

MARINE PATROL FACT FINDER'S REPORT



SEA/MARINE PATROL Sub-Unit Bargaining Team

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Bargaining Summary:

The SEA/Department of Safety sub-unit bargaining team and the State bargaining team started negotiations on November 2020 in an attempt to reach a new sub-unit agreement. SEA sub-unit team presented the State team with (5) proposals (*listed below*). The State bargaining team did not present the SEA sub-unit bargaining team with proposals and did not offer any counter proposals. The parties could not reach an agreement and went into impasse. As required, the parties 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 sub-unit team proposals and would not offer any compromises. The parties remained at impasse and proceeded into fact finding as required by NH RSA 273-A:12.

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

On October 15, 2021, the fact finder released her report to the parties outlining what recommendations she had for a possible settlement. The report had (1) positive recommendation but did not recommend the remaining (4) proposals.

Per RSA 273-A:12, the met on Thursday October 28, 2021 to review the fact finder's recommendations and attempt to negotiate an agreement. At the meeting, the State bargaining team informed the SEA that they rejected the fact finder's report. The SEA sub-unit team asked the State team to reconsider and possibly compromise on some of the union proposals. The State team said no. The parties remain at bargaining impasse

and now submit the fact finder's report to the members of the bargaining unit per RSA 273-A:12,(II). *See Below

Requirements of RSA-273-A:12

NH Labor Law requires the following steps to be followed if either the SEA team or the State team 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 sub-unit t recommendations on the Fact Finder's recommendations:

The SEA bargaining unit for NH Department of Safety consists of employees from many different divisions. All members of the unit have the right to submit suggestions for contract changes at the start of each new bargaining cycle. During this cycle of bargaining, the members of Marine Patrol unit were the group that come forward and requested to present contract proposals to the State. Because Marine Patrol is part of the larger Department of Safety bargaining unit, any actions taken on the sub-unit contract must be voted on by all unit members. The outcome of the vote will be decided by a simple majority. *Please note that all members of the Department of Safety unit were given the opportunity to participate at the start of the 2021-2023 bargaining cycle (November 2020). The members of the Marine Patrol were the only group that participated in negotiations. This is the reason that all of the proposals in the fact finder's report are for the Marine Patrol officers.

Of the (5) proposals submitted to the fact finder, only (1) was recommended. This was a proposal to exempt members of the Marine Patrol from Article 8.3 of the SEA master contract (Overtime and the use of Sick Leave without (3) days' notice). The fact finder's recommendation is based on the unequal impact that this article has on Marine Patrol officers who work 28- day (law enforcement) schedules versus the regular 7-day (weekly) schedules that a majority of State employees work.

The remaining (4) proposals submitted by the sub-unit team were looking to create wage and leave parity between the Marine Patrol unit and the State Police units within the Division of State Police. These proposals however were not recommended by the

fact finder. The SEA sub unit team believes that there is still a case to be made for wage and benefit parity for Marine Patrol officers. The SEA team therefore does not support the fact finder's recommendations.

The sub-unit team advises that members vote to reject this 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 42.X Time Worked Exemption for Sick Leave
2. Article 42.X S416 Law Enforcement Wage Scale
3. Article 42 Diversity of Duty Pay
4. Article 42.2 Annual Leave Accruals
5. Article 42.XX Sick Leave Accruals

SEA Item 1: Exemption to Article 8.3 "Time Worked relating to the use of Sick Leave."

42.X. Notwithstanding the provisions of Article 8.3, all hours that full time sworn law enforcement employees of the Division of State Police-Marine Patrol Unit are on pay status shall constitute "time worked" for the purpose of determining the workweek required to establish eligibility for overtime compensation

Factfinder's Analysis of SEA Proposal regarding Time Worked Exemption for Sick Leave

The SEA argument for exempting Marine Patrol employees from the "time worked" provision is persuasive. Like the State Troopers, Marine Patrol employees work a 28-day schedule, but unlike the State Troopers, the master agreement "time worked" provision, which applies to all other state employees, also applies to Marine Patrol employees. The impact of that "time worked" language on Marine Employees' overtime is different than the impact of the same language on the majority of state employees whose overtime is calculated on a seven (7)-day schedule. For example, if an employee on a seven (7)-day schedule and a Marine Patrol officer both work four (4) hours overtime every week for four (4) weeks and each one calls out sick once for an eight (8)-hour

shift during the same four (4) weeks, the Marine Patrol employee will be paid for fewer overtime hours. The employee on a seven (7)-day schedule will receive more overtime pay because the 8 hours of sick leave only affects the calculation of overtime during one of the four (4) weeks. The Marine Patrol employee, however, will be paid less overtime even though they had the same amount of unscheduled sick leave and worked the same amount of overtime. There is no reasonable justification for applying a master agreement provision in a manner that produces such disparate outcomes. The State's argument that it has a goal of moving closer to the requirements of the FLSA must fail because the FLSA requirements for calculating overtime are based on a fixed and recurring seven (7)-day workweek.

Factfinder's Recommendation:

The SEA proposal regarding time worked exemption for sick leave is recommended.

SEA Item 2: S416 Law Enforcement Wage Scale

42.X All full time sworn members of the Division of State Police-Marine Patrol Unit shall be moved to the S416 wage scale.

42.X.X All full time sworn members of the Division of State Police-Marine Patrol Unit that are moved to the S416 wages scale shall also be placed at the labor grades listed herein on the first full pay period following July 1, 2021. All unit employees that are subject to wage scale adjustments under article 42.X.X shall maintain their original accrual dates.

Marine Patrol Captain shall be placed in the new pay scale at labor grade 29.

Marine Patrol Lieutenant shall be placed in the new pay scale at labor grade 27.

Marine Patrol Sergeant shall be placed in the new pay scale at labor grade 24.

Marine Patrol Officer II shall be placed in the new pay scale at labor grade 21.

Factfinder's Analysis of SEA Proposal regarding S416 Law Enforcement Wage

The SEA proposal that Marine Patrol employees be paid on the S416 wage scale is not persuasive. The SEA established that Marine Patrol employees are law enforcement officers who face certain risks and dangers and have challenging, necessary, and essential jobs. The fact that both groups are "law enforcement officers," however, is not sufficient evidence that a Marine Patrol officer's work is

comparable to the State Trooper's and is insufficient to establish that Marine Patrol officers should be paid comparable wages and benefits.

Specifically, the SEA has not established that the nature of the Marine Patrol officer's job is comparable to the nature of the State Troopers' job. For example, both officers have the authority to arrest citizens, which can be a stressful and sometimes dangerous part of the job. There is no evidence, however, to establish how this aspect of the Marine Patrol officers' job compares to the State Troopers'. Similarly, while both officers conduct law enforcement patrols, Marine officers perform this duty differently and under different conditions and there is no evidence to establish how this part of their job compares to the State Troopers'. The SEA evidence does not persuade me that the work performed by Marine Patrol officers work is comparable to the work performed by State Troopers or that their wages and benefits should be the same as those negotiated by the State with the State Troopers.

Factfinder's Recommendation:

The SEA proposal regarding S416 law enforcement wage scale is not recommended.

SEA Item 3: Diversity of Duty Pay

42.xx Notwithstanding any other provisions of this Agreement, full time sworn members of the Division of State Police-Marine Patrol Unit shall, in recognition of the diverse nature of their job duties, shall receive the following payments above base wages:

Lieutenants and Captains: sixty (\$60) dollars per week.

Marine Patrol Officer IIs and Sergeants: twenty-five (\$25) dollars per week.

Factfinder's Analysis of SEA Proposals regarding Diversity Pay

The SEA proposal that Marine Patrol employees receive a stipend comparable to the "diversity" stipend paid to State Troopers is not persuasive. The reasoning and analysis above applies here as well. The SEA established that Marine Patrol employees are law enforcement officers whose job is "diverse" because it entails a wide range of duties. The SEA evidence does not establish, however, whether the "diverse" work performed

by Marine Patrol officers work is comparable to the work performed by State Troopers. More significantly, it is not clear what duties or working conditions the original “diversity” stipend was meant to compensate.

Factfinder’s Recommendation:

The SEA proposal for diversity pay is not recommended.

SEA Item 4: Annual Leave Accruals

42.20c. Accrue leave at the following rates in lieu of the rates provided by Article X, Section 10.1:

Years Service	Hours per Month	Hrs per Yr/Maximum
0-1	0 <i>1</i>	12 days
2-5	10 <i>1½</i>	120 <i>144/256</i>
6-10	12 <i>1¾</i>	144 <i>168/304</i>
11-15	14 <i>2</i>	168 <i>192/352</i>
15+ <i>16-20</i>	16 <i>2¼</i>	192 <i>216/400</i>
<i>21+</i>	<i>2½</i>	<i>240/448</i>

1 day = 8 hours; 1¼ days = 10 hours; 1½ days = 12 hours

1¾ days = 14 hours; 2 days = 16 hours; 2¼ days = 18 hours; 2½ days = 20 hours

** No payment for accrued but unused annual leave will be made upon separation from employment within the first twelve (12) months of employment*

Factfinder’s Analysis of SEA Proposal regarding Annual Leave Accruals

The SEA proposal that Marine Patrol employees should earn annual leave at the same rate as State Troopers is not persuasive. The SEA established that Marine Patrol employees are law enforcement officers, but as discussed previously, the evidence is not sufficient to conclude that the two law enforcement groups are so similar that they should earn annual leave at comparable rates. Both units have had long-standing bargaining relationships with the State, and each has had an opportunity to negotiate over wages and benefits over multiple contracts.

Factfinder’s Recommendation:

The SEA proposal regarding annual leave accruals is not recommended.

SEA Item 5: Sick Leave Accruals

42.20 d. ~~Not be entitled to accrue any bonus leave, notwithstanding Article XI, Section 11.1.1.~~

Accrual: Full time sworn law enforcement employees of the Division of State Police-Marine Patrol Unit shall accrue sick leave at the following rates in lieu of the rates provided by Article XI, Section 11.1.

<i>Continuous Years Worked</i>	<i>Accrued/ Month</i>	<i>Years/Max.</i>
<i>0 thru 8</i>	<i>1 1/2 days</i>	<i>18/90</i>
<i>9 thru 15</i>	<i>1 1/2 days</i>	<i>18/105</i>
<i>16 thru 20</i>	<i>1 1/2 days</i>	<i>18/120</i>
<i>21 plus</i>	<i>1 1/2 days</i>	<i>18/135</i>

1 1/2 days = 12 hours

For all other employees, 1 1/4 days equals 10 hours.

Employees in their first six (6) months of service accrue sick leave and may use accrued sick leave as soon as it is accrued.

For purpose of utilization, sick leave shall be converted to hours. Sick leave deductions shall be made hour for hour.

42.20 e Payment: Notwithstanding the provisions of Article 11.1., Full time sworn law enforcement employees of the Division of State Police-Marine Patrol Unit, upon retirement under the provision of RSA 100-A:5 and RSA 100-A:6 only, or upon eligibility under RSA 100-A:5 but electing to receive a lump sum payment in lieu of an annuity, an employee shall receive payment in a sum equal to 50% of the number of sick leave days remaining to the employees credit. However, the total number of days eligible for payment shall not exceed sixty-two (62) days.

42.20 f Notwithstanding the provisions of Article 11.1., Full time sworn law enforcement employees of the Division of State Police-Marine Patrol Unit who are terminated as a result of a reduction in force shall receive payment in a sum equal to 50% the number of sick leave days remaining to the employees credit. However, the number of days eligible for payment shall not exceed sixty-two (62) days.

Factfinder's Analysis of SEA Proposal regarding Sick Leave Accruals

The SEA proposal that Marine Patrol employees should earn sick leave at the same rate as State Troopers is not persuasive. As discussed above, the SEA established that Marine Patrol employees are law enforcement officers but there

is insufficient evidence to conclude that the nature of their jobs is comparable or that they should earn sick leave at comparable rates.

Factfinder's Recommendation:

The SEA proposal regarding sick leave accruals is not recommended

**SEA/Marine Patrol Fact Finder's Brief
and the final Fact Finder's report:**

If you want to read the complete SEA/MARINE PATROL 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/MARINE PATROL Fact Finder Brief:

October 15, 2021 Fact Finder's Report for MARINE PATROL: