

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD
before Fact-Finder Mary Ellen Shea

In the fact-finding matter between: *
*
STATE EMPLOYEES' ASSOCIATION OF NH, INC. *
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, Inc., (“SEA” or “Union”) participated in hearings to address the impasse in their collective bargaining for a successor agreement for the period July 1, 2019 through June 30, 2021. Hearings were conducted on August 1, 2019, August 6, 2019, October 9, 2019, and October 23, 2019¹ in Concord, New Hampshire.

The State of New Hampshire was represented by Mathew Newland as Chief Negotiator. The State’s team also included Liz McCormack, incoming Chief Negotiator; Commissioner Lindsey Stepp, Department of Revenue; Deputy Commissioner Rudy Ogden, Department of Labor; Deputy Commissioner Richard Lavers, Employment Security; MJ Shapiro, Employee Relations Specialist; retired Director Michael Wilkey, Insurance Department; and Director Deborah Pendergast, Fire Academy.

The State Employees Association was represented by Randy Hunneyman as Executive Branch Negotiator. The Union’s team also included Co-Chairs James Nall and Leah McKenna. Also, in attendance were bargaining team members Dan Brennan, Kimothy Griffin, Shannon

¹ By mutual agreement, the October hearing dates included confidential mediation efforts by the factfinder.

Perkins, Corey Dearborn, Dawn O'Brien, Alisa Druzba, Jenny Robles, Andy Newcomb, David Rys, Heather Fairchild, Betty Thomas, Linda Huard; and Ralph Macheau.

The parties had full opportunity to present oral and documentary evidence as well as oral and written argument on all the issues in dispute. This report provides the Factfinder's recommendations on all the issues based on a comprehensive and thorough review of the evidence and arguments presented by the parties.

ISSUES

The issues that remain in dispute are summarized in the lists below. Each issue is addressed in detail in the Discussion section.

The following are proposals by the SEA to the State of NH:

- Wages - COLA
- Step Increases
- Memo of Counsel
- Health Promotion Sunset Date
- Health Care Layoff Sunset Date
- Connor's Law
- Direct Care Pay
- Hazardous Duty Pay

The following are proposals by the State of NH to the SEA:

- Time Worked (all Unions)
- Family Medical Leave Insurance (all Unions)
- Health Insurance: Step Therapies (all Unions)
- Article 9.1 Holidays, FT and PT (SEA only)
- Article 9.5 Holidays on Flex Schedule (SEA only)
- Article 11.2.2 Definition of "Family" (SEA only)
- Article 11.8 Change Name of Short Term Disability (SEA only)
- Employee Discount at State Recreational Areas (SEA only)

DISCUSSION

In this section, each party's proposal is explained and their arguments and evidence summarized. The Union's proposals to the State are discussed first, followed by the State's

proposals to the Union. Next is a summary of the other party's objections to each proposal with a summary of the opposing party's evidence and argument. These are followed by the factfinder's analyses and recommendations for resolving the disputed issues.

At the outset, it is appropriate to comment about the process of making decisions in factfinding and some of the principles or guidelines that have been applied here. First, it should be noted that factfinding is an extension of the collective bargaining process. The factfinder aims to make recommendations the parties might have negotiated themselves if they had not reached impasse. Also, it is generally understood that factfinding is 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. [Factfinding] must be a natural extension of where the parties were at impasse.
Harvey Nathan, IL State Labor Relations Board (August 17, 1988)

Due to the conservative nature of the process, a common principle is that some proposed changes are more appropriately decided through collective bargaining rather than in factfinding. For example, a proposal to eliminate or reduce an existing benefit or contract provision should be hammered out at the bargaining table. 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 there is a demonstration of a compelling need; evidence the existing practice or language is unworkable and inequitable; or there is an appropriate quid pro quo for the change. Finally, the arguments of each party have been considered and a recommendation has been made where the testimony and evidence were persuasive.

PROPOSALS AND RECOMMENDATIONS

SEA Wage Proposal:

Year 1: 4% wage increase

Year 2: 4% wage increase

According to the SEA, a number of factors support its proposal for wage increases, including:

- As of April 2019, NH's unemployment rate is the 3rd lowest in the country at 2.4%;
- As of April 2019, NH had a \$198 million surplus and a \$121 million increase in revenues over the same time a year earlier;
- NH ranks 7th in the U.S. for per capita personal income;
- Overall personal income in NH grew by 4% in 2018 and by 4.4% in the first quarter of 2019, while NH state employees' personal income grew by 1.5% in July 2018 and 1.5% in January 2019;
- Average per capita income in NH for 2018 was \$61,405, but the average State employee salary in 2018 was \$55,582.

The SEA argues its proposal for increases of 4% in each year is justified when taking into account the State of New Hampshire economy, the rate of income growth in NH, the state budget surplus, the general cost of living in New Hampshire, the age of the state workforce, and the overall competition for employees in the New Hampshire workplace. The SEA also argues that the 2018 fact-finding is close in time to the current fact-finding and so SEA's arguments and Mr. Cooper's findings remain relevant. Then – as now - New Hampshire experienced record growth in personal income and was ranked 7th highest in the country; income levels were growing at 4% then and are growing at 4.4% now; and New Hampshire continues to enjoy one of the lowest unemployment rates in the country.

The SEA contends that most New Hampshire state employees are along the southern border and experience costs higher than indicated by the New England CPI due to their proximity to the metro-Boston area. The SEA asserts the Boston-Cambridge CPI is a more accurate measure for determining an appropriate COLA and for adjusting employees' wages. Increases in housing costs have increased dramatically. The average rent for a two-bedroom

apartment increased by almost 15% in the last 5 years. Home prices increased by 5% in the last year alone. New Hampshire utilities are the 3rd highest in New England.

The SEA wage proposal is necessary to attract, retain and maintain the workforce needed. In addition to the challenge of recruiting enough employees in a tight labor market, 67% of the employees who left state service in 2018 had fewer than ten years' service, which is the highest rate of separation for this group since 2013 when many employees were laid off. Compounding the retention problem, 65% of the workforce will be eligible to retire in 2020.

The State's counter-offer of \$250 one-time payment in the first year and a 1% increase in the second year is not reasonable and is not consistent with the Governor's own portrayal of the state's economy. SEA rejects the State's claim that step increases should be considered as general wage increases. Step increases are based on performance and are not meant to be general wage adjustments for inflation. The SEA points out that 1400 employees are at Step 9 and will not receive any step increase; 2742 employees are step 8 and will max out at Step 9 in 2021; and by 2021, fully 44% of all employees will be maxed out at Step 9.

The SEA argues the State's claims about the cost of wage increases have been contradictory. For example, at one point the State claimed a 3% raise costs \$14.2 million but later claimed a 1% wage increase costs \$3.75 million.

The 2018 fact-finding report recommended two COLA's of 2.35% each, but the unions were pressured to accept COLA's of 1.5% and 1.5%. When the current contract expired on July 1, 2019, however, the Governor sent state employees an email boasting that, "Our state is benefitting from a strong economy, low unemployment, and a record budget surplus."

The SEA urges that its wage proposal is justified when the state's overall economy, income growth, budget surplus, and increased cost of living are taken into account.

State Response to SEA Wage Proposal:

The State countered with the following proposal:

Year 1: \$250.00 one-time payment

Year 2: 1% wage increase

The State argues that its flat dollar payment in the first year is necessary due to the budget situation and its proposal for a 1% increase in the second year is necessary in order to be fiscally responsible given the uncertainty of economic projections. The State points out the parties have entered into a tentative agreement to increase longevity by \$50, which must be factored into the compensation package. In addition, the State has offered to provide modest increases to hazardous duty and direct care pay for those who already receive them. According to the State, it had “some room to move” but the Unions’ proposals “did not give us the ability to move.”

Based on calculations for the average employee, the State estimated that the total of COLA’s granted from 2007-2019 increased salary by 28.1% (not compounded). For the same period of time, the State estimated the same average employee also received a total of 42.4 % (not compounded) in step increases.

The State rejects the Union assertion that steps should not be considered as wage increases. The State’s position is that step increases represent a combination of satisfactory performance, retention, longevity as well as a raise. The State also points out that the new Step 9 was added to the salary grid (January 4, 2019), providing significant advancement for employees. If an employee wishes to further advance their career, nothing prevents the employee from applying for advancement opportunities. Also, the State’s aging workforce provides additional opportunities for upward mobility with vacancies due to current retirement trends as well as anticipated retirements.

The State argues that revenues are currently “flat” and cites the following:

FY2018

- General and Education Trust Funds ended the year \$127.9 million ahead of plan;
- Approximately \$100 million of that total is due to one-time, non-recurring revenue.

FY2019

- General and Education Trust Funds ended the year \$198.0 million ahead of plan;
- Approximately \$120 million of that total is due to one-time, non-recurring revenue.

FY2020

- General and Education Trust Funds ended the year \$42.9 million *less* than FY2019 revenues;
- When one-time non-recurring revenues are removed from FY2019 and FY2020, the resulting increase in base revenues is \$18.2m or 0.07%

FY2021

- General and Education Trust Funds are estimated to be 2.7m *less* than FY2020 revenues;
- When one-time non-recurring revenues are removed from FY2020 and FY2021, the resulting increase in base revenues is \$32.9m or 1.3%

Based on this data, the State argues that wage increases above the projected revenue base for FY2020 and FY2021 (.7% and 1.3%, respectively) will require a reduction in another area of spending. In addition to flat revenues, the State argues it is absorbing (conservatively) an increase of \$14.2 million in healthcare costs. The State insists its estimate regarding the cost of a 1% increase was not misstated or misrepresented. The total cost to the State of a 1% increase for one year is \$8.5 million, and \$3.75 million of that total represents the general funds portion of the State budget.

In response to Union assertions that the economy is strong, the State counters that while there have been some economic surpluses, in reality, the economic outlook is uncertain. The State offered a number of articles about the likelihood of a recession within the next two years. According to the State, economic forecasts may be difficult, but these articles are examples of what experts are predicting:

*More than 70% of economists think a US recession will strike by the end of 2021.
NABE Outlook Panel Foresees Favorable Short-Term Outlook
But Recession Fears Surge amid Rising Trade Protectionism*

The State rejects the Union's contention that the factfinder should rely on the CPI for the Boston-Cambridge area rather than the Northeast Urban Region area. According to the State, linking New Hampshire with the CPI for the Boston area overstates price trends in New Hampshire. While major components of the CPI such as housing costs, medical care and food are rising in both the Boston metropolitan area and New Hampshire, the rate at which they are rising in Boston is higher than in New Hampshire. Furthermore, only 8% of State employees work in the two counties (Strafford and Rockingham) that the Boston-Cambridge CPI takes into account.

Awarding pay raises that are based on one-time revenues will put the state budget into a deficit in future years. In fact, per RSA 9:3, I (c), the Governor cannot recommend a budget in which expenditures exceeds revenue estimates plus amounts available in the treasury. Also, pursuant to RSA 9:8-b, the legislature may not adopt an operating budget which exceeds the state's total estimated revenue.

Factfinder's Analysis and Recommendation(s) Regarding Wages:

During the last factfinding, the parties submitted extensive and historical data to support their wage proposals. Factfinder Cooper's decision included a thorough analysis of the data submitted by the parties. The factfinders' wage recommendation accounted for such factors as New Hampshire's strong economy, its "super full employment" and the extent to which large numbers of state employees did not have access to step increases and who simply "kept about even with the cost of living." Factfinder Cooper's wage recommendation considered the 10-year history including prior wage increases, prior CPIs, the average "cushion" above the CPI of prior

wage increases, as well as the value of the healthcare benefit provided to state employees. Given the comprehensive and detailed analysis of historical and verified economic data, it is assumed that the factfinder's April 2018 wage and step recommendations were the fair and necessary adjustments to bring employees' wages up to date during the term of the prior collective bargaining agreement.

Assuming the wages had been adjusted as recommended during the term of the prior contract, the appropriate wage adjustments for the current contract can be calculated using the same factors relied on in the prior factfinding: the average CPI, the average "cushion" over the CPI (.1% average over a 10-year period), and the value of the increased cost of healthcare as a percent of wages.

The State and all the bargaining units (except the Teamsters²) cited CPI data published by the U.S. Bureau of Labor Statistics. The State relies on data related to the Northeast region. The Unions argued that most state employees work along the state's southern border and the data for the Boston-Cambridge area is a more appropriate measure. During the prior factfinding, the parties did not dispute the applicable cost of living and agreed on the number the factfinder was to use:

Based on these calculations and an agreed rate of increase in the cost of living for 2017 (2.9%) which will be assumed to be identical for 2018....

April 18, 2018, SEA Factfinder's Report, page 19

This time, the parties do not agree on the rate of increase and do not agree whether the Northeast Region data or the Boston-Cambridge data applies.

It may be that the cost of living in areas along the border is affected by the cost of living in Massachusetts, but there are real and significant differences between living in New Hampshire

² The Teamsters cited working conditions, staffing levels and overtime (rather than economic data such as CPI's) in support of their wage proposals, which are discussed separately in the Teamsters' Report.

and living in Massachusetts. More significantly, there is no evidence that the Bureau of Labor Statistics or any other reliable provider of cost of living data considers the Boston-Cambridge area data to be an accurate measure of cost of living for New Hampshire at this time.

For these reasons, this calculation will rely on U.S. Bureau of Labor Statistics data for the Northeast Region. Factfinder Cooper's wage recommendations for both 2018 and 2019 were based on the CPI data for 2017. A similar approach will be adopted here. According to the data available from the BLS for the Northeast Region, the average 2019 (January through August), CPI is 1.56%.

January 2019	1.5%
February 2019	1.3%
March 2019	1.7%
April 2019	1.7%
May 2019	1.5%
June 2019	1.6%
July 2019	1.7%
August 2019	1.5%
Average	1.56%

Next, the increased cost of healthcare will be considered. The State argued that healthcare costs will increase an average of 5.9% in 2020 and 6% in 202, and cites PWC, an accounting firm as its source (www.pwc.com). The source (PWC) based its projections on national data and included both public and private industry.

The State also submitted a spreadsheet with its projected healthcare costs:

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Health 2019	\$197,816,981
Dental 2019	\$12,009,797
FY19 Total	\$209,826,778
FY20 Total Health & Dental	\$210,413,701
FY21 Total Health & Dental	\$223,407,964
FY20 vs FY19	\$586,923
FY21 vs FY19	\$13,581,186
Total Increase FY20 and FY21	\$14,168,110

The total dollar increase of \$14,168,110 represents a 6.76% increase in total dollars spent on healthcare over the term of the agreement (2019 - 2021). It is noted that the State’s “projected increases” are lower than the projections by the State’s cited source (PWC) and are closer the U.S. Bureau of Labor Statistics data regarding healthcare costs for the Northeast region:

January 2019	2.0%
February 2019	2.0%
March 2019	2.8%
April 2019	2.8%
May 2019	3.2%
June 2019	3.6%
July 2019	4.3%
August 2019	4.6%
Average	3.1%

Using the BLS data for the region, the projected increased cost of healthcare for the State would average \$6,505,834 each of the two years. Assuming a 1% wage increase costs \$8.5 million, the value of the increased healthcare cost is .77% as a percent of wages. Factfinder Cooper determined that the State should be “credited” with the value of increased healthcare costs when calculating an appropriate wage adjustment. While I generally agree with the concept, I do not agree that the employees should bear the entirety of increased costs associated with this basic employment benefit.

As an Employer, the State hires and employs public employees to accomplish its myriad public missions. As an Employer, providing wages and basic benefits is a necessary cost of doing the public’s business. The cost of basic benefits will increase when consumer prices or costs of living go up. There is no reason the increased costs should be shouldered entirely by the employees. If the employees are expected to absorb all increased costs associated with a basic benefit such as healthcare, what incentive does the State have to manage or control cost increases?

The State pays most of the costs associated with healthcare and state employees are only required to contribute a small amount. Still, it is reasonable for the State and the Employees to share the projected increased costs for healthcare. For these reasons, the State will be “credited” with the equivalent of a .5% wage increase for the employees’ “share” of increased healthcare costs. The remaining .27% increased cost will be borne by the State.

The State has not argued that it has an inability to pay, but argues that wage increases above the projected revenue for FY2020 and FY2021 (.7% and 1.3%, respectively) will require a reduction in another area of spending. This may be true but this is not a basis for legitimizing a

recommendation that amounts to a reduction in real earnings (as measured by the actual cost of living). As Arbitrator William Fallon wrote,

Funding limitations must be shared fully to the extent possible, by the providers of public services....the ability-to-pay criterion does not require public employees to bear a disproportionate share of governmental belt-tightening.

National Academy of Arbitrators 34th Annual Meeting, 248, 267 (1981)

The current 2019 average CPI for the Northeast will be used for both years to calculate an appropriate wage adjustment based on the actual cost of living. This will be adjusted by .1% to maintain the historic average “cushion” above the CPI. The adjusted CPI of 1.66% will be reduced by .5% to account for the employees’ “share” of increased healthcare costs. The resulting 1.16% for each of two years is based on the initial assumption that employee wages had been fairly and appropriately adjusted as recommended by the prior factfinder. The factfinder determined that a total of 4.7% in wage increases was to be made during the term of the prior contract but the wages were adjusted by a total of 3%, or 1.7% less than recommended as the fair and appropriate adjustment. For this reason, to assure the carefully calculated wage recommendation for the current contract achieves the intended fair and appropriate adjustment to employee wages, the wage increases for the current contract must be 2.86% for the first year and 1.16% for the second year.

Factfinder’s Recommendations

- **Increase the general wages by 2.86% for FY2020 effective the first full pay period following execution of a successor Agreement, but no later than the first full pay period following January 1, 2020.**
- **Increase the general wages by 1.16% for FY2021 effective the first full pay period of Fiscal Year 2021.**

SEA Step Increases Proposal:

19.2.2 The parties agree that there shall be **10 steps in an additional 3 steps added to the salary matrices effective the first pay period following January 1, 2019. for full-time and part-time employees. After successful completion of each**

step, an employee shall be eligible to move to each subsequent step pursuant to the table below.

STEP	DURATION
Step 1-2	1 year
Step 2-3	1 year
Step 3-4	1 year
Step 4-5	1 year
Step 5-6	2 years
Step 6-7	2 years
Step 7-8	2 years
Step 8-9	2 years
Step 9-10	2 years

The SEA reiterates many of the arguments in its arguments about wage increases regarding NH's economy, the low rate of unemployment, the high personal income, and other factors in support of its wage proposal. These need not be repeated here. For the last collective bargaining agreement, the SEA had proposed that four steps be added to the salary grid but the factfinder approved only one. Nonetheless, the SEA still argues that more steps are needed to remain competitive and to retain longer-term employees who are eligible to retire. In 2018, 13% of the state positions were vacant and the State continues to have a high rate of turnover in child protective services, corrections, transportation and administrative services.

The SEA points out that the addition of a tenth step (at 3% effective January 2021) will not add any cost until the second year because no employee would be eligible until then. The SEA is unable to estimate the cost of reducing the time between step 8 and 9 because the data needed from the Fiscal Year 2019 was not available. As of FY 2018, 31% of all employees (2742 of 8870) were already at Step 8.

The average wage of a 12-year NH state employee is \$52,956, which is approximately 14% behind the state's average income of \$61,405. With the current step capped at 14 years of

employment, the average state employee will see only one more step increase during their employment with the state.

The Governor praised the states's economy in the 2019 budget address saying, "our economy is booming." By providing upward mobility now when the economy is strong, the State will have a cushion for when revenues fall and funds for wage increases are limited.

State Response to Step Increases Proposal:

The State opposes adding a new step or reducing the time between steps. According to the State, the changes are neither necessary nor economical. The State points out that the new Step 9 was implemented in January of this year, significantly increasing salary costs.

Factfinder's Analysis and Recommendation(s) Regarding Step Increases

The parties do not agree about the significance of or the purpose for step increases. In the absence of a mutual understanding about the purpose of steps, the Union's proposal will be assessed based on the common understanding that step increases are provided at periodic intervals in recognition of an employee's continued effectiveness in their position and their longevity in the position. In general, wage schedules establish the proper range of pay based on factors such as the knowledge and skills required of each position. The lowest step generally represents the minimum pay rate for a new employee and the top step generally represents the maximum pay for an experienced employee in that position, with that classification. It is understood that the rate of pay for any job will not continue to increase indefinitely: at some point the pay for a particular position will reach a maximum amount.

While a wage schedule may need to be adjusted to keep up with the cost of living, new steps generally are not added unless there is evidence that the established pay range is no longer appropriate for that position and that classification. It is not uncommon for parties to mutually

agree through collective bargaining to add steps for other reasons (to retain senior employees who might be eligible to retire, for example). The SEA argument that a new step should be added and the time in each step reduced for the purpose of increasing the rate of pay and more frequently, alone, is not a basis for altering the step structure in fact-finding. There is no of evidence or argument that the existing step structure no longer provides an appropriate range of pay for some or all of the positions and classifications.

The Step 9 is new and was recommended in the prior factfinding report to address a specific problem that many employees had reached the top step and had been “maxed out” for some time. While I may not agree with the factfinder’s reasons for adding the new step, it is noted that the factfinder identified a serious problem that he determined needed to be remedied. Before the 9th step was added, employees were required to remain in steps 5, 6, and 7 for two years before advancing to the next step. When the 9th step was added, the parties agreed that employees would be required to remain in step 8 for 3 years before advancing to the new step 9.

There is no evidence of a similarly serious problem at this time. Employees who are now at the top step, moved there in January 2019. The SEA proposes that employees be required to remain in Step 9 for two years before advancing to the proposed step 10, which means that no employee will have been maxed out for more than two years during this contract, which was not the case in the last contract. In the absence of an existing problem that must be remedied at this time, collective bargaining and not factfinding, is the appropriate process for adding another step to the salary schedule or for changing the time required at each step.

Factfinder’s Recommendation

The SEA proposal to change the number of steps and the duration in each step is not recommended.

SEA Memo Of Counsel Proposal:

16.x Once twelve (12) months has passed from the issuance date of any letter of counsel or other instrument of similar purpose, or any documents pertaining thereto, given to the employee, the Employer shall, upon request by the employee, remove and permanently destroy such document(s) from the employee's personnel file(s).

If the document is related to a performance evaluation and the employee's file contains a rebuttal by the Employer, the rebuttal shall also be removed and permanently destroyed.

The SEA proposal is based on an apparent conflict between the contract language and the personnel rules. The contract clearly spells out specific levels of progressive discipline, which do not include anything described as a letter (or "memo") of counsel. The only place where a letter (or "memo") of counsel appears is in the personnel rules. Nonetheless, over the years, management officials have been trained to use or have actually used letters (or "memos") of counsel as a disciplinary action, which is not consistent with the contract regarding disciplinary actions. Since these "memos" are not mentioned in the contract, employees have been unable to appeal them and unable to have the contractual limits applied to "memos" remaining in their personnel files. The SEA's proposal seeks to remedy the conflict between the contract and the personnel rules by providing protections for employees who are issued letters or memos of counsel for disciplinary reasons.

State Response to Memo of Counsel Proposal:

At hearing, the State acknowledged that letters (or "memos") of counsel are not included in the contract and is not opposed to eliminating them.

Factfinder's Analysis and Recommendation(s) Regarding Memo of Counsel:

It appears the parties are now in general agreement that memos of counsel do not exist in the collective bargaining agreement. The Union provided evidence that even though the contract does not mention memos of counsel, some managers and/or supervisors still issue memos of

counsel for disciplinary purposes. The Union proposal provides a way of dealing with a memo of counsel if one is issued for a disciplinary reason by a manager or supervisor.

Factfinder's Recommendation

The SEA proposal regarding memos of counsel is recommended.

SEA Health Promotion Proposal:

19.8.1.gThe Employer shall consult with the Association through the Health Benefits Committee regarding the design and implementation of the program. This provision shall expire on June 30, ~~2019~~ **2021** unless mutually agreed otherwise by the parties.

The health rewards program provides employees up to \$300 a year for getting preventive treatments such as annual physicals and flu shots. According to the Union, the program has been successful except when the State discontinued the program as leverage when the contract went into Evergreen status. The SEA finds this disappointing but is willing to agree to another two-year sunset clause.

State Response to Health Promotion Proposal:

The State will agree to the proposal if the SEA accepts its Step Therapy proposal. According to the State, it is hard to estimate the value of the health reward program's savings, but the State can quantify the cost of the program, which is why it prefers to sunset it every two years.

Factfinder's Analysis and Recommendation(s) Regarding Health Promotion Proposal:

The State does not oppose the proposal to extend the sunset date for the health rewards program, *per se*, but tied acquiescing to this proposal to its Step Therapy proposal. The Step Therapy proposal is addressed separately. The State contends it is hard to estimate the value of the prevention program but does not refute the Union's assertion that the program was designed to save healthcare costs and the program has been successful in terms of participation. The State

does not oppose the health rewards program and the evidence indicates the parties routinely extend the sunset date as part of their contract settlement.

Factfinder's Recommendation

The SEA proposal to extend the sunset date for the health rewards program to June 30, 2021 is recommended.

SEA Health Care Layoff Proposal:

19.8.1.1This provision shall expire on June 30, ~~2019~~ **2021**.

The parties agreed to extend health care coverage for laid off employees in the 2011-2013 contract. Since then, the SEA has tried to remove the sunset provision, but agreed to extend the sunset date. The SEA is willing, again, to agree to extend, rather than remove the sunset date.

State Response to Health Care Layoff Proposal:

The State is not opposed to extending the sunset date for healthcare coverage for laid off employees, but tied acceptance its Step Therapy proposal.

Factfinder's Analysis and Recommendation(s) Regarding Health Care Layoff Proposal:

Like the proposal to extend the sunset date for the health rewards program, the State does not oppose the proposal to extend the sunset date regarding healthcare for laid off employees, *per se*, but made agreement contingent on its Step Therapy proposal. The Step Therapy proposal is addressed separately. The State does not oppose the healthcare provision for laid off employees and the evidence indicates the parties routinely extend the sunset date as part of their contract settlement.

Factfinder's Recommendation

The SEA proposal to extend the sunset date for laid off employees health care coverage to June 30, 2021 is recommended.

SEA Proposal Regarding Connor's Law:

The SEA proposes to extend the benefits of “Connor’s Law” to state employees:

19.8.o The Employer shall provide coverage under the health plans consistent with Chapter 417-E:2 of the Laws of 2014 (i.e., Connor’s Law).

Connor’s Law was enacted in NH in 2014 to require health insurers to provide treatment for children with autism but the law does not cover state employees. As a result, a state employee with an autistic child does not receive the same medical treatment as the rest of the general public. The parties have agreed to extend the benefits of laws to state employees, such as Michelle’s law, which provided coverage for dependents up to age 26. The SEA believes it is reasonable and fair to provide the same basic coverage for state employees that other NH residents already enjoy.

State Response to Proposal Regarding Connor’s Law:

The State contends the proposal would increase costs by more than a million dollars but will agree to the proposal if the SEA accepts its Step Therapy proposal. According to information from Anthem provided by the State, the cost of extending Connor’s Law to state employees could range from \$1,342,000 to \$1,844,000, depending on whether the amount of coverage can be limited.

Factfinder’s Analysis and Recommendation(s) Proposal Regarding Connor’s Law:

The State does not object to the Union’s proposal on its merits and is willing to extend the coverage provided by Connor’s Law if the Union accepts the Step Therapy proposal. The State’s Step Therapy proposal is addressed separately and is recommended in this report. For this reason, the SEA proposal is recommended.

Factfinder’s Recommendation

The SEA proposal to extend the benefits of “Connor’s Law to state employees is recommended.

SEA Direct Care Pay Proposal:

The SEA proposes new language that incorporates a statutory payment for Direct Care, and increases the amount of the payment:

19.X Direct Care Pay

Employees who receive Direct Care pay shall be paid, in addition to their regular salary, ~~\$5~~ **\$25** per week.

The Direct Care payment affects 712 employees who care for and treat patients at New Hampshire Hospital, Glenclyff Home, NH Veteran's Home, and the Youth Development Center have received the same rate of \$5/week since 1974, which has eroded in value due to 45 years of inflation. The SEA argues the adjustment is justified and reasonable considering the physical and emotional risks of working with in-patient psychiatric residents, delinquent youth and developmentally disabled patients who need active treatment.

State Response to Direct Care Pay Proposal:

The State acknowledges these employees have hard jobs and is willing to double the Direct Care payment to \$10/week if the Union agrees to its proposal regarding "time worked" (according to a State counter proposal dated January 31, 2019, the State's offer to increase Direct Care Pay was tied to its wage proposal).

Factfinder's Analysis and Recommendation(s) Regarding Direct Care Pay Proposal:

The Union proposes to increase a stipend that has not been changed for many years and to incorporate the stipend into the contract. Increasing the stipend by five times the current amount, however, does not seem reasonable. The State has agreed to the proposal at a lesser amount: double the current stipend amount of \$5/week to \$10/week. As a result, employees will receive twice the amount they previously received in the direct care stipend and the benefit will be memorialized in the collective bargaining agreement.

Factfinder's Recommendation

The SEA proposal regarding Direct Care is recommended but with a \$5.00 increase to a total of \$10.00 per week.

SEA Hazardous Duty Pay Proposal:

The SEA proposes new language that incorporates a statutory payment for Hazardous Duty, and increases the amount of the payment:

19.X Hazardous Duty Pay

Employees who receive Hazardous Duty pay shall be paid, in addition to their regular salary, ~~\$25~~ **\$45** per week.

The Hazardous Duty payment affects 281 employees who “are exposed to inmates or forensic patients daily in the normal course of their duties” have received the same rate of \$25/week since 1974, which has eroded in value due to 45 years of inflation. The SEA argues the adjustment is justified and reasonable considering the hazards of working with inmates and forensic patients at the state prison and the state hospital.

State Response to Hazardous Duty Pay Proposal:

At hearing, the State acknowledges the hazards these employees face and is willing to increase the Hazardous Duty payment by \$5.00 to \$30/week *if* the SEA agrees to the “time worked” proposal. The “time worked” proposal is discussed elsewhere. It is also noted that in a counter proposal dated January 31, 2019, the State agreed to increase Hazardous Duty payments if the SEA agreed to the State’s wage proposal.

Factfinder's Analysis and Recommendation(s) Regarding Hazardous Duty Pay Proposal:

The rationale regarding the hazardous duty pay proposal is similar to the rationale regarding the direct care stipend. The Union proposes to increase a stipend that has not been changed for many years and to incorporate the stipend into the contract. Increasing the stipend by 80% does not seem reasonable. The State has agreed to the proposal at a lesser amount: by

adding \$5/week for a total of \$30/week. As a result, employees will receive more than they previously received for hazardous duty pay and the benefit will be memorialized in the collective bargaining agreement.

Factfinder's Recommendation

The SEA proposal regarding Hazardous Duty Pay is recommended but with a \$5.00 increase to a total of \$30.00 per week.

State Proposal Regarding "Time Worked":

The State proposed the following changes to Article 7.1.2 and Article 8.3:

Article 7.1.2. Time and One-Half Rate....

c. ~~All hours that an employee is on pay status,~~ **Only hours actually worked** except unscheduled sick leave, will constitute "time work" for the purpose of determining the work week required to establish eligibility for overtime compensation.

8.3. **"Time worked" Defined:** The following provision constitutes the understanding of the Parties with respect to defining time work for the purpose of determining the number of hours required for overtime compensation eligibility.

~~"Time Worked" for law enforcement employees and fire protection employees shall include all hours actually worked and all hours on approved paid leave status except unscheduled sick leave, bona fide meal periods, bona fide rest periods, bona fide commuting time and anytime worked for which specific compensation provisions have been established elsewhere in the Agreement. Rest periods are defined by Article VI, Section 6.2....~~

The State has a couple reasons for its "time worked" proposal. First, the State seeks to align the overtime provisions more closely with the FSLA rules, which do not count paid leave when determining whether overtime rates apply. (The proposal would not change the parties' prior agreement regarding unscheduled sick leave). Second, the State contends its ability to make wage adjustments depends on an offset or cost savings in overtime spending. According to the State, its "time worked" proposal could save up to \$2.8 million a year in overtime costs.

SEA Response to Proposal Regarding "Time Worked":

The SEA rejects the State's proposal for several reasons. Due to staffing shortages, high employee turnover, and increased demand for State services, employees are asked – or mandated – to work a lot of overtime. In 2018, a majority of the 9,199 state employees earned more than \$1000 in overtime pay. It is clear that the State cannot function without its employees working overtime. During the 2015 negotiations, the Union agreed to a State proposal that eliminated unscheduled sick leave as “time worked” when calculating overtime. The impact of that change had a broader negative impact on employees than anticipated. The current proposal amounts to an unfair wage reduction at the expense of employees who are doing more for less and who are already stressed. The proposal impacts only those employees who must work overtime and establishes a standard of unequal treatment. The State has other means of addressing the problem of costly overtime through adequate staffing and increased wage incentives.

Factfinder's Analysis and Recommendation(s):

The State proposes to change the definition of “time worked” so that it is more aligned with FLSA rules and to offset the cost of wage increases. The goal of being more aligned with the FLSA rules appears to run counter to the parties' long and established collective bargaining relationship. A common reason for entering into a collective bargaining relationship is to negotiate terms and conditions of employment beyond those minimally required by law. I find the State's goal of aligning state overtime rules with those of FLSA to be unpersuasive. The State's goal of aligning contract provisions with existing minimum wage laws is a reasonable basis for changing collectively bargained overtime provisions at factfinding.

On the other hand, there can be no question that the change could reduce overtime costs. According to the State, the savings could mean wage increases for all employees. The problem is that reducing overtime costs by changing the definition of “time worked” simultaneously reduces

the wages paid to the employees who work overtime. Some evidence and data from the parties regarding the “time worked” proposal follow:

- \$2.8 million estimated savings if proposal is adopted; and
- 55% (5048 of 9199) of FT employees earned \$1000 or more in overtime in 2018³;
- Average salary is \$55,582/year.

Based on these data and the State’s “time worked” proposal, employees who work overtime could see an average wage reduction of \$554/year, or about 1% of an average annual salary. If the \$2.8 million in savings is paid as an across-the-board wage increase, employees could see an average wage increase of \$304/year or about .5% of the average annual salary. It is clear that the savings paid as an across-the-board wage increase to all employees will not offset the wage reduction imposed on the majority employees who do the overtime work.

Collective bargaining, rather than factfinding, is the most appropriate process for making significant structural changes to long-standing and agreed-upon provisions for the method of calculating and paying overtime. The State proposed similar changes to overtime in 2015 and was successful in reaching agreement with the Union that unscheduled sick leave would no longer count as “time worked” for overtime purposes. This was a significant structural change made by the parties themselves through the process of collective bargaining.

In summary, the State’s argument that the “time worked” proposal should be adopted for the purpose of aligning with FLSA is not persuasive; the evidence does not support the State’s assertion that the savings could have a significant impact on its ability to pay wage increases; and, finally, collective bargaining, not factfinding, is the appropriate process for changing long-standing and agreed-upon provisions for the method and payment of overtime.

Factfinder’s Recommendation

³ Note: this does not represent *all* employees who earn work and overtime

The State’s proposal regarding “Time Worked” is not recommended.

State FMLI Proposal:

The State proposed the following new provision:

11.8.2. Family Medical Leave Insurance: Effective TBD, after the exhaustion of all authorized paid leave available to an employee under this Agreement the State shall provide employer paid Family Medical Leave Insurance to full-time employees, employed for at least twelve (12) months, that provides 60% of base annual salary for up to six (6) weeks non-intermittent per year for the following Family Medical Leave Act (FMLA) defined qualifying events: care for a spouse, son, daughter or parent who has a serious health condition; bonding with a newborn or newly placed son or daughter; exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active or called to covered active duty status.

The State described this proposal as a “gift” to employees with no request for anything in exchange. Family Medical Leave Insurance will provide some pay for employees where none is available now and at no cost to the employee.

SEA Response to FMLI Proposal:

The SEA has not agreed to the State’s proposal because it claims the State has not provided details to support the claim that the benefit will have no cost to employees. The SEA points out that one of the State’s most common explanations for rejecting Union wage proposals is the added cost of employee benefits. The SEA cannot agree to implement a benefit plan without knowing the impact of its cost.

The SEA also argues that the State has not provided requested information about the benefit. The original plan was a bi-state arrangement (with Vermont) to require private employers to provide FMLI for their employees, with the risk pool anchored by state employees. The SEA notes that news accounts indicate the original plan (the bi-state agreement with Vermont) has not materialized and, to date, the Governor has only engaged in “preliminary discussions with multiple insurance carriers.” The SEA also notes that the NH General Court

was considering several bills to establish an FMLI program. The Senate Majority leader commented on the Governor’s plan saying, “There’s no policy behind this, there’s no legislative planning behind this, there’s no actuarial studies, there’s no stakeholder support...” The SEA does not believe the State’s proposal is financially feasible and suggests the money is better spent on employee wages.

Factfinder’s Analysis and Recommendation(s) Regarding FMLI Proposal:

The State’s proposal for Family Medical Leave Insurance would provide a new monetary benefit the employees do not have at this time. While the State proposal does not require employees to pay a premium or ask the Union for anything in exchange, the SEA correctly argues that the program must have *some* cost. It may be that most program costs for state employees would be covered by private employers’ contributions but the State provided no evidence about program costs or how it would be funded. The SEA provided evidence that the program is not yet developed and its future remains uncertain. The State did not refute the Union’s evidence and has not demonstrated that its proposal for FMLI will not create a financial burden that, down the road, might require limits on other benefits or employee wages.

Factfinder’s Recommendation

The State’s FMLI proposal is not recommended.

State Proposal for Step Therapies:

The State proposed the following change to Health Insurance:

19.8 Health Insurance

Prescription Drugs

~~h. 5. Traditional Generic Step Therapy Therapies~~

The State proposes a change from the current “traditional generic step therapy” approach to prescription management to a “step therapy” approach. According to the State, the change

only means that employees will now have access to a brand name medication or a generic medication in the first instance (for the lowest copay). Under the current “traditional generic step therapy,” prescriptions must be filled with a generic medication in the first instance. The State has proposed the change because evidence indicates that generics may not always be the most cost effective medication. Rather than mandating a prescription be filled with a generic in the first instance, the proposed step therapy approach will require prescriptions be filled with the cheapest but effective medication, whether it is a generic or a brand name. The State rejects the Union’s assertion that its “Step Therapy” proposal is actually a “fail first” approach to prescription coverage. The State counters that the Union is overlooking the fact that a “step therapy” approach for prescription coverage has been in the collective bargaining agreement since 2011 at Article 19.8.1.h:

19.8.1.h. Prescription Drugs – The prescription drug plan shall include the following:

4. Exclusive Specialty Pharmacy
5. **Traditional Generic Step Therapy**

Retired Insurance Director Michael Wilkey testified for the State and explained that the proposed change simply allows employees to receive a brand name medication in the first instance if the brand name medication is cheaper. The traditional generic step therapy requires a generic medication be given in the first instance regardless of cost. The State contends it is looking to provide a *greater* benefit to employees by not limiting the current step therapy approach to generics and to include the option of brand name medications in the first instance.

SEA Response to Proposal for Step Therapies:

The SEA agrees the current contract refers to “step therapy” but it is a limited step therapy approach and is for generic medications only. The State’s proposed change would allow the prescription plan to force employees to try lower cost medications before allowing them the

medication prescribed by their doctor. During bargaining, the Union asked what the “specialty and brand” step therapy would mean for employees, the State offered explanations about perceived savings with few details. The Union supports the idea of potential cost savings but not if the approach jeopardizes the health and well-being of employees.

The Union points out that step therapy approaches have created problems for patients accessing the medications they need. In response to these problems there are now 25 states that regulate the use of “step therapy,” citing an article about a recent bill passed in Wisconsin. The Union opposes the proposed change because the current prescription plan has been performing well (with only a .9% increase between 2017 and 2018) and in there is no evidence that employee’s medical care will not be compromised and there is no evidence the change will result in savings.

Factfinder’s Analysis and Recommendation(s) Regarding Step Therapies:

At hearing, Retired Insurance Director Michael Wilkey testified about the proposal to change from a “traditional generic step therapy.” Representatives for the State stressed that its proposal only changes the current rule that prescriptions must be filled with generic medications in the first instance. The State argues that this proposal provides a *greater* benefit by allowing brand name medications or generics in the first instance.

A document from Express Scripts with general questions about “step therapy” was submitted into evidence. Based on Express Scripts’ general description of a general “step therapy” program, the Union’s skepticism about the State’s proposal is understandable. The Express Scripts handout, however, is not the State’s proposal. The proposal being considered and the one before me is the State’s proposal for a single, limited change to the current health

insurance provisions that would allow prescriptions to be filled with either a generic or a brand name medication in the first instance (for the lowest copay).

Under the current collective bargaining agreement, generic medications are mandated in the first instance unless the prescriber has specified a brand name:

1. Mandatory Generic Substitution with DAW 2 (i.e., the only exception is physician ordered "Dispense as Written")

Based on the Express Scripts handout, the Union is concerned that medications prescribed by their members' doctors will not be approved. However, the State proposes to make a very limited change. The State does not propose changes to any other health insurance provision. For example, the State's proposal will not change the current provision that employees will not be required to accept a cheaper medication first or prove that they tried a cheaper medication first before getting access to the medication their doctor prescribed even if it is more expensive.

When presenting its proposal, the State repeatedly emphasized that the only change would be that prescriptions could be filled with a generic OR a brand name medication in the first instance. The Union is skeptical because the handout from Express Scripts describes "step therapy" very differently but the handout it is not the proposal before me. According to the State, it proposes to change the words, "traditional generic step therapies" to, "step therapy" for only one reason: to allow prescriptions to be filled with the cheapest medication in the first instance, whether it is a generic or a brand name. If this is the only change and employees' contractual prescription benefit remains otherwise unchanged, the State's proposal will not reduce employees' current benefit. The State has not proposed to change any other aspect of the employees' contractual prescription benefit and so no other change to the Health Insurance provisions will be recommended. The factfinder's recommendation will be clear: the State's proposal is recommended so long as the only change being made is the ability to fill a

prescription with a generic or a brand name in the first instance and the employees' contractual prescription benefit remains otherwise unchanged.

Factfinder's Recommendation

The State's proposal to change "Traditional Generic Step Therapies" to "Step Therapy" is recommended provided the only change to employees' existing contractual prescription benefits is that prescriptions can be filled with a generic or a brand name medication in the first instance.

State Proposal Regarding Article 9.1 Holidays (to SEA only):

The State proposed to change eligibility for holiday pay for part-time employees:

9.1. Eligibility: All full-time ~~and part-time~~ employees shall be entitled to all holidays prescribed by law or the chief executive with approval of council, provided the employee is on ~~pay status~~ **approved leave** on the employee's next regularly scheduled work day preceding and subsequent to the holiday, and employees shall be compensated as provided herein for work performed on these days.

Part-time employees shall be entitled to all holidays prescribed by law or the chief executive with approval of council. Part-time employees are paid for those hours normally scheduled to work on the day the holiday is observed, provided the employee worked their full normal schedule on the employee's next regularly scheduled work day preceding and subsequent to the holiday.

The State explained that its proposal is intended simply to provide separate provisions for full-time and part-time employees. At hearing, the State responded to SEA's concerns about the language saying "we're happy to adjust the proposal so the language makes sense."

SEA Response to Proposal Regarding Article 9.1 Holidays:

The SEA believes that a plain reading of the proposed language would result in full-time employees having to be on approved leave the day before and after a holiday in order to receive payment for the holiday. The SEA believes that this proposal is procedurally flawed and would result unintended consequences.

Factfinder's Analysis and Recommendation(s) Regarding Article 9.1 Holidays::

The Union is correct. The language is unclear and could lead to confusion. The State may have only intended to provide separate language regarding part-time employees' eligibility for holidays. The problem is that the State not only deleted "part-time" employees from the original language, but it also changed the criteria for being eligible for holiday pay from "the employee is on pay status" to "the employee is on approved leave." The State contends it did not mean to change eligibility for full-time employees, but a basic rule of contract construction is that a change in contract language generally results in a change in its meaning. The SEA did not oppose the idea of separate language for part-time and full-time employees but objects to unclear language or language that changes the existing provisions for full-time employees. At hearing, the State offered to edit its proposal, but no modification or alternate proposal language was submitted.

Factfinder's Recommendation

The State's proposal regarding Article 9.1 Holidays is not recommended.

State Proposal Regarding 9.5 Holidays on Flex Schedules (to SEA only):

The State proposed to insert new language regarding holiday pay for employees on flex schedules:

9.5. Holidays On Flex Schedules: The premium compensation provided by 9.4. for those employees on flexible or alternative work schedules shall be limited to seven and one-half (7 1/2) hours for 37 1/2-hour employees and eight (8) hours for forty-hour employees.

The proposed language had been in the parties' contract for years but was removed during negotiations for the 2018-2019 contract. The State later realized it made an error in removing the language and addressed the mistake in June 2017 at Joint Labor Management Committee (JLMC) meetings with the Union. SEA representatives on the JLMC understood the State's concern and signed a memorandum agreeing to an amended interpretation of the

language. However, SEA leadership objected, saying the SEA members of the JLMC did not have authority to alter agreed-upon contract language. A grievance concerning the language was submitted to arbitration. The arbitrator ruled that the language was clear and unambiguous and must be enforced as written even if it did not reflect the parties' original intention. The State now seeks to correct an error that the JLMC - including SEA employees - agreed should be corrected.

The State contends that employees who do not work alternative schedules (such as four 10-hour days a week) do not get 3-day weekends and do not get paid at the overtime rate for any of their scheduled 40 hours of work. The State argues that it is only fair and reasonable to revert to the contract language in existence prior to the error.

SEA Response to Proposal Regarding 9.5 Holidays on Flex Schedules:

According to the SEA, during the prior round of bargaining, the State submitted a proposal to remove this language as part of a bundled proposal. SEA submitted a counter-proposal and both parties signed the counter-proposal.

SEA represents employees who work in agencies with 24/7 operations and many have alternate work schedules (10 and 12 hour shifts). The Union has argued for years that premium pay should be applied to all hours worked on a holiday and feel the contract change (in the last round) resolved this issue. The language affects a very limited number of employees and the pay is deserved because these employees are sacrificing more time for the employer while other state employees are able to enjoy holidays with friends and family.

Factfinder's Analysis and Recommendation(s) Regarding 9.5 Holidays on Flex Schedules::

The State seeks to change an agreement it made during the prior contract negotiations in June 2017. At arbitration, the State did not prevail with its argument that the language was deleted from the contract in error and was not intentional. It is generally accepted that, unless the

language is unclear or ambiguous, the parties' intention during bargaining is not relevant. Even if the negotiated language contains a mistake, the terms of an agreement "will not be subject to reformation merely because at the time of signing the agreement, one party did not understand its implications." (See *How Arbitration Works*, 6th Ed., Elkouri and Elkouri at Chapter 9, "Interpreting Contract Language, Misunderstanding and the Mutual Assent") This is not a situation where the proposals and counter-proposals were unclear or confusing, such as hand-written proposals or documents cluttered with hand-written notations. The tentative agreement signed by the experienced labor negotiators was a clean, typed document with no hand-written notations in which the State clearly proposed to delete the language it now seeks to re-insert.

The State argues that, besides being a mistake, the erroneous change resulted in an unfair situation because employees who do not work alternate schedules do not get 3-day weekends and do not get paid at the overtime rate for any of their scheduled 40 hours of work. An alternate schedule may result in three consecutive days off for those employees, but the 3 days off typically rotate and the rotation only occasionally results in the 3 days off corresponding to the weekend. In any event, having 3 consecutive days off is generally considered part of the exchange for working 10 or 12 hours shifts at a time. The work schedules and the criteria for overtime may be different but the State has not established that the differences are, in fact, unfair.

Factfinder's Recommendation

The State's proposal regarding holidays on a flex schedule is not recommended.

State Proposal Regarding 11.2.2 Family (to SEA only):

The State proposes to eliminate supervisory discretion to expand the definition of "family":

11.2.2. Family: For the purpose of administering Articles 11.2 and 11.2.1, family shall be defined as: Spouse, children, the minor or dependent children of the spouse, mother-in-law, father-in-law, parents, step-parents, step-children, step-brother, step-sister, foster child, grandparents, grandchildren, brothers, sisters, legal guardian, daughter-in-law, and son-in-law. ~~This definition may be expanded to include other persons at the discretion of a requesting employee's supervisor on a case-by-case basis.~~

The State proposes to eliminate the last sentence of this provision which has been in the collective bargaining agreement since 2005. The State is concerned that allowing supervisory discretion to expand the meaning of “family” can result in decisions that appear unfair. The State points out that the 8 other Unions have agreed to the proposed change.

SEA Response to Proposal Regarding 11.2.2 Family:

According to the SEA, this provision was included in the 2005-2007 contract to address the diverse nature of the modern family. The SEA contends there have been no problems with the language. They know of no complaints or grievances. The State explained its concern that supervisors will “expand” the meaning of family in different ways and argued the change is needed to avoid the appearance of unfairness. The State’s hypothetical concern is not supported by any evidence of instances where unfairness was actually alleged. The SEA contends the proposal to modify language that has served the parties well is unnecessary.

Factfinder’s Analysis and Recommendation(s) Regarding 11.2.2 Family:

It may not always be necessary to prove a history of grievances or complaints to establish a need for a change to contract language. That said, there is no evidence of any problems with the current language and the proposed change would clearly result in the elimination of a benefit (albeit a limited one) that only has been approved on a case-by-case basis with no evidence of problems or complaints about the case-by-case approvals. In the prior round of bargaining, the State offered a different proposal with the same goal of limiting supervisory discretion to expand

the meaning of “family”. The factfinder did not recommend the State’s proposal, saying, “There has been no showing that supervisors have been granting such leave to people with attenuated attachment to the deceased or with facile excuses for sick leave.” There is no evidence this has changed and the State has not demonstrated that its proposal regarding 11.2.2. Family is necessary.

Factfinder’s Recommendation

The State proposal regarding Article 11.2.2 Family is not recommended.

State Proposal Regarding Short Term Disability (to SEA only):

The State proposes to change the name of this benefit:

11.8. ~~Short Term Disability~~ Income Protection **Leave**: ~~Effective 1/1/2019~~ the Employer agrees to provide ~~Short Term Disability~~ Income Protection **Leave** (STD IPL) benefits providing replacement income for full-time Unit Employees who through non-occupational Illness or Injury become Totally Disabled...

11.8.1. The Employer is authorized to provide additional sick leave to an employee once all benefits approved under ~~short term disability income protection~~ **Income Protection Leave** plan have been exhausted under the following conditions:

The State proposes this change to clarify that the Short Term Disability is not an insurance program; it is a leave program. The State points out that 7 out of 9 Unions have agreed to these proposals. The State acknowledges this is not a big issue but suggests it is better to clarify the language sooner rather than later and notes that all other unions agreed to the proposed name change.

SEA Response to Proposal Regarding Short Term Disability:

The Short Term Disability provision was just added to the contract in the last round of bargaining. The program is still new and many employees are still confused about it. The SEA is concerned that changing its name so soon will only create more confusion. The major concern

SEA has is that the term, “short term disability” is a well-defined and recognized industry term, while “income protection leave” is not commonplace and might lead some employees to believe that the new disability protections have been eliminated.

Factfinder’s Analysis and Recommendation(s) Regarding Short Term Disability:

The parties do not disagree about the benefit program – they simply disagree about what to call the benefit. If the State is concerned that the program will be confused with an insurance benefit rather than a leave benefit, it could be called, “Short Term Disability Leave.” If the Union is concerned that some may think the new short term disability benefit has been eliminated, it could be called, “ Disability Income Protection.” The decision about how or whether to change name of this new benefit is best left to the parties.

Factfinder’s Recommendation

The State’s proposal regarding Short Term Disability is recommended.

State Proposal Regarding Employee Discount (SEA only):

19.17. Discount at State Recreational Areas: Any full-time bargaining unit employee and one (1) guest shall be entitled to a fifty-percent (50%) discount on the admission price of any state-owned recreational area. **The discount at state-owned campgrounds is limited to Sunday through Thursday nights.**

This proposal eliminates employee discounts at state campgrounds on Friday and Saturday nights and adds a discount for one guest pass at recreational areas. The State argues that the state Parks Department has been reorganized to be self-funded and the Department “needs help from state employees to keep the Department afloat.” The State notes that eight other Unions have agreed to the proposal.

SEA Response to Proposal Regarding Employee Discount:

The Union opposes the proposal and points out that camping is popular among NH residents, including state employees. Eliminating the discount at campgrounds for Friday and

Saturday nights might not impact state employees who work alternate or rotating schedules.

Most SEA employees, however, work a traditional Monday-Friday schedule. Unless they are taking paid leave, most SEA employees would never benefit from a discount that is only offered on a work day. The SEA also opposes the proposal because the offer of a discount on a \$2-\$8 guest pass is not a reasonable exchange for the loss of two \$25/night discounts at a campground.

Factfinder's Analysis and Recommendation(s):

The State argues that the Parks Department “needs help from other state employees” to achieve its goal of being self-funded. This is not a reasonable basis for reducing or partially eliminating an employee benefit. The proposal is not recommended.

Factfinder's Recommendation

The State's proposal regarding employee discount is not recommended.

SUMMARY OF FACTFINDER RECOMMENDATIONS

SEA PROPOSALS

Wages/COLA

Increase the general wages by 2.86% for FY2020 effective the first full pay period following execution of a successor Agreement, but no later than the first full pay period following January 1, 2020.

Increase the general wages by 1.16% for FY2021 effective the first full pay period of Fiscal Year 2021.

Steps

The SEA proposal to change the number of steps and the duration in each step is not recommended.

Memo of Counsel

The SEA proposal regarding memos of counsel is recommended.

Health Promotion Sunset Date

The SEA proposal to extend the sunset date for the health rewards program to June 30, 2021 is recommended.

Health Care Layoff Sunset Date

The SEA proposal to extend the sunset date for laid off employees health care coverage to June 30, 2021 is recommended.

Connor's Law

The SEA proposal to extend the benefits of "Connor's Law to state employees is recommended.

Direct Care Pay

The SEA proposal regarding Direct Care is recommended but with a \$5.00 increase to a total of \$10.00 per week.

Hazardous Duty Pay

The SEA proposal regarding Hazardous Duty Pay is recommended but with a \$5.00 increase to a total of \$30.00 per week.

STATE PROPOSALS

7.1.2 and 8.3 Time Worked

The State's proposal regarding "Time Worked" is not recommended.

11.8.2 Family Medical Leave Insurance

The State's FMLI proposal is not recommended.

19.8 Health Insurance: Step Therapy

The State's proposal to change "Traditional Generic Step Therapies" to "Step Therapy" is recommended provided the only change to employees' existing contractual prescription benefits is that prescriptions can be filled with a generic or a brand name medication in the first instance.

9.1 Holidays

The State's proposal regarding Article 9.1 Holidays is not recommended.

9.5 Holidays/Flex Schedule

The State's proposal regarding holidays on a flex schedule is not recommended.

11.2.2 Family

The State proposal regarding Article 11.2.2 Family is not recommended.

11.8 Short Term Disability

The State's proposal regarding Short Term Disability is recommended.

Employee Discounts

The State's proposal regarding employee discount is not recommended.



Mary Ellen Shea
Factfinder

Issued: November 12, 2019