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### BACKGROUND

On June 29, 1993, Teamsters Local 633 of New Hampshire (Teamsters) filed a Petition for Certification, under Chapter 273-C for the following employees of Rockingham Venture, Inc. (Rockingham), a horse racing track located in Salem, New Hampshire, to wit: custodial/maintenance employees, gate attendants, ushers, parkers, and mutuel clerks. This filing date was eleven calendar days after Lane Kirkland, President of the AFL-CIO, notified the General President of the International Brotherhood of Teamsters, Ron Carey, that the AFL-CIO Executive Council had "found justification for the action proposed by the Teamsters." The employees who are subjects of this Petition for Certification are covered by a collective bargaining agreement (CBA) between Rockingham and Allied Novelty and Production Workers Union, Local 402 (Local 402) to which the respondent International Union of Allied Novelty and Production Workers, Local 10 (Local 10) claims to be a successor. The CBA is for the period January 1, 1990 through November 30, 1993.

On July 9, 1993, Local 10 filed exceptions to the Teamster petition. Rockingham filed exceptions to the petition on July 12, 1993. Both documents questioned the jurisdiction of the PELRB and sought a determination as to the adequacy of the petitioner's showing of interest. Local 10 filed a Motion to Dismiss on August 19, 1993. The Teamsters filed objections thereto on August 13, 1993. Thereafter, this matter was heard by the PELRB on August 17, 1993. At the conclusion of those proceedings, the parties were given until close of business on August 30, 1993 to file post hearing briefs. Briefs were received from both the Teamsters and Local 10.

### FINDINGS OF FACT

1. Rockingham Venture, Inc. operates a horse racing track in Salem, New Hampshire, and is an "employer" within the definition of RSA 273-C:2 IV.
2. Teamsters Local 633 of New Hampshire is a labor organization representing employees in the public and private sectors in the State of New Hampshire, having offices and a place of business at 265 Maple Street in Manchester, New Hampshire.
3. International Union of Allied Novelty and Production Workers, Local 10 is a labor organization having offices and a place of business at 1950

West Erie Street, Chicago, Illinois. On April 2, 1993, Dennis Mascolo, Secretary-Treasurer of the International Union, wrote to Ed Callahan, General Manager of Rockingham Park, telling him, "This is to inform you that as of April 1st, a merger of Local 402 into Local #10 of the same International Union has been approved by Local #402." (Teamsters Ex. No. 1 and Local 10 Ex. No. 2)

4. Novelty and Production Workers, Local Union 402, AFL-CIO, was a labor organization having offices and a place of business at 36 Mohawk Street, Danvers, Massachusetts. (Teamsters Ex. No. 2) It is undisputed in these proceedings that Local 402 ceased to exist as a labor organization some time during the Spring of 1993 and prior to the filing of the Petition for Certification by the Teamsters on June 29, 1993.
5. Local 402 had a CBA with Rockingham for the period January 1, 1990 through November 30, 1993. In Article II of that contract Rockingham "hereby recognizes the Union as the sole collective bargaining agent with respect to wages, rates of pay and other conditions of employment of its regular employees who are employed by the Employer in its operation of the racing of thoroughbred horses at its track in Salem, New Hampshire." RSA 273-C became effective July 31, 1990. RSA 273-C:9 IV provides that "the bargaining unit or units in effect for employees as of the effective date of this section shall be deemed to be the bargaining unit or bargaining units determined by the board. The exclusive representative of the bargaining unit or bargaining units in effect on the effective date of this section shall be deemed as certified by the board." Local 402 obtained its certification by virtue of the foregoing statutory provision and not as the result of an election conducted under RSA 273-C:10.
6. The petition filed by the Teamsters seeks no modifications in the composition of the bargaining unit as recited in Article II of the CBA between Rockingham and Local 402. That bargaining unit covered custodial/maintenance employees, gate attendants, ushers, parkers and mutuel clerks. Thus, there are no pending questions of unit composition.
7. Rockingham provided the PELRB with an employee list for the bargaining unit which consisted of 210 names,

nine of whom are no longer employed. The showing of interest which accompanied the Teamster's Petition for Certification was sufficient for a bargaining unit of that size.

8. RSA 273-C:11 I (b) confers on the bargaining agent "the right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the date on which the term of the collective bargaining agreement expires." Local 10 asserts that this would act as a bar to the Teamsters petition, given the date it was filed (June 29, 1993) and the date of the PELRB hearing (August 17, 1993) in this matter.
9. RSA 273-C:2 III defines "employee organization" as "any organization certified as the exclusive representative of a bargaining unit by the board under this Chapter." Local 10 asserts that the Teamsters have never been certified as an "exclusive representative" under RSA 273-C and, therefore, are barred from being able to pursue the pending Petition for Certification.
10. Article IV of the Constitution of Local 402 provides that fifteen members of the local shall constitute a quorum. Article V of the Constitution of Local 402, provides (1) that its Executive Board shall consist of the President, Vice President, Recording Secretary, Secretary-Treasurer and three trustees and (2) that "a majority of the members of the Executive Board shall constitute a quorum for the transaction of business and decisions shall be by vote of a majority of all its members." The Teamsters assert that there was neither a meeting of the membership or the Executive Board of Local 402 (or, in the alternative, if there was, then there was no quorum present) at which the issue of Local 10's becoming the successor to Local 402 was discussed and voted upon, thus causing Local 10 to have insufficient standing to participate in these proceedings or to appear on the ballot of any election directed by the PELRB.
11. There is no evidence, be it copies of notices, minutes of meetings, expense records or otherwise, that a quorum of the membership of Local 402 or a quorum of its Executive Board, ever met to consider either the dissolution of or the merger of that local into Local 10.

12. Local 402, which formerly maintained offices in Danvers, Massachusetts, had officers who were elected by and represented its membership. It was not part of any joint board. Local 10 is one of seven locals in the Chicago Joint Board of the Allied, Novelty and Production Workers. As such, it services local union membership with business representatives employed by that joint board who may never have been subject to the approval of or a vote by the membership at Rockingham.

#### DECISION AND ORDER

Notwithstanding challenges raised by Rockingham and Local 10, the PELRB asserts its jurisdiction in this case under the provisions of RSA 273-C. It is clearly and unequivocally the only agency of the State of New Hampshire which has had authority conferred on it to deal with labor relations matters involving employees of dog and horse racing tracks.

The PELRB also rejects Local 10's interpretation of RSA 273-C:2 which defines "employee organization." To accept Local 10's position would frustrate the purposes of RSA 273-C and, taken to its extreme, would disenfranchise or severely limit the choice of employees at dog and horse racing tracks, given the demise of Local 402 and only one other union having been certified under RSA 273-C. Decision No. 91-96 (November 27, 1991). Conversely, our reading of RSA 273-C:1 as to purpose and RSA 273-C:10 as to method, leads us to conclude that the pending petition is a proper one and that it should be processed under C:10 given that the requisite showing of interest required thereunder has been satisfied.

Local 10 has raised a collateral issue pertaining to the rules used by the PELRB during the course of these proceedings. Local 633's petition was filed on June 29, 1993. At that time, the PELRB's rules had expired, but, prior to adoption of successor rules<sup>1</sup> which were effective as of August 4, 1993, the expired rules were the standard used by the Board and practitioners alike. Both RSA 273-A:2 VI and RSA 273-C:12 confer upon the PELRB the authority to adopt rules under RSA 541-A. There has never been any differentiation in the application of the PELRB's rules both to Chapter 273-A and to Chapter 273-C. We note, coincidentally, that Rockingham Venture participated in certification proceedings with another union and for other employees which were conducted under the expired rules and were not challenged for any such deficiency. While those proceedings do not control the pleadings of Local 10 in this case, the record is clear that the Board's former rules were

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<sup>1</sup>The PELRB considers its "new" rules effective August 4, 1993 to apply to labor relations matters under both Chapter 273-A and 273-C, given that the promulgation authority and methodology under RSA 541-A are identical.

available for use and effectively used in previous RSA 273-C certification proceedings. Thus, we reject Local 10's assertions as to the inadequacy of the PELRB's rules.

Local 10 also raised an issue concerning the application of RSA 273-C:11 I (b) pertaining to the holding of bargaining agent elections between 120 and 180 days prior to contract expiration. We examine this requirement by three criteria. First, the statute provides that such elections "may be held," not "shall be held only," during this period. It is a permissive requirement, not an exclusionary one. Second, Local 633's petition was timely. It was filed 150 days prior to the contract expiration date, an adequate amount of time to conduct an election at least 120 days before that expiration date but for the contested nature of these proceedings. We cannot allow that contested nature to disenfranchise bargaining unit members. To do so would only encourage such challenges as a delaying tactic. The efforts of Local 633 to file the instant petition within eleven days after permission for this procedure was given by the President of the AFL-CIO suggest every effort was made to make a timely filing.

If these two considerations were not enough by themselves, the third and most compelling reason we reject Local 10's contentions about RSA 273-C:11 I (b) is the very purpose for which Chapter 273-C was passed: to afford employees of dog and horse racing tracks the opportunity to appear before and utilize the services of the PELRB to engage in collective bargaining and resolve labor management disputes which would otherwise not be available to them as the result of the declination of the National Labor Relations Board (NLRB) to exercise jurisdiction. RSA 273-C:1 I. Chapter 273-C, in its entirety, is intended to extend a voting franchise to employees of operators of dog and horse racing tracks. Neither these employees nor the purpose of Chapter 273-C would be well served if we were to construe 273-C:11 I (b) as a bar. We are most mindful that these employees have never had an opportunity to vote for or against a bargaining agent. Local 402 enjoyed that status purely as the result of grandfathering under RSA 273-C:9 IV. Accordingly, we reject Local 10's assertions of RSA 273-C:11 I (b)'s being a bar to an election.

This brings us to our final area of analysis, that of the status of Local 10 and Local 402 for purposes of acting on the pending petition. It is undisputed that Local 402 no longer exists. Local 633 would have us hold that Local 10 is not the successor to Local 402. While Local 10's status is questionable (Findings No. 10, 11, and 12 above), we resolve any questions as to that status by looking to Rule PUB 301.05 (a). It provides that this board may recognize internal mergers or affiliations if it is satisfied that : (1) the internal rules of the exclusive representative as to approval of the affiliation have been followed, (2) the employees involved have had a reasonable opportunity to be informed, to have input and to vote, and (3) the

local organization did not change materially from that selected as the exclusive representative. Given Findings No. 10, 11 and 12, we are not so satisfied. In such a case Rule PUB 301.05 (b) provides that the PELRB "shall require an election to determine the wishes of the members of the bargaining unit before the change shall be recognized, regardless of the status of any contract which may be in effect." (Emphasis added.) Thus, that is the remedy directed in this case.

Based on the foregoing, we DENY Local 10's Motion to Dismiss filed August 19, 1993. Likewise, we DENY Local 10's Motion to Strike the By-laws of Local 402, filed September 3, 1993, as they are an integral part of the decision making process conferred on this board under Rule PUB 301.05. We further direct that an election be held, on site, within the next thirty (30) days to determine whether the employees seek to be represented by Local 10, Local 633 or to have no representative. Pre-election proceedings shall be conducted within two weeks of the date of this decision. Voter eligibility shall be determined by the employee list submitted and filed by Rockingham Venture on July 30, 1993 less any employees who have terminated employment between then and the date of this decision.

So ordered.

Signed this 6th day of October, 1993.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Richard Roulx and E. Vincent Hall present and voting.