfinding. The State and the SEA participated in a factfinding hearing on September 1, 2021, via zoom, and addressed the unresolved issue.

The State Employees Association, SEIU, Local 1984, was represented by Randy Hunneyman, Executive Branch Negotiator. The Union’s team also included David Rys and

Karen Page. The State was represented by Rudolph W. Ogden, Deputy Labor Commissioner.

The parties had full opportunity to present oral and documentary evidence as well as oral and written argument on the unresolved issues. This report includes a summary of the arguments and evidence followed by the factfinder's analysis and recommendation on the unresolved issue. The factfinder's recommendation is based on a comprehensive and thorough review of the parties' presentations.

At the outset, it may be helpful to comment about the decision-making process in factfinding and some of the principles or guidelines that have been applied. Fact finding is an extension of the collective bargaining process and the goal of the neutral factfinder is to make recommendations the parties might have negotiated themselves if they had not reached impasse. For this reason, factfinding tends to be a conservative process:

[T]he neutral cannot impose upon the parties' contractual procedures he or she knows the parties themselves would never agree to. Nor is it their function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to the parties' particular bargaining history.

Harvey Nathan, Illinois State Labor Relations Board (August 17, 1988)

A common principle in factfinding is that some changes – especially novel or unusual changes - are more appropriately decided through collective bargaining rather than in factfinding. If the parties have fully engaged in collective bargaining over the disputed issue and were still unable to reach agreement, a recommendation may be made if the proposed change achieves an appropriate degree of comparability or fairness and/or there is a compelling need for the change. Most importantly, the parties' presentations have been considered carefully, and the recommendations made reflect whether this factfinder was persuaded that the proposed changes should be made.

UNIT DESCRIPTION

The Department of Information Technology has about 305 full-time employees and consists of four divisions, two bureaus, and one group under the direction of Commissioner's Office.

THE ISSUES

The issue that remains unresolved is the following proposal by the SEA:

Article 39.4 On Call Minimum

PROPOSAL AND RECOMMENDATION

SEA Proposal: On Call Minimum

39.4 In addition to provisions of article 7.3.2, any bargaining unit member who is deemed as being in "On-Call" status by the employer shall be guaranteed a minimum of one (1) hour of compensation per occurrence.

SEA On Call Minimum Proposal

The SEA proposes language that IT employees be guaranteed a minimum of one hour compensation when they are required to be on call. According to the SEA, the employer had always assigned employees to be on call for 4-hour intervals and paid a minimum of one hour, based on contract language which says the employee, "shall receive one hour of pay for every four hours in On-Call status." The SEA contends the employer recently began taking advantage of an ambiguity in the language by assigning employees to be on call for one hour and paying them for only 15 minutes. The SEA argues this was never the intent of the language and the practice is unfair and unreasonable. The SEA urges the proposal be recommended.

State of NH Response to SEA On Call Minimum Proposal

The State opposes the proposal and argues the existing language is not ambiguous. The contract provides that compensation for on call status be calculated as a ratio (4:1), rather than an

hourly minimum. The one-hour minimum is only guaranteed when the on-call employee actually responds to a request and provides service. The State acknowledges that, in the past, employees were always scheduled to be on call for 4 hours at a time and were paid the one hour minimum. The State “recently” began giving shorter on-call assignments and calculating pay based on the 4:ratio, which it argues remains consistent with Article 7.3.2. In addition, the State points out that IT employees provide technical support services to other state agencies, and the agencies should not be charged for more support than they need or request. The State urges the proposal be rejected.

Factfinder’s Analysis of SEA On Call Minimum Proposal

The SEA argument that IT employees be paid a 1-hour minimum when assigned to be on call is persuasive. The State’s contention that the existing contract language requires payment of a 4:1 “ratio” is not supported. By extension, the State’s interpretation means there is no minimum duration for an on-call assignment so long as the employee be paid for $\frac{1}{4}$ of the time, an interpretation which does not reasonably flow from the agreed-upon language. The negotiated language of the parties’ collective bargaining agreement does not suggest the parties intended call back pay to be based on a ratio, regardless of the hours assigned. Nor does the language suggest they contemplated or had a practice of scheduling on-call assignments for less than 4 hours at a time. The parties negotiated mandatory language guaranteeing a minimum payment of one-hour for 4-hour assignments. These numbers may work out to be a “ratio” (4:1), but the language refers to specific numbers of hours (4-hour assignments and 1-hour minimum) and there is no evidence the parties’ intended the references to specific hours to be interpreted as a “ratio.” According to the parties’ negotiated agreement, employees “shall receive one hour of pay for every four hours in an on-call status.”

Factfinder's Recommendation:

The SEA on-call minimum proposal is recommended.

SUMMARY OF FACT FINDER RECOMMENDATIONS

Article 39.4 On Call Minimum
The SEA on-call minimum proposal is recommended.



Mary Ellen Shea, Factfinder

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