

DEPARTMENT OF TRANSPORTATION FACT FINDER'S REPORT



2021 SEA Dept. of Transportation Fact Finder's Report

SEA/DOT Sub-Unit Bargaining Team

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Bargaining Summary:

The SEA/DOT sub-unit bargaining team and the State bargaining team met repeatedly starting in November 2020 in an attempt to reach a sub-unit agreement. The SEA/DOT sub-unit team presented the State team with (7) proposals (*listed below*). The State bargaining team did not present the SEA with proposals and did not offer any counter proposals to the SEA/DOT sub-unit bargaining team. The parties went into impasse and participated in mediation on May 14, 2021 for (1) day using the assistance of mediator Mark Grossman. In mediation, the State would not agree to any of the SEA/DOT sub-unit team proposals and would not offer any compromises. Without an agreement, the parties proceeded forward into the fact finding process as required by NH RSA 273-A:12.

The State bargaining team and the SEA/DOT sub-unit team met with fact finder Mary Ellen Shea on Wednesday September 1, 2021. The SEA/DOT sub-unit team made a very extensive presentation to the fact finder in support of the union proposals to the State.

On October 15, 2021, the fact finder released her report to the parties outlining what recommendations she had for a possible settlement. While the report had some positive recommendations on double overtime for winter maintenance call-outs on Thanksgiving, Christmas and New Years Day, and for tool rentals, the fact finder did not recommend the critical wage adjustments that the SEA/DOT sub-unit bargaining team felt were essential due to the large wage discrepancies that exist between NH-DOT CDL drivers and CDL drivers working

for other public and private employers in NH. Overall, the SEA/DOT sub-unit team was extremely disappointed with the fact finder's results.

Per the law, the State bargaining team and the SEA/DOT sub-unit team met for negotiations on Thursday October 28, 2021 to review the fact finder's recommendations. At the meeting, the State team moved to accept the fact finder's report. The SEA/DOT sub-unit team asked the State team to reconsider a wage adjustment for CDL drivers. The State team declined so the SEA/DOT team rejected the fact finder's report due to the lack of a wage enhancement.

Requirements of RSA-273-A:12

NH Labor Law requires the following steps to be followed if the union and the State reject a fact finder's report.

CHAPTER 273-A PUBLIC EMPLOYEE LABOR RELATIONS

273-A:12 Resolution of Disputes. –

II. 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.

SEA/DOT Sub-Unit Team comments and recommendations on the vote to accept or reject the Fact Finder's recommendations:

While there are some small positive recommendations for SEA/DOT workers, the SEA/DOT sub-unit bargaining team believes that the fact finder's report does not address the substantial problem of low wages, employee turnover and unreasonably low staffing at the NH Department of Transportation.

The SEA/DOT sub-unit team does not support the fact finder's recommendations and advises that SEA/DOT Chapter 17 and Chapter 3 members vote to reject the report.

Fact Finder's Report Summary

Proposal Legend:

Language proposed to be stricken from the agreement is crossed out. New language proposed to be added to the agreement is ***bolded and italicized***.

SEA Proposals

1. Article 43.6 Tool Rental Increase
2. Article 43.11 Year-Round Maintenance Stipend
3. Article 43.13 CDL/Drug Testing Stipend

Article 43.13.1 Medical Card Stipend

Article 43.13.2 Medical Card Exemption (current employees)

4. Article 43.15 Double Pay for Call Out Holidays
5. Article 43.12 40 Hour Schedule (select employees)

SEA Item 1: Tool Rental Increase

- 43.6. Rental & Fees: The Employer agrees to enter into a tool rental agreement with mechanics wherein the Employer shall pay a fee for the employee's use of such tools in the service of the Employer. The agreement shall be of legal form and shall contain as minimum provisions the following:
- a. Rental fee of four *five* hundred dollars (\$400.00) (~~\$500.00~~) per year.
 - b. Ownership and use shall remain vested in the employee.
 - c. The employee shall furnish tools of less than one (1) inch.
 - d. A pro rate termination fee schedule.

Factfinder's Analysis of SEA Tool Rental Increase Proposal

The Tool Rental fee is a unique stipend arrangement requiring it be reduced to writing and be in "legal form". The "tool rental fee" is money paid by the State to a fleet mechanic "for the use of [the employee's] tools." As a condition of their employment, fleet mechanics are required to have the tool collection. In addition, Article 43.6 requires the State to enter into an agreement guaranteeing payment of the rental fee to fleet mechanics. Taken together, it is clear that the "tool rental fee" is an integral part of the fleet mechanic's overall compensation. The State correctly argues that the parties agreed on an across-the-board wage adjustment in the master agreement, but the agreement did not address the fleet mechanic's overall compensation package. The value of an across-the-board increase is diminished whenever an integral part of a compensation package remains unadjusted. An adjustment in the tool rental fee is appropriate. The Union proposal for a 25% increase, however, is not supported because it includes an as-yet untested assumption about the 2021 inflation rate.

Factfinder's Recommendation:

The SEA's proposal to increase the tool rental stipend is recommended **as modified**:

Rental fee of four hundred sixty dollars (\$460.00) per year.

SEA Item 2: Year-Round Maintenance Stipend

43.11. Maintenance Activities: In recognition of their obligation **requirement** to respond to winter maintenance call outs, the Employer agrees to pay a stipend of thirty- five dollars (\$35.00) per week to certain **maintenance** employees from the pay period that includes the first day in November through the pay period that includes the last day of March each year in accordance with the following conditions:

a. The stipend shall be paid to those employees who are determined by the Employer to be routinely engaged in winter maintenance and ancillary activities and are on the Employer's winter maintenance call out list.

b. **Notwithstanding the provisions of Article 7.1**, Other employees who are not routinely engaged in winter maintenance and ancillary activities but who possess a Commercial Driver's License may volunteer **at their regular rate of pay** for placement on the winter maintenance call out list, from the pay period that includes the first day in November through the pay period that includes the last day of March. Provided that any employee who refuses a call to perform winter maintenance and ancillary duties may be removed from the list, may cease to receive the stipend, and may be required to reimburse the Employer for stipends received since the date of the last winter maintenance call out.

c. Employees defined in paragraph (a. **and b.**) above who obtain and maintain a valid CDL medical card and provide an acceptable copy to the NHSEA/DOT's Driver Qualifications Specialist shall receive an additional ten dollars (\$10) per week in accordance with the above provisions.

Factfinder's Analysis of SEA Year-Round Maintenance Proposal

The SEA argument that "the demand for callouts has increased" outside the winter months is an assertion that is not supported by evidence. In addition, there is no evidence that callouts during non-winter months are as demanding or the conditions as severe as winter callouts.

Factfinder's Recommendation:

The SEA proposal regarding a Year-Round Maintenance stipend is not recommended.

SEA Item 3:

Stipend for Random Drug Testing

43.13 Any employee who holds a Commercial Drivers License (CDL) and is subject to random drug testing shall receive an additional (\$3) three dollars per hour added to their base pay.

CDL Medical Card Stipend

43.13.1 Employees who hold a Commercial Driver's License and have a CDL medical card certification shall receive an additional (\$2) two dollars an hour added to their base pay.

Exemptions to CDL Medical Card

43.13.2 Employees who hold a Commercial Driver's License (CDL) prior to the implementation of this agreement shall be exempt from the requirement to obtain and/or maintain a medical card certification.

Mandatory CDL Medical Cards for new hires Proposed

43.13.3 All employees who are hired after the signing date of this agreement, and who are required to hold a Commercial Driver's License (CDL) as a condition of employment, shall be required to maintain a medical card certification and shall receive the wage adjustments as established in section 43.13 and 43.14 of this article.

Factfinder's Analysis of SEA Proposals for Wage Adjustments for CDL/Drug Testing and Medical Card

The SEA presented evidence that the Department of Transportation continues to have high rates of turnover among the HMI, HMII, and HMIII positions. The SEA also presented evidence that hourly rates for these employees are lower than the rates in 6 NH cities and lower than the rates at 5 private companies based in NH. These data are insufficient, however, to establish whether the sampled rates also represent the average hourly rate in NH for comparable positions, which information is needed to determine the variance between the overall average and the current HMI, HMII, and HMIII rates and to then determine an appropriate wage adjustment.

Also, there are factors affecting turnover rates that may not be related to the wage rate that must be considered. First, there is a regional shortage of CDL drivers, a factor that compounds the current recruitment and retention problem for any employer. Second, during the 2019 fact-finding, the SEA accurately predicted a spike in turnover since “65% of the [state’s] workforce will be eligible to retire in 2020.”

In addition, the SEA proposal for “realigning” wages uses an indirect and creative mechanism to increase the hourly rate (tied to CDLs and medical cards) but there is no indication the parties have adopted this kind of indirect approach to adjusting wages in the past. I am familiar with contract provisions that use an indirect approach instead of directly adjusting the wage rate (such as the stipends proposed here). The difference is that those were the result of the parties negotiating and agreeing to the provisions in collective bargaining. I am not persuaded that it is appropriate, “to create some innovative procedural or benefit scheme which is unrelated to the parties’ particular bargaining history.”

Finally, I am not persuaded that – if recommended - the SEA stipend proposals would prompt agreement by the parties. There are other mechanisms for addressing the problem. I urge the parties meet and consider appropriate options for improving the recruitment and retention of employees with CDLs, including further bargaining.

Factfinder’s Recommendation:

The SEA proposals (#3-6) for Wage Adjustments for CDL/Drug Testing and Medical Card are not recommended.

SEA Item 4: Double OT for working holidays (new)

43.13 Holiday Worked: In addition to the provisions of Article 9.4 and notwithstanding the provision of article 9.4.2, when a full-Time employee works on a calendar holiday, he/she shall be paid either: Double to their regular rate for hours actually worked on the holiday or, with mutual consent of the parties, be given compensatory time off equal to double the number of hours actually worked on the holiday. A calendar holiday begins after 12:00 a.m. on the actual day of the holiday and ends at midnight on the same day. Only hours worked on the actual calendar holiday are to be compensated as indicated above.

Factfinder's Analysis of Double Pay for Call-out on Holidays Proposal

The argument that a callout on Thanksgiving, Christmas, or New Years is more disruptive to an employee than on other days is persuasive. It is also significant that these Highway Maintenance employees are (mostly) the only employees who are required to sacrifice time on days that are almost universally considered family holidays. I am not persuaded, however, that the proposal for double pay should apply to all contractual holidays.

Factfinder's Recommendation:

The SEA's proposal for double Pay for Call-out is recommended as modified:
Holiday Worked: In addition to the provisions of Article 9.4 and notwithstanding the provision of article 9.4.2, when a full-time employee works on **Thanksgiving, Christmas, or New Year's Day**, he/she shall be paid either: Double to their regular rate for hours actually worked on the holiday or, with mutual consent of the parties, be given compensatory time off equal to double the number of hours actually worked on the holiday. The **Thanksgiving, Christmas and New Year's Day** holidays begin after 12:00 a.m. on the actual day of the holiday and ends at midnight on the same day. Only hours worked on **Thanksgiving, Christmas and New Year's Day** are to be compensated as indicated above.

SEA Item 5: Parity for 40-hour schedules

Work Schedule Consistency: To avoid disparity, when the employer designates a SEA/DOT Division of Operations position to a 40-hour wage schedule, then all positions with the same position classification within the Division shall be assigned to a 40-hour schedule.

Factfinder's Analysis of SEA Parity for 40-hour Schedules Proposal

The SEA argument is not persuasive. It is not uncommon for a single job classification or position to have different schedules. Even where a supervisor and a subordinate both work a 40-hour week, they could have different starting and ending times, meaning the subordinate will sometimes be on duty without supervision. It is also not uncommon for

a newer supervisor (at a beginning step) to receive a lower pay rate than a long-term subordinate (on a higher step).

Factfinder's Recommendation:

The SEA proposal regarding Parity for 40-hour Schedules is not recommended.

**Links to the complete SEA/DOT Fact Finder's Brief
and the final Fact Finder's report:**

If you want to read the complete SEA/DOT sub-unit team presentation to the Fact Finder or the full Fact Finder's report, you can find them online at:

September 1, 2021 SEA/DOT Fact Finder Brief:

<https://seiu1984.org/wp-content/uploads/2021/11/SEA-Fact-Finder-Brief-for-DOT.pdf>

October 15, 2021 Fact Finder's Report for NH-DOT:

<https://seiu1984.org/wp-content/uploads/2021/11/1.-DOT-Fact-Finders-Report-2021.pdf>