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**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

January 7, 2021

The Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to an order of the Public Employee Labor Relations Board (PELRB), which is currently on appeal before the New Hampshire Supreme Court, the fact finder report for New Hampshire Department of Health and Human Services, NH State Hospital, State Employees Association of New Hampshire, Service Employees International Union, Local 1984, is being submitted for your review and input on whether such recommendations should be accepted or rejected.

EXPLANATION

On June 25, 2021, the parties of The State of New Hampshire and The State Employees Association of New Hampshire (SEIU Local 1984) finalized and signed the master agreement terms for the 11,200 covered state employees to go into effect July 1, 2021.

Per determination of the PELRB and according to RSA 273-A:9(I), individual subunits can bargain unique cost items separate from the master agreement terms.

While the parties have already negotiated a master agreement, which included bargaining over statewide contract issues as well as bargaining over issues specific to the sub-unit agreements, four of the 29 sub-units did not agree to terms.


The sub-unit representing the Department of Health and Human Services, NH State Hospital consisting of 635 employees reached an impasse over the SEA sub-unit proposal. Items of concern included a 20% wage enhancement enacted pursuant to state law RSA 99:8 be made permanent for 231 full and part-time mental health workers at the State Hospital.

As required by law, the State and the Union have followed the impasse process set forth in RSA chapter 273-A and a fact finder has issued a report pertaining to the unit negotiations. After receiving the report, the State's bargaining team pursued further negotiations with this unit, which unfortunately have remained unsuccessful.

Because agreeing to these provisions could cause potential long term unintended consequences that may reach far beyond this specific sub-unit, I have rejected the recommendations of the fact finder report.

Therefore, per order of the Public Employee Labor Relations Board (PELRB), this item is being submitted to the New Hampshire Executive Council for review and input on whether such recommendations should be accepted or rejected.

Respectfully Submitted,



Christopher T. Sununu
Governor
State of New Hampshire

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

In the factfinding matter between: *
DEPARTMENT OF HEALTH AND HUMAN SERVICES, *
NH STATE HOSPITAL, *
STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, *
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1984 *
*
and *
STATE OF NEW HAMPSHIRE *

INTRODUCTION

In accordance with Chapter 273, the State of New Hampshire (“State”) and the State Employees Association of New Hampshire, SEIU, Local 1984, Department of Health and Human Services (“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 State Hospital 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 issues.

The State Employees Association, SEIU, Local 1984, was represented by Randy Hunneyman, Executive Branch Negotiator. The Union’s team also included Sarah Pierce, Laurie

Aucoin, and Stephanie Carpenter. 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 State Hospital is within the Department of Health and Human Services which includes several divisions and has about 653 employees.

THE ISSUES

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

Article 38.15

Wage Enhancement

PROPOSAL AND RECOMMENDATION

SEA Proposal: Wage Enhancement

38.15. The 20% temporary wage enhancements put into effect for full and part-time Mental Health Workers shall be made permanent and shall be incorporated into a salary schedule, which will be included in Appendix A of this agreement.

SEA Wage Enhancement Proposal

The SEA proposes that the 20% temporary wage enhancement enacted pursuant to state law RSA 99.8 be made permanent for 231 full and part-time mental health workers at the State Hospital. In a letter to the Governor, the Health and Human Services Commissioner made a compelling argument for a wage enhancement for these mental health workers. The rate of turnover for mental health workers had been among the highest of all state agencies and employees were forced to work excessive amounts of overtime and experienced high levels of stress. The Governor and Legislature approved the Commissioner's requested wage enhancement which became effective December 3, 2020 and is set to expire on December 3, 2022.

During bargaining, the State rejected the Union proposal to make the temporary wage adjustment permanent, taking the position that the employer reserved the right to take back the enhancement when recruitment reached a satisfactory level. The idea of cutting mental health workers' wages after staffing levels are restored makes no practical sense and given the current

market, problems with recruitment and retention will return. The SEA urges the proposal be recommended.

State of NH Response to SEA Wage Enhancement Proposal

The State points out that RSA 99:8 provides for flexibility and the temporary wage enhancements are subject to “ongoing consideration, and where appropriate, extension.” The State also points out the wage enhancement remains in effect until 2022. Until then, the State can continue to evaluate the most sensible approach for moving forward. The State urges the proposal be rejected.

Factfinders’ Analysis of SEA Wage Enhancement Proposal

The SEA proposal to continue the 20% wage enhancement is persuasive. The evidence and argument establish that the decision to increase wages pursuant to RSA 99:8 was determined to be necessary and supported by the employer. In her letter to the Governor, HHS Commissioner Shibinette explained the Hospital was negatively impacted by its inability to recruit and retain mental health workers. According to the Commissioner, average wages for mental health workers in other states was significantly higher and 69% of the part-time Mental Health Worker positions were vacant. In her request to the Governor for the 20% wage enhancement, the Commissioner also attested:

Funds to support this enhancement are available in fiscal year 2021 and are anticipated to be available in SFY 2022-2023.

...NHH has continued to have extreme difficulty recruiting Mental Health Workers -See Table 1....

...The vacancies have created increased stress for the current Mental Health Workers who must regularly work mandatory overtime - in addition to the regular hours. This is expensive, and more troubling, it negatively affects the quality of care provided by staff who already work in a stressful, demanding and dangerous environment.... Despite intensive efforts to recruit new Mental Health Workers, NHH has been unable to fill the vacant positions....

...Due to the lack of other facilities with [this] specialty, the wage comparison is with the national average and surrounding states and entry-level

positions out of high school. The national wage estimate for mental health workers at psychiatric hospitals is \$54,560 a year, which is 45.8% higher than the mean wage of all mental health workers at NHH. A newly hired mental health worker with no experience starts at labor grade 7, step 1, making \$12.87 an hour. If that employee stays in the position and is given step increases each year, then [after] 4 years they will be making the same amount (\$15.00) as a starting frontline fast food worker in Concord, NH according to Ziprecruiter.com....

Should Governor and Council determine to deny this request, New Hampshire Hospital will be unable to adequately recruit and retain staff...

The SEA and the employer agree that Mental Health Workers at NHH are significantly underpaid, that the inability to recruit and retain Mental Health Workers jeopardizes the hospital's ability to provide the essential services and care required of the State, and that funding to support the wage enhancement is projected to be available for the duration of this collective bargaining agreement. The State's arguments opposing the proposal notwithstanding, the evidence establishes the employer concluded there was a compelling need for the wage enhancement and determined that funding would be available through the term of this agreement. The State argument that it should retain authority to end the wage enhancement is not defensible.

Factfinders' Recommendation:

The SEA wage enhancement proposal is recommended.

SUMMARY OF FACT FINDER RECOMMENDATIONS

Article 38.15 Wage Enhancement
The SEA wage enhancement proposal is recommended.



Mary Ellen Shea, Factfinder