

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2017-0472

Appeal of New England Police Benevolent Association, Inc.  
Appeal of State Employees' Association of New Hampshire, Inc., SEIU, Local 1984

APPEAL BY PETITION PURSUANT TO RSA 541:6  
(New Hampshire Public Employee Labor Relations Board)

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BRIEF FOR THE STATE OF NEW HAMPSHIRE

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THE STATE OF NEW HAMPSHIRE

Gordon MacDonald  
Attorney General

Jill A. Perlow (NH Bar #15830)  
Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
(603) 271-3658

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### QUESTION PRESENTED

Whether the State was required to continue to meet and negotiate with the SEA and NEPBA regarding cost items and generally applicable terms and conditions of employment when the Teamsters and NHTA ended the bargaining sessions and sought mediation, and RSA 273-A:9, I specifically provides that “[a]ll cost items and terms and conditions of employment affecting state employees in the classified system generally *shall be negotiated by the state. . . with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units*”?

**TEXT OF RELEVANT STATUTES**

**541:13 Burden of Proof.**

Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

## STATEMENT OF THE CASE

This appeal arises out of a decision of the Public Employee Labor Relations Board (Board) dated May 26, 2017. R. 127-39<sup>1</sup>. The Appellants, the New England Police Benevolent Association, Inc. (NEPBA) and the State Employees' Association of New Hampshire, Inc. SEIU, Local 1984 (SEA), appeal the Board's dismissal of their unfair labor practice complaints. The Appellants' complaints alleged that the State committed an unfair labor practice when it stated that it would proceed with either negotiations or impasse resolution with the full "Union Committee," but would not negotiate with some members of the "Union Committee," namely the SEA and the NEPBA, while proceeding with impasse procedures with other members, namely the Teamsters Local 633 (Teamsters) and the New Hampshire Troopers Association (NHTA). R. 1-9; 56-59.

The parties agreed that a hearing before the Board was unnecessary and that the matter could be decided on stipulated facts, stipulated exhibits, and briefs. R. 89-93. The Board concluded, by order dated May 26, 2017, that the "Union Committee" requirement applied to the impasse resolution phase of bargaining and dismissed the unfair labor practice petitions. R. 127-39.

On June 26, 2017, the Appellants filed motions for rehearing of the Board's May 26, 2017 decision. R. 140-46; 148-51. The State filed an objection to the motions, indicating that the original decision was both lawful and reasonable. R. 153-58. The Board denied the motions. R. 159-60. The Appellants filed this appeal, arguing that the Board acted unlawfully and unreasonably when it applied the "Union Committee" requirement of bargaining with the State

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<sup>1</sup> In this brief, "R" refers to the certified record on appeal filed by the Public Employee Labor Relations Board, "NEPBA Bf" refers to the Brief of the Appellant New England Police Benevolent Association, Inc., and "SEA Bf" refers to the Brief for Appellant State Employees' Association of New Hampshire, Inc., SEIU, Local 1984.

to the impasse resolution phase of bargaining and dismissed their complaints. NEPBA Bf 11-13; SEA Bf 16-18.

### **STATEMENT OF THE FACTS**

The dispute before the Court involves the manner in which the State of New Hampshire, as a public employer, and the four exclusive representatives of the state executive branch employees bargaining units, specifically the NEPBA, SEA, Teamsters, and NHTA, negotiate their collective bargaining agreements. R. 129-30. The state executive branch employees are organized into approximately fifty separate bargaining units. R. 129. These bargaining units are represented by four separate exclusive representatives.<sup>2</sup> R. 129.

The NEPBA is the exclusive representative and bargaining agent for five of the bargaining units. R. 129. These units include: the Fish and Game Conservation Officer's unit, the Fish and Game Conservation Officer's Supervisor's unit, the Liquor Investigators unit, the Probation/Parole Officers I and II unit, and the Probation/Parole Officers III (Supervisors) unit. R. 129-30.

The Teamsters is the exclusive representative and bargaining agent for one bargaining unit: the Corrections Officers and Corrections Officers Corporals employed at the Department of Corrections. R. 130.

The NHTA is the exclusive representative and bargaining agent for two bargaining units. R. 130. These units are: the Department of Safety sworn personnel up to and including the rank of Sergeant ("Troopers") and the Department of Safety Command Staff unit, which is comprised

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<sup>2</sup> The Board's order states that there are five exclusive representatives; however, the order later clarifies that there are four representatives because NHTA represent two bargaining units: the Troopers Unit and the Troopers-Command Staff Unit. R. 130.



of the supervisors of the Troopers unit and including the Major, Captain, and Lieutenant positions. R. 130.

The SEA is the exclusive representative and bargaining agent for the approximately 42 remaining bargaining units. R. 129. A representative list of these units include: the Department of Agriculture employees, the Insurance Department employees, the Department of Education employees, the Department of Labor employees, the Liquor Commission employees other than the Liquor Investigators, the Department of Safety employees other than the Troopers or Troopers Command Staff, and the Department of Health and Human Services employees. R. 129.

In December 2016, the State began bargaining with all four exclusive representatives comprising a single employee bargaining committee, or "Union Committee," on successor contracts.<sup>3</sup> R. 130-31. At the February 21, 2017 bargaining session, the State rejected all of the Union Committee's wage proposals and explained that, for various reasons including increased health care costs, the Governor was not offering any wage increases during this bargaining cycle. R. 131. At the March 7, 2017 bargaining session, the Teamsters declared impasse and left the bargaining session after requesting the State's final and best offer on wages and the State offered no wage increase. R. 131. At the same meeting, the State rejected NHTA's proposals on wages and NHTA, on behalf of the Troopers, declared impasse and left the bargaining session. R. 131.

In light of the Teamsters' and NHTA's declaration of impasse, the State explained to all four exclusive representatives that the entire Union Committee must go to impasse or must return to the bargaining table. R. 132. The NEPBA and SEA objected. R. 131-32. On April 27, 2017,

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<sup>3</sup> The contracts between the State and each of the exclusive representatives included the same terms with regard to the duration of the contracts: the agreement remains in force and effect until June 30, 2017, or until such time as a new agreement is executed. R. 129-30.

because the Teamsters and NHTA ended bargaining at the table with the full Union Committee, the State advised the Union Committee that it would select a mediator and that the impasse mediation sessions were not limited to the Teamsters and NHTA Troopers contracts because the issues to be resolved affected all bargaining units. R. 132. The SEA and NEPBA did not participate in mediation; however, SEA attended the sessions as an observer. R. 132. On May 1, 2017, the State offered to meet with the SEA and NEPBA outside of impasse mediation on all non-cost items unique to their respective bargaining units. R. 132.

Since the Board's order was issued, the State and the Union Committee have participated in impasse fact-finding procedures. In addition, the State has continued to meet and negotiate with the individual representatives on all non-cost items unique to their respective bargaining units. To that end, the State and SEA have negotiated and executed two sub-unit agreements that involve the unique terms and conditions of employment for the Department of Education and the Department of Employment Security bargaining units.

## SUMMARY OF THE ARGUMENT

The method by which collective bargaining by the exclusive representatives of the bargaining units representing state executive branch employees and the state government must occur is set forth in RSA 273-A:9, I. That statute provides, in relevant part, that “[a]ll cost items and terms and conditions of employment affecting state employees in the classified system generally *shall be negotiated by the state . . . with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units.*” RSA 273-A:9, I.

The plain language of the statute requires that, on cost items and general conditions of employment, to the extent the bargaining units for state employees choose to be represented by different exclusive representatives, the “Union Committee” format must apply to all stages of bargaining – from negotiations during initial meetings through the negotiations that occur during mediation and other dispute resolution procedures. Even if the Court found the statutory language ambiguous, recent legislative history of an attempt to repeal this language reveal a legislative intent to require the “Union Committee” format through all stages of bargaining. As a result, the State has not refused to negotiate, as alleged by the Appellants, because mediation, and other dispute resolution steps set forth in RSA 273-A:12, are forms of negotiation recognized by RSA 273-A:3.

Thus, the SEA and NEPBA failed to establish that the State has refused to negotiate in good faith with the single bargaining committee comprised of exclusive representatives of all interested bargaining units. The Court should affirm the Board’s dismissal of the SEA’s and NEPBA’s unfair labor practice petitions.

## ARGUMENT

### I. STANDARD OF REVIEW

Any appeal from a decision of the Public Employee Labor Relations Board is reviewed under the standards as set forth in RSA 541:13. This statute provides:

Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be *prima facie* lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

*Id.*; see also *Appeal of NH Retirement System*, 167 N.H. 685 (2016). The Board's rulings on issues of law are reviewed *de novo*. *Appeal of NH Retirement System*, 167 N.H. at 689-90.

### II. THE BOARD'S DECISION TO DISMISS THE UNFAIR LABOR PRACTICE COMPLAINTS WAS LAWFUL AND REASONABLE BECAUSE THE STATE'S ACTIONS ARE CONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE.

RSA 273-A:9, I, defines the way in which collective bargaining by the exclusive representatives of the bargaining units representing state executive branch employees and the state government must occur. Specifically, it provides:

All cost items and terms and conditions of employment affecting state employees in the classified system generally *shall be negotiated by the state*, represented by the governor as chief executive, *with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units*. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.

*Id.* (emphasis added). The NEPBA and SEA argue that the State committed an unfair labor practice by declining to continue bargaining sessions unless all members of the single employee

bargaining committee, or Union Committee, were present. Because the plain language of the statute requires that the State negotiate all cost items and generally applicable terms and conditions of employment “with a single bargaining committee comprised of exclusive representatives of all interested bargaining units,” it was lawful and reasonable for the Board to determine that the State acted consistent with the requirements of the statute and dismiss the complaints. Accordingly, the Board’s decision should be affirmed.

When interpreting a statute, the Court will “first examine the language of the statute and ascribe the plain and ordinary meanings to the words used” and only “interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Attorney General, Director of Charitable Trusts v. Loreto Publications, Inc.*, 169 N.H. 68, 74 (2015). Further, statutory construction requires that all words of a statute be given meaning and presumes that the legislature did not adopt meaningless phrases. *O'Brien v. NH Democratic Party*, 166 N.H. 138, 145 (2014) (“This interpretation would contravene the principle of statutory construction that meaning was intended by every word used by the legislature, and that effect must be given to every word and clause.”). Finally, the Court’s “goal is to apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme. Accordingly, we interpret a statute in the context of the overall statutory scheme and not in isolation.” *State v Etienne*, 163 N.H. 57, 72 (2011).

#### **A. The Statutory Scheme**

It is first important to set forth the statutory scheme. RSA chapter 273-A was enacted in 1975 and, at the time it was enacted, included the following statement of policy:

The legislature declares that it is the policy of the state to foster harmonious and cooperative relations between public employers and their employees and to

protect the public by encouraging the orderly and uninterrupted operation of government. This can best be achieved by:

- I. Acknowledging the right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivisions thereof, and with the university system.
- II. Requiring public employers to negotiate in good faith and to reduce to writing any agreements reached with employee organizations which have been certified as representing their public employees; and
- III. Establishing a public employee labor relations board vested with broad powers to assist in resolving disputes between government and its employees.

Laws 1975, 490:1.

The statute defines, among other things, who is a public employer, RSA 273-A:1, X, and who is a public employee, RSA 273-A:1, IX. It then sets forth the process for public employees to form a bargaining unit, including holding employee elections for forming the unit and selecting the unit's exclusive representative, RSA 273-A:10, and ultimately certifying the unit by the Board, RSA 273-A:8. Once a unit is certified, the statute sets forth the rights of the exclusive representative of the bargaining unit, which includes "[t]he right to represent employees in collective bargaining negotiations and in the settlement of grievances." RSA 273-A:11, I.

With regard to bargaining, the statute obligates the public employer and exclusive representative of the public employees to bargain. RSA 273-A:3. This includes setting forth when bargaining must commence, RSA 273-A:3, II(a), and when cost items must be submitted to the legislative body for approval, RSA 273-A:3, II(b). The statute also imposes an obligation on both the public employer and the exclusive representative of the bargaining unit to negotiate in good faith. RSA 273-A:3. This is further defined as follows:

"Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate

in good faith shall not compel either party to agree to a proposal or to make a concession.

RSA 273-A:3, I.

The statute provides multiple steps in the bargaining process to assist with reaching an agreement on the terms of employment.<sup>4</sup> Bargaining begins with a “meeting stage” that requires the parties to “meet[ ] at reasonable times and places in an effort to reach agreement on the terms of employment.” RSA 273-A:3, I. If the parties request assistance of the Board or are unable to reach an agreement, the statute sets forth a “dispute resolution” stage of bargaining, which provides additional steps in the bargaining process, including making presentations to the public employer board or bargaining unit, RSA 273-A:12, I(a), participating in mediation, RSA 273-A:12, I(b), and engaging in “fact finding” with a neutral party, RSA 273-A:12, I(b). If an agreement is still not reached, the statute provides additional required steps, including submitting proposals to the “board of the public employer,” the full membership of the public employees, and potentially the legislative body. RSA 273-A:12, II & III. In the end, should these dispute resolution steps still not result in an agreement, the statute requires negotiations to be reopened. RSA 273-A:12, IV.

In sum, the policy of RSA chapter 273-A, as set forth in the enacting policy statement and in the overall statutory scheme, is to provide a structure, through the certifying of bargaining units and exclusive representatives, and a road map, through the steps of bargaining including both meetings and dispute resolution, for public employees and public employers to enter agreements regarding the terms and conditions of employment. The statutory scheme sets forth

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<sup>4</sup> The Board includes information on its website that summarizes the steps in the collective bargaining process. It is listed under the “Frequently Asked Questions” section as: “What are the steps in the collective bargaining process?” This summary can be found here: [https://www.nh.gov/pelrb/faqs/documents/bargaining\\_steps\\_process.pdf](https://www.nh.gov/pelrb/faqs/documents/bargaining_steps_process.pdf) and is provided in the State’s appendix at page 21.

1) how the employees join together into a recognized group, the bargaining unit, and select an exclusive representative for the bargaining unit, 2) how the public employer and the exclusive representative of the employees commence the bargaining process, 3) the obligations of both the public employer and the exclusive representative of the employees to bargain, and 4) a roadmap for how the parties are to bargain, including meeting at reasonable times for negotiations and engaging in other dispute resolution steps, all in an effort to reach an agreement on the terms and conditions of employment.

#### **B. The Plain and Ordinary Language**

It is against this statutory backdrop that the Court is asked to determine whether the State was required to continue to meet and negotiate with the SEA and NEPBA regarding cost items and generally applicable terms and conditions of employment when the Teamsters and NHTA ended the bargaining sessions and sought mediation. RSA 273-A:9, I, specifically provides that “[a]ll cost items and terms and conditions of employment affecting state employees in the classified system generally *shall be negotiated by the state. . . with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units.*” (Emphasis added).

The plain and ordinary language of the statute is clear: cost items and terms and conditions of employment that affect all state employees are negotiated by the State with all of the exclusive representatives forming a single bargaining committee, the Union Committee. The statute contemplates that there may be more than one representative and more than one bargaining unit and, thus, requires a single committee of those representatives to negotiate those specific terms that either involve cost items or apply generally across all units.



The statute continues in the same paragraph to provide: “Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.” RSA 273-A:9, I. This sentence recognizes that the individual representatives and bargaining units would operate separately in the limited circumstances of those terms and conditions that were unique to their respective units. Further, this sentence is necessary in light of the prior section requiring the negotiation as part of a joint Union Committee. *O'Brien*, 166 N.H. at 145 (recognizing “the principle of statutory construction that meaning was intended by every word used by the legislature, and that effect must be given to every word and clause”). Thus, the State acted consistent with this requirement when it took the position that it could no longer participate in meetings to negotiate cost items and generally applicable terms and conditions of employment when two of the four exclusive representatives that comprise the Union Committee left those meetings and declared impasse over these items.

The Appellants argue that the Board erred in applying the Union Committee requirement of RSA 273-A:9, I, to the dispute resolution procedures in RSA 273-A:12. SEA Bf 16-17; NEPBA Bf 11-13. Instead, the Appellants assert that the Union Committee requirement only applies to negotiations during the “meeting” stage of bargaining and not the later “dispute resolution” stage of bargaining. This argument must fail because there is nothing in the statute to support such a segmented reading of bargaining, nor is such a reading consistent with the plain language of the statute or the overall statutory scheme.

There is nothing in RSA 273-A:9, I, regarding the Union Committee that limits its function to negotiations during the “meetings” stage of bargaining. Rather, the statute broadly speaks to the structure of all stages of bargaining by state employees: “all cost items and terms

and conditions of employment affecting state employees...generally shall be negotiated by the state...with a single employee bargaining committee.” *Id.* The requirement to negotiate with the Union Committee is not limited to negotiations during the meeting stage. Rather, there is no limitation to which setting, in meetings or mediation, the negotiations regarding cost items and terms and conditions of employment must occur between the State and the Union Committee. Further, the statutory obligation to bargain in good faith includes both negotiating in meetings and in mediation or other dispute resolution steps. This is set out in RSA 273-A:3, I, which defines good faith negotiation as involving “meeting at reasonable times and places in an effort to reach agreement on the terms of employment, *and to cooperate in mediation and fact-finding required by this chapter.*” Thus, the statute specifically identifies that the mediation and fact-finding steps set forth in RSA 273-A:12 are part of good faith negotiations. Therefore, the requirement for the State to negotiate with the Union Committee includes negotiations as part of the mediation and fact-finding process in RSA 273-A:12, and is not limited to the “meeting” stage of bargaining.

Furthermore, the Appellants’ arguments also fail to read the statutes in the context of the overall statutory scheme. As set forth above, the policy of RSA chapter 273-A is to provide a structure for public employees and public employers to bargain and reach written agreements through the recognition of bargaining units and exclusive representatives of those units. In addition, the statute provides a road map for the public employer and the organized employees to reach an agreement on the terms and conditions of employment. The roadmap includes various steps in the collective bargaining process including meetings, mediation, and fact-finding. This roadmap all leads to the same goal of the statute--to assist the parties in reaching an agreement. The Appellants are trying to create an artificial distinction between the negotiations that occur

during the meetings between the parties and the negotiations that occur during dispute resolution with the additional assistance of a mediator or fact-finder. There is no such distinction when viewing the statute as a whole.

NEPBA points to the use of the term “bargaining unit” in the first presentation step<sup>5</sup> of the dispute resolution process as evidencing legislative intent that the Union Committee structure of RSA 273-A:9, I, was limited to the meeting stage of negotiations and not the dispute resolution stage. This argument, however, must fail because it singles out one term in one section of the dispute resolution section of the statute to reach an interpretation of the statute that is inconsistent with the overall statutory structure. Such a reading ignores that RSA 273-A:12 applies to all public employers and employees in the state, including municipal, school, county, and state employers and employees. Thus, the use of the term “bargaining unit” is a common reference to all public employee units covered by the chapter and not indicative of an intent to exclude the Union Committee for state employees at the dispute resolution phase. In addition, as set forth above, the statute provides a roadmap of how public employer and public employees are to reach an agreement, which includes many different stages of the one same bargaining process. To adopt the NEPBA’s argument based upon this use of this one term would create a division in the bargaining process that is not supported by the overall policy and statutory structure, and thus, this argument should be disregarded. *See Etienne*, 163 N.H. at 72 (noting that the Court’s “goal is to apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme. Accordingly, we interpret a statute in the context of the overall statutory scheme and not in isolation.”).

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<sup>5</sup> Of note, the reference to “bargaining unit” is not used in the remaining paragraphs of RSA 273-A:12 that set out the other dispute resolution steps. For example, the mediation and fact-finding paragraph references the “parties.” RSA 273-A:12, I(b).

To the extent that the NEPBA argues that RSA 273-A:9 simply codifies an ability to engage in “pattern bargaining,” NEPBA Bf 13, fn2, that is not the case. No legislation would have been necessary to authorize use of pattern bargaining as a strategy, as that concept is described by the NEPBA in its footnote, as that is simply the “me too” approach, where either the employees or the employer all insist on similar deals across multiple bargaining units.

In addition, SEA’s argument that because neither the SEA, NEPBA, nor the State declared impasse, the dispute resolution procedure could not commence, SEA Bf 15-16, is inapposite. This argument ignores the plain language of the statute that requires the negotiations to occur with the Union Committee. Because members of the Union Committee ceased to participate in negotiation sessions and declared impasse, the dispute resolution procedures were required to commence.<sup>6</sup>

Finally, contrary to the Appellants’ argument that the Board’s interpretation will lead to absurd results, the Board’s decision is a common sense reading of this statute that serves an important purpose. Without keeping all the parties at the table and in dispute resolution for the cost items and common terms and conditions of employment, the State is significantly disadvantaged. One of the purposes of collective bargaining is to ensure a level playing field when it comes to the parties’ respective bargaining powers. Cf. Laws 1975, 490:1 (enacting RSA chapter 273-A and providing the policy includes “to foster harmonious and cooperative relations between public employers and their employees”). Forcing the State to negotiate common terms and conditions, applicable to all fifty-one bargaining units, separately with each unit would be

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<sup>6</sup> The Appellants also argue that the State has never previously asserted that the declaration of impasse by one or more members of the Union Committee results in impasse for all members of the Union Committee. This argument ignores that the parties agreed to proceed in an alternative format in the prior negotiations and RSA 273-A:12 specifically authorizes the parties to agree to any “lawful procedures for resolving impasses.” A prior agreement regarding impasse procedures does not bind the parties to agree to those same procedures in future negotiations.

illogical and inefficient. Not only would the State waste considerable time and resources negotiating essentially the same terms over and over, but further, each successive unit would naturally seek better terms than the last, causing the State to effectively negotiate against itself.

### **C. Legislative History**

In the event the Court determines the language is ambiguous, the statute's legislative history supports the State's position that RSA 273-A:9 requires the Union Committee format to continue into the dispute resolution stage. *Loreto Publications, Inc.*, 169 N.H. at 74 ("Unless we find statutory language to be ambiguous, we will not examine legislative history. A statute is ambiguous if its "language is subject to more than one reasonable interpretation.").

The language "with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units" was specifically added to RSA 273-A:9 in 1997 in House Bill 2 for that budget session. Laws 1997, 351:53. There is no written legislative history available specific to that section that can be located.

The unions, however, have understood that this provision is intended and requires all unions to participate as a Union Committee with regard to all cost items and generally applicable terms and conditions of employment *and* that the Union Committee structure continues into the dispute resolution stage of bargaining. As a result, the unions also have understood that impasse for some meant impasse for all. This is clearly demonstrated by the unsuccessful 2014 attempt to repeal the Union Committee requirement in Senate Bill 398. R 120-21. Indeed, the NEPBA testified in favor of the bill, stating that one of the issues they wanted to change was the requirement that if impasse was declared at the Union Committee level, that it applied to all

unions. R 122-123.<sup>7</sup> In contrast, the SEA opposed this bill, arguing that keeping all the unions together in one team at the negotiating table or in mediation created greater efficiencies. R 124-25. The legislature indicated its intent to keep the Union Committee for bargaining at all stages by rejecting SB 398 in 2014. N.H.S. Jour. 153-54 (2014).

As a result, even if the Court deems the statutory language ambiguous, it is clear that the legislative intent of the Union Committee structure in RSA 273-A:9, I, was not limited to negotiations during the meeting stage and rather, the structure continued into the dispute resolution stage of bargaining. Thus, the State acted consistent with the legislative intent of the statute when it took the position that it could no longer participate in meetings to negotiate cost items and generally applicable terms and conditions of employment when two of the four exclusive representatives that comprise the Union Committee left those meetings and declared impasse over these items.

### CONCLUSION

For the foregoing reasons, the State respectfully requests that this honorable Court affirm the judgment of the Public Employee Labor Relations Board. Assistant Attorney General Jill A. Perlow will present oral argument on behalf of the State.

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<sup>7</sup> The State's Exhibit B in the record before the Board is an unofficial transcript of the testimony on Senate Bill 398. The hearing testimony audio is available at: [http://www.gencourt.state.nh.us/bill\\_status/BillStatus\\_Media.aspx?lsr=2822&sy=2014&sortoption=&txtsessionyear=2014&txttitle=bargaining](http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=2822&sy=2014&sortoption=&txtsessionyear=2014&txttitle=bargaining)

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Gordon MacDonald  
Attorney General


Date: March 15, 2018



Jill A. Perlow  
Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
(603) 271-3658

**Certificate of Service**

I certify that two copies of the foregoing have on this 15<sup>th</sup> day of March, 2018 been mailed, postage prepaid to Gary Snyder, Esq., State Employees' Association of NH, SEIU Local 1984, 207 North Main Street, Concord, NH 03301, and Peter J. Perroni, Esquire, Nolan Perroni, PC, The Mill, 73 Princeton Street, Suite 306, N. Chelmsford, MA 01863.

  
Jill A. Perlow

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**Collective Bargaining Under NH RSA 273-A.....21**



Collective Bargaining under N.H. RSA 273-A

Bargaining Steps & Process	Detail	Authority	Public Employer
Formal commencement of bargaining	120 days before budget submission date Notice Intent to Bargain Due.	273-A:3, II (a)	All
	120 days before Governor's budget submission date State bargaining must commence.	273-A:3, II (a)	State
Presentation to public employer board or bargaining unit	Subject to ground rules, & with approval of public employer board/bargaining unit (reciprocity applies) - at "statutory" impasse, or negotiator declared impasse, or 90 days pre budget submission date (State), or 60 days pre budget submission date (non-state employers). <i>See below.</i>	273-A:12, I (a), (1) & (2)	All
Mediation Required	"Statutory" Impasse: No agreement at 90 days before budget submission date.	273-A:12, I	State
	"Statutory" Impasse: No agreement at 60 days before budget submission date.	273-A:12, I	Non State Employers
	"Negotiator Declared" Impasse: Parties have bargained to impasse or request PELRB assistance.	273-A:12, I	All
	Presentation to public employer board or bargaining unit does not resolve impasse.	273-A:12, I	All
	Note: PELRB may allow mediation post budget submission date.	Pub 305.03 (d)	All
Fact Finding Required	75 days before budget submission date.	273-A:12, I	State
	45 days before budget submission date.	273-A:12, I	Non State Employers
	Note: PELRB may allow fact finding post budget submission date.	Pub 305.03 (d)	All
Issuance of Fact Finder's Report	Due 30 days after appointment - to negotiating teams and PELRB unless PELRB otherwise directs.	273-A:12, I (b); Pub 305.03 (c)	All
Use of Fact Finding Report	1. Negotiating teams have 10 days for review. (ULP if published during 10 day period).	273-A:12, I (b)	All
	2. If both teams accept, proceed with normal process for approval of tentative agreement (ratification, cost approval).	273-A	All
	3. To full membership of employee organization (Union) and full board of public employer if fact finder report rejected by either negotiating team.	273-A:12, II	All
	4. To local legislative body at next annual meeting if town meeting form government; or to city/town council or board aldermen within 30 days, and conduct vote within 30 days thereafter if full membership of employee organization or full board of public employer rejects report.	273-A:12, III	All
	5. If vote of local legislative body does not resolve impasse, parties shall continue with negotiations, including mediation, and mediator may involve board of employer or up to one less than quorum of city council/board aldermen, town council.	273-A:12, IV	All
Other Impasse Resolution Procedures	Parties may use other impasse procedures, must share the cost. Legislative approval of costs of any agreement reached still required.	273-A:12, V	All
Required Notifications to PELRB	If no agreement at 90 days before budget submission date.	Pub 305.03 (a)	All
	If mediation does not result in agreement 50 days before budget submission date.	Pub 305.03 (c)	
	If negotiations cease	Pub 305.03 (f)	All
	If negotiations reopen	Pub 305.03 (f)	All
	Negotiating team action on fact finder's report - acceptance or rejection.	Pub 305.03 (c)	All