

NH LIQUOR COMMISSION FACT FINDER'S REPORT



SEA/NHLC Sub-Unit Bargaining Team

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Bargaining Summary:

The SEA/NHLC sub-unit bargaining team and the State bargaining team met repeatedly starting in November 2020 to reach a sub-unit agreement. The SEA/NHLC sub-unit team presented the State team with five (5) proposals (*listed below*). The State bargaining team did not present the SEA with proposals and did not offer any counter-proposals to the SEA/NHLC sub-unit bargaining team. The parties went into impasse and participated in mediation on May 14, 2021, for one (1) day using the assistance of mediator Mark Grossman. In mediation, the State would not agree to any of the SEA/NHLC 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/NHLC sub-unit team met with fact finder Mary Ellen Shea on Wednesday, September 1, 2021. The SEA/NHLC sub-unit team made a very extensive presentation to the fact-finder supporting 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. Overall, the fact-finding report is very positive and the fact finder supported all of the SEA team's proposals except (1).

Per NH bargaining law, the SEA/NHLC sub-unit team and the State bargaining 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 three (3) of the fact finder's recommendations but rejected the remaining two (2) of the recommendations, including the proposal on wage adjustments for retail workers. The SEA/NHLC sub-unit team asked the State team to reconsider the fact finder's report, but the State team declined. As a result, the parties are still at impasse and must now follow the next steps outlined in NH RSA 273-A:12.

Requirements of RSA-273-A:12

NH Labor Law requires the following steps to be followed if the union and/or 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/NHLC Sub-Unit Team comments and recommendations on the vote to accept or reject the Fact Finder's recommendations:

The SEA/NHLC sub-unit bargaining team believes that the fact finder's report addressed a number of key issues for NHLC Retail workers and represents fair changes to the NHLC sub-unit contract. The SEA/NHLC team believes that the fact finder acknowledged the problems that exist regarding low wages, unfair treatment of part-time employees and the ability of employees to have access to water while working at cash registers.

The SEA/NHLC sub-unit team **supports** the fact finder's recommendations and advises that SEA/NHLC Chapter 54 members vote to **accept** 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 37.3 Water at Cash Registers
2. Article 37.17 Involuntary Transfers
3. Article 37.18 Portal to Portal Call Back (PT employees)
4. Article 37.18.1 Premium Pay and Hourly Minimum Call Back
5. Article 37.19 Increase to Base Wages (retail employees)

SEA Item 1: Allow Water at Cash Registers

37.3 The Employer should provide a refrigerated water fountain in each retail store.

Nothing shall prohibit employees from having water at the register in a sealable beverage container.

Factfinder's Analysis of SEA Proposal to Allow Water at Cash Registers

The SEA arguments are persuasive. The State's argument that a water bottle near the registers poses a risk of damage to the registers is at odds with its policy allowing office workers to keep drinks near their computer terminals. The State's argument that keeping a water bottle at the register appears unprofessional is nor is it supported by evidence of a common practice in many retail stores to allow water bottles at a cash register.

Factfinder's Recommendation:

SEA Proposal to Allow Water at Cash Registers is recommended..

SEA Item 2: Involuntary Transfers

37.17 The Employer shall not permanently transfer a unit employee involuntarily to any worksite location that is more than thirty miles (30) from the worksite to which the employee is currently assigned.

Any involuntary transfer of an employee from their current assigned worksite to another worksite shall be done in writing and shall be considered as temporary and said assignments shall not exceed a distance of thirty miles (30) and shall not be for a period of more than ten (10) working days.

Temporary transfers may be extended beyond ten (10) working days through mutual written agreement between the employee and the employer.

Factfinder's Analysis of SEA Proposal regarding Involuntary Transfers

The SEA arguments for its involuntary transfer proposals are not persuasive. First, the SEA has not offered data to support its argument that involuntary transfers have

increased significantly, are of significantly longer duration, or are significantly further from an employee's home store than transfers made in the past. Without such evidence, I am not persuaded that there is a compelling need to recommend changes to the transfer language. It is also a reality that a retail business with dozens of retail outlets, may need to transfer employees from time to time. It is assumed that volunteers are sought first, but when there are no volunteers, the employer must be able to staff its retail operations.

Factfinder's Recommendation:

The SEA Proposal regarding Involuntary Transfers is not recommended.

SEA Item 3: Portal to Portal Call Back for Part-Time Employees

37.18 In addition to the provisions of Article 7.3.1.1, any part-time employee who is called back to their place of work or other site away from their home shall have the "hours worked" computed from portal to portal.

Factfinder's Analysis of SEA Proposal for Portal to Portal Call Back for Part-Time Employees

The SEA argument that portal to portal pay for callbacks be extended to part-time employees is persuasive. The State correctly argues that full-time benefits are different from part-time benefits. The rate or amount of pay for a particular task or work assignment, however, is not a "benefit." The value assigned to a particular task or work assignment is the price (or the rate of pay) for that work. Whether viewed as the price (to the employer) or the rate of pay (to the employee), the value assigned to that work is not a "benefit" as suggested by the State. The price (or rate of pay) is the value assigned to that work in the form of wages.

A callback to deal with an after-hours matter (for example, to reset the store alarm) is a particular task or work assignment of importance to the employer. The task can be performed by either a part-time or a full-time employee, but the employee's status (full or part-time) does not alter the requirements to perform the task or the importance to the employer of completing the task. The employee's performance of the task does not alter their status as a part-time or full-time employee. Whether performed by a full or part-time employee, the task is the same and the degree of skill or proficiency required is the same, and the work must be compensated. The State has determined that the value of an after-hours callback includes compensation for a minimum number of hours and portal to portal pay. The State has not established a reasonable basis for

compensating full-time and part-time employees differently when they are required to perform the same work under the same conditions.

Factfinder’s Recommendation:

The SEA Proposal for Portal to Portal Call Back for Part-Time Employees is recommended.

SEA Item 4: Premium Pay and Hourly Minimum Call Back for Part-Time Employees

37.18.1 In addition to the provisions of Article 7.3.1, part time employees who are called back to his/her place of work or other site away from his/her home without prior notice on the same day after once leaving work or before the next regular starting time, shall be compensated at one and one half time the hourly rate for the hours worked and shall be guaranteed a minimum of not less than three (3) hours of premium pay

Factfinder’s Analysis of SEA Proposal for Premium Pay and Hourly Minimum Call Back for Part-Time Employees

The SEA argument that premium pay and an hourly minimum for callbacks be extended to part-time employees is also persuasive and for the same reasons discussed above. The value of a callback to open a store after-hours has been calculated to include premium pay, a minimum number of hours, and portal to portal pay. This value (or “rate”) constitutes wages, is not a “benefit”, and has been the established rate for full-time employees. The State has not established a reasonable basis for a different rate for part-time employees who are subject to the same callback requirement, the same disruption of their personal time, and who are required to perform the same duties applying the same skill and knowledge.

Factfinder’s Recommendation:

The SEA Proposal for Premium Pay and Hourly Minimum Call Back for Part-time Employees is recommended.

SEA Item 5: Increase to Base Wage for Retail Employees

37.19 All temporary wage enhancements put into effect for full and part-time NHLC employees in 2020 shall be made permanent and shall be incorporated into a salary schedule that will be included in Appendix A.

Factfinder's Analysis of SEA Proposal to Increase Base Wage for Retail Employees

The SEA has presented persuasive evidence that the current hourly rates for Liquor Commission retail employees is lower than the rate for similar retail work and, given the very low unemployment rate in NH, the hourly rates are not competitive when recruiting new hires. The Liquor Commission has increasing difficulty filling and retaining enough retail employees to fill its available positions (1627 positions are filled, 500+ are vacant). Part-time positions comprise 85% of the bargaining unit.

The evidence establishes the Liquor Commission's profits have increased every year since it was established more than 50 years ago (Exhibit #9: chart titled, "Net Profits over the Years.") with a record profit exceeding \$200m in 2020. The evidence also establishes that a significant portion of the State's general revenues come from the Liquor Commission (more than \$158m per Exhibit #9).

It is not surprising that the Governor declared that a wage enhancement to Liquor Commission employees was necessary because the state's liquor stores are "essential to the core missions of the State" and their operation is necessary to avoid "fiscal harm to the State." The SEA also established that the NH Liquor Commission is a self-funded agency and the State offered no evidence that extending the 10% wage enhancement could not be supported or would reduce revenues to the general fund. For these reasons, I am persuaded that base wages for retail employees must be increased by extending the 10% wage enhancement.

Factfinder's Recommendation:

The SEA proposal to increase base wages for retail employees is recommended.

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

If you want to read the complete SEA/NHLC 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/NHLC Fact Finder Brief
- October 15, 2021 Fact Finder's Report for NHLC