

**STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
CASE NO. G-109-14 et al.
James S. Cooper, Ad hoc
FACTFINDER**

**In the Matter of Factfinding for an Agreement:
July 1, 2017 to June 30, 2019
between:**

**STATE OF NEW HAMPSHIRE,
Employer
-and-
TEAMSTERS, LOCAL 633,
Union**

FACTFINDER'S REPORT AND RECOMMENDATION

I. Introduction

In accordance with New Hampshire RSA 273-A:12 the State of New Hampshire ("State" or "Employer") and the Teamsters, Local 633 ("Teamsters" or "Union") participated in hearings on October 13, 2017, January 16, 2018, January 18, 2018 and January 19, 2018. The State was represented by Matthew Newland as principal spokesperson¹ and the Teamsters were represented by Attorney William Cahill and Business Agent Jeff Padellaro.² The parties had full opportunity to present evidence and argument on all issues presented. This Report

¹ Mr. Newland was accompanied by Thomas Manning, MJ Shapiro, Richard Lavers, Deborah Pendergast and Michael Wilkey.

² These representatives were accompanied by Union leaders George Bigl and Frank Logan.

and Recommendation represents the Factfinder's assessment of evidence and arguments and recommends the following terms and conditions of employment on the issues as a complete and final package of the give and take necessary for maintaining the balance between the State's interest in economy and productivity and the Union's interest in economic fairness and acceptable working conditions. In this Report the issues which could not be resolved across the table in negotiations will be specified and the evidence and argument summarized. My recommendation will follow.

Issues

1. The Teamsters propose to delete the Wage Schedule as it appears in Appendix A of the Agreement (Wage Schedule denoted as X208) and substitute in its place the July 1, 2017 Wage Schedule X416 (Law Enforcement Employees) effective July 1, 2017.³ This Wage Schedule would remain in force for two years, the term of the Agreement.

The State rejected the Teamster's proposals and counter proposed the following:

2. Modifying Article VIII, Holidays, by changing §§ 8.5, 8.5.1 and 8.5.2 by adding one floating holiday accruing on October 1st each year but requiring that all floating holidays must be used during the fiscal year in which such were earned.
3. Modifying Article IX, Annual Leave, providing for approval of notice of leave with less than five days' notice in as found in §9.3.1. by incorporating same within §9.3.
4. Eliminate Bonus Leave as provided in Article X, Sick Leave, § 10.1.1.

The Teamsters rejected the State's proposal to eliminate bonus leave.

³ The X416 Wage Schedule would increase bargaining unit wages across the board by roughly 9.1%.

Discussion of evidence and argument with respect to Teamster's Proposal

Item #1: Wage proposal substituting Schedule 416 for Schedule 208.

The Teamster's arguments in this regard stem from the dire condition of the State's Department of Corrections. A 2010-2011 audit of the conditions at the Men's Correctional Facility in Concord, as commissioned by the State, reported that the minimum staffing level at the institution should be 377 correction officers ("CO's"). The State's Department of Corrections set the absolute minimum staffing level for CO's at 275. As of January 2018 the total complement of CO's is 187. The result is that the Department is not just below recommended levels, the Teamsters suggest that it is dangerously below all concepts of safety including safety for the officers, safety for the staff and safety for the community. Because of this shortage, COs, who are subject to forced overtime, are working an average of 12,000 hours of overtime every month. This condition is leaving correction officers exhausted, disillusioned and quitting. Over the past twenty four months, the Department lost six correction officers. This may not seem like a huge number, but it is because in order to replace these officers the State has to recruit, hire and train new COs. This can take a lengthy period of time (at least three or four months, depending on the Police Academy schedule and availability).

The Teamsters argue that the forced overtime is causing undue havoc among the employees including increased anxiety, lack of sleep and unwanted dissension with spouses and children. It has got to stop. The Teamsters argue that the only way the current situation is going to stop is to increase the pay so that COs will stop departing for other jurisdictions such as Massachusetts and Vermont. An increase in the pay scale will also attract more candidates who are seeking a career

in law enforcement but find that the number of available police officer positions is very limited; it will make it less likely that COs will leave and finally it will reward the current COs for the hard work and debilitating home life situations being caused by being required to work an excessive amount of overtime.

The State argues that it has recently retained an outside agency to help with the recruitment and retention of the COs. This includes an advertising campaign along with a signing bonus and a streamlined training program. The State has dedicated \$325,000 recruit and train new COs. This program is just getting off the ground but results will soon flow to the Department. Rather than simply throwing money at the situation, the State would prefer to engage in a more thoughtful and cautious approach to solve the particularly difficult problem of hiring new COs.

The Union responds by pointing out that in December 2017 West Virginia had to engage the National Guard to guard its prisons when there were insufficient numbers of COs to secure the facilities. This situation should scare New Hampshire because the salaries paid in West Virginia were above those in New Hampshire at almost every level of employment. If the Governor called out the New Hampshire National Guard, there would be a collective scream from citizens because it would mean a substantial increase in expense, not to mention the loss of productivity for all those businesses whose employees would be guarding prisoners rather than working at their regular jobs. In addition, the National Guard members are soldiers, not corrections officers, so the nature of the interactions between the citizen soldiers and the prisoners could render the rehabilitative nature of corrections moot. For these reasons the Teamsters seek their proposed increase in wages.

Factfinder's Recommendation

I recommend the State agree to the Union's proposal which amounts to a 9.1% wage increase. The dire situation with respect to the Department of

Corrections cannot wait for an outside agency to devise, implement and fulfill the goals necessary to ameliorate the situation in the State's prison system. Requiring employees to work 12,000 hours of overtime each month is outrageously expensive and creates an onerous work situation which can no longer await a months or year- long solution. It is unclear to me that even with this wage increase, the Department of Corrections will be able to recruit, train and assign sufficient number of corrections officers to significantly reduce the number of overtime hours for another year. Perhaps knowing that the State has initiated this wage increase for the purpose of alleviating an emergency situation will reduce the COs' anxiety over the constant pressure of forced overtime. Surely the increase in salary will provide a sudden rush of elation which will carry the COs through the long period awaiting new recruits.

Unlike the other units within the State, I am convinced that the Corrections Officers should receive this special compensation. The State can well afford to implement this recommendation for the reasons set forth in my Report and Recommendations for the State Employees Association. The State has enjoyed a healthy increase in economic activity which has bolstered the State's coffers. This recommendation will not impinge on the State's ability to pay.

I recognize that this represents a significant departure from what I am recommending with respect to the increase in wages for the State's other bargaining unit. I do not believe that this recommendation should trigger any "me too" clause for the other members of the coalition bargaining. If the State could increase (even on a temporary basis) the salary for nurses by 15% the State should certainly do the same for an even more oppressed and generally ignored segment of State employees. Unlike nurses who take care of sick people, the COs deal with the least favorable members of our society. There is simply no sympathy for convicted felons or support for those who guard them. No legislator is going to

lose a single vote by failing to support the State's correction systems. On the other hand the failure to support the Department of Corrections leaves the State more vulnerable to constant criminal activity and recidivism and never ending expense. The State simply has to swallow its distaste for guarding convicted felons but support those who manage and serve as the guards to keep the rest of the State's citizens safe and help rehabilitate some of the incarcerated. I fully recommend adoption of this proposal with the only change is retroactive pay to the first full pay period in July 2017.

Discussion of evidence and argument with respect to State Proposals

Item #2: Amending Article VIII by adding one floating holiday and requiring all floating holidays be used in the fiscal year earned and

Item #4 Eliminating Bonus Leave as provided in Article X, Sick Leave, § 10.1.1..

The State proposes to eliminate Bonus Leave, as provided in Article XI and in exchange therefore provide employees with a third floating holiday, as listed in Article XI, provided that the employees use the bonus holidays during the fiscal year in which it was earned. The State maintains that only 32% of the employees earn any bonus leave and therefore it has failed as a mechanism for curbing sick leave abuse. The extra floating day and the requirement that all floating holidays be used in the fiscal year earned is a fair negotiating exchange since the extra bonus holiday will be available to all employees rather than the approximately one-third of the workforce that actually take advantage of the benefit.

The Union opposes this provision suggesting that this is just another “take away” and that the employees cannot use sick leave because the Department is so short of help that sick leave is rarely used, even when the employee is indeed ill and should not be at work.

Factfinder’s Recommendation

The third floating holiday is a benefit that all employees will enjoy and for two-thirds of the employees they will give up nothing in exchange for the extra day off. There is little doubt that a few employees may take extra sick leave, but by and large employees who preserve and accumulate their sick leave will continue to come to work with their customary regularity. I recommend the State’s proposal.

Items #3: Language change with no effect on the bargaining unit

The State’s proposals with respect to minor language changes in Articles IX, §9.3 and §9.3.1 make no substantive changes to the articles, but simply clarify existing obligations.

Factfinder’s Recommendation

I recommend these proposed changes to the Agreement.

Concluding Comments

Collective bargaining is generally a slow moving, conservative and time-consuming process. It is not designed for radical changes in terms and conditions of employment. But in this case where the evidence is clear and the danger so dramatic and the results so easily foreseen, this process must accelerate change. No agreement is perfect and there will certainly be protests and criticism from the State for this report. My job is to record the facts and provide an opinion based those facts. I certainly urge the State and the Union to take these recommendations as the catalyst for change.

Date: April 18, 2018

James S. Cooper, Factfinder