



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Rockingham County Corrections Officers' Association

Complainant

v.

SEA of NH, Inc., Local 1984 SEIU

Respondent

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Case No: S-0386-14

Decision No. 2006-160

APPEARANCES

Representing Rockingham County Corrections Officers' Association

J. Joseph McKittrick, Esq.

Representing SEA of NH, Inc., Local 1984 SEIU

Lorri Hayes, Esq.

Representing Rockingham County

Thomas J. Flygare, Esq.

BACKGROUND

The Rockingham County Corrections Officers Association (the "Association") filed a Petition for Disaffiliation From State/National Organization on June 29, 2006. The Association seeks Disaffiliation from SEA of NH, Inc., Local 1984, SEIU (the "Union") pursuant to the provisions of Pub 301.04 and requests that the PELRB continue to recognize the Association as the Exclusive Representative for all full and part-time regular Correctional I and II Officers employed by the County. Rockingham County (the "County") filed its Objections to the Association's petition on July 12, 2006. Among other things, the County contends that Pub 301.04 does not apply in this case and that if the petition had been filed under Pub 301.01 it would have been untimely. The Union filed its Reply to the Association's petition on July 14, 2006. The Union asserts that it was affiliated with SEIU at the time of the PELRB's July 29, 1992 Certification and no changes have occurred to

that affiliation agreement since that time. Accordingly, the Union asserts that the premise of Pub 301.04 has not been satisfied. The Union does not recognize the Association and it asserts that it was unaware of the Association's existence and that the Association has no rights to negotiate on behalf of the unit members.

A pre-hearing conference was conducted on August 15, 2006. A hearing on the petition was held on August 25, 2006. Deadlines for all submissions have now passed and the record is closed. The parties' stipulated facts appear below as Findings of Fact 5-11.

FINDINGS OF FACT

1. Rockingham County (the "County") is a "public employer" within the meaning of RSA-A:1,X.
2. The SEA of NH, Inc., Local 1984 SEIU (the "Union") is an employee organization that represents corrections officers of the Rockingham County Jail for the purposes of collective bargaining pursuant to RSA 273-A. The Union is the certified bargaining agent pursuant to the July 29, 1992 certification.
3. That the current bargaining unit was certified by the PERLB on July 29, 1992 in the matter of: State Employee's Assoc. of N.H., SEIU Local 1984 and Rockingham County (Correctional Officers).
4. That neither the Petitioner (the Association) nor the Respondent (the NHSEA or the Union) seek any modification or change to the existing unit.
5. That the bargaining unit has entered into five Collective Bargaining Agreements with the County, with the latest covering the period July 01, 2003 to June 30, 2006.
6. That during the current bargaining over a successor agreement, there have been two mediation sessions that have not resulted in a settlement.
7. That impasse has been declared by the NHSEA (the Union) and the PELRB has been petitioned for the appointment of a Fact finder.
8. That in July of 2006, when the County questioned whether it was appropriate to participate in contract mediation with the SEA (the Union) in light of the pending Petition filed by the RCCOA (the Association), the SEA responded that it was the certified bargaining representative and that the County was compelled to continue negotiating in good faith with the bargaining unit.
9. That there is currently no tentative agreement to be submitted to the parties for ratification.
10. The New Hampshire State Employees' Association, Inc. chartered with its international union, the Service Employees' International Union (the "SEIU") in 1984.

11. The SEIU has two chartered locals in New Hampshire, Local 560 in Hanover and Local 1984 in Concord. The Association is not one of these two chartered locals of the SEIU.
12. The bargaining unit has been designated as Chapter 58 of the Union and is one of many such Chapters.
13. The Chapter 58 constitution and bylaws do not provide that Chapter 58 is a Union local nor do they set forth any process for affiliation or disaffiliation of any kind.
14. The Rockingham County Corrections Officers' Association (the "Association") is an informal group of corrections officers employed by the County.
15. The Association does not have bylaws, a constitution, or other written documentation of its existence and operation.
16. The Association is not the certified bargaining agent of the corrections' officers.
17. There was no evidence of any prior proceedings or filings with the PELRB to establish, document or otherwise inform the PELRB that the Union has affiliated with the Association within the meaning of Pub 301.04.
18. The Union claims it was unfamiliar with the Association until the onset of this petition.
19. The Association proceeded at hearing on a petition which specifically seeks disaffiliation pursuant to the provisions of Pub 301.04 and requests that the Association be named as the exclusive representative of the employees in the involved unit.
20. During the hearing counsel for the Association discussed the provisions of Pub 301.01 as well as Pub 301.04 but never filed any amendment to the Association's petition nor did he request an amendment at the hearing.
21. The 2006 annual elections for Chapter 58 required three ballots. The Union claimed the first two ballots were voided for legitimate (and identified) reasons, while the Association suggests the ballots were voided until the Union was satisfied with the election result.

DECISION AND ORDER

JURISDICTION

The PELRB has jurisdiction over disaffiliation petitions per the general provisions of RSA 273-A and the specific provisions of Pub 301.04.

DISCUSSION

The Association's request for permission to file its brief one day late is granted. The briefs of all parties have been received and reviewed. The issue in this case is whether the Association is entitled to disaffiliate from the Union and be recognized as the exclusive

representative for purposes of collective bargaining pursuant to RSA 273-A or, alternatively, is entitled to an election wherein employees in the unit can elect to have the Union as representative, or the Association as representative, or no representative at all.

Generally, the process to obtain an election to seek the replacement of an incumbent representative requires compliance with Pub 301.03 and 301.01 and such filings are known as certification petitions. As noted by the Association in its brief and during the hearing, Pub 301.01 (a) imposes restrictions on when this type of certification petition can be filed. This rule computes the "filing window" with reference to the budget submission date, which in this case is January 15. Under Pub 301.01 (b) a certification petition filing after the filing window is closed may be allowed with due regard to the election window (120 days of budget submission date). These rules all relate to the provisions of RSA 273-A:11 (b), which states in effect that elections seeking removal of an incumbent exclusive representative are permitted "not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire."

The Association states it did not file a certification petition in this case and instead has proceeded with a disaffiliation petition because it is impossible to comply with the filing requirements imposed by Pub 301.01. The Association's interpretation of Pub 301.01 and its conclusion that compliance with Pub 301.01 is impossible is without merit. Pub 301.01 (a) first requires the determination of the year in which the parties' collective bargaining agreement expires – in this case 2006. Based upon this information it is possible to determine the budget submission date in the year the collective bargaining agreement expires – in this case January 15, 2006. After establishing this date it is a simple matter to determine the filing window, which is 210 to 150 days prior to January 15, 2006. The filing window for certification petitions was open during the summer of 2005. The Association did not file a certification petition during the 2005 window period nor thereafter. It appears the real reason it is impossible for the Association to comply with this certification petition filing window is because they waited until 2006 to take action to seek to replace the incumbent representative. The Association did not provide any excuses or justifications for this delay.

The Association next argues that despite its failure to make any filing under Pub 301.01 it should still be granted the requested relief via a petition for disaffiliation. However, the Association misinterprets the meaning and operation of Pub 301.04 as well as the prior PELRB decisions cited in its brief.

Only the Union has been certified as the exclusive bargaining agent for the bargaining unit. This is expressly stated in the July 29, 1992 Certification of Representative and Order to Negotiate in Case No. 2-0386. There is no mention of a "Rockingham County Corrections Officers' Association" in this order. Neither the Association nor the Union claim that since July 29, 1992 there have been filings (with the exception of pleadings filed in this case) wherein anyone claimed or asserted an event of affiliation between the Association and the Union.

Of course, it is possible that an affiliation occurred but the parties neglected to make a filing with the PELRB, so the PELRB was never provided with the opportunity to "duly note the status and identity" per Pub 301.04 (a). However, the PELRB did not receive any evidence

which establishes that in fact such an affiliation took place and the parties simply neglected to make filings to notify the PELRB pursuant to Pub 301.04. In this regard, the Union adamantly denies that it has ever affiliated with the Association within the meaning of Pub 301.04 and also argues that the designation of the bargaining unit as Chapter 58 was not an event of affiliation within the meaning of Pub 301.04. The Association in effect argues that it is in fact Chapter 58 and that, by virtue of its status as a Chapter and otherwise, it is in fact a Local and an affiliate of the Union within the meaning of Pub 301.04. The PELRB finds the Union's evidence and arguments on this issue to be persuasive. There is a dearth of evidence to support the Association's claims on this point. Further, the PELRB rejects the claim, to the extent it is made, that the group of employees in the bargaining unit somehow became affiliated with the Union within the meaning of Pub 301.04 by virtue of the 1992 Certification or by virtue of the fact that they now call themselves the "Rockingham County Corrections Officers' Association."

Since the PELRB finds that the Association and the Union never affiliated within the meaning of Pub 301.04, it necessarily follows that the PELRB cannot grant the Association's request for disaffiliation, assuming that the Association is the proper party to make such a request. Therefore, the PELRB cannot grant the Association's request that it be recognized as the exclusive representative of the bargaining unit and in effect replace the Union. The PELRB notes that a separate question in this case is whether the Association could even assume this status in the event that the Association and the Union had been affiliated within the meaning of Pub 301.04 and the PELRB granted the disaffiliation request, but it is not necessary to reach this issue.

The Association makes two other general arguments to support its request for an election (a request made during the hearing process and in the Association's brief). First, the Association argues that by its current pleadings it is simply following a process allegedly established by the PELRB to allow elections where otherwise a request for election must be denied and/or to avoid jeopardizing the existing collective bargaining agreement. To support this argument the Association cites In the Matter of Derry Police Association, PELRB Case No. P-0702-17, Decision No. 2005-100. The Association claims the "format" of the Derry Police Association case is identical to this one. The Association also states that the incumbent exclusive representative International Brotherhood of Police Officers (the "IBPO") did not contest the claims and relief requested in the Derry Police case. Because the outcome of the Derry Police Association case was not the result of a contested proceeding but was instead by agreement, the PELRB finds it does not require a different analysis in this case.

The Association does claim that the IBPO did contest "similar petitions" and the Association cites Durham Police Officer's Union, NEPBA, Local 21 and the Durham Police Department, PELRB Case No. P-0707, Decision No. 2006-098 to support this claim. This citation does not support the Association's argument, because in Durham Police the case proceeded to election in accordance with an agreement reached at the May 15, 2006 pre-hearing conference. This fact is documented in the May 15, 2006 Order of Election in that case, which provides that "the parties in full resolution of the instant dispute assented to the Board's conducting an election to determine the wishes of the members of the bargaining unit before any change shall be recognized." Accordingly, the parties jointly agreed to proceed to election in the Durham Police case, a controlling fact not present here, and by agreement the employees

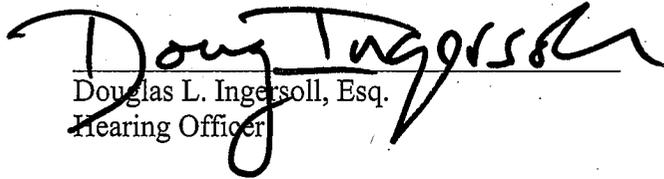
were given a choice on the ballot between continuing with the IBPO, choosing a new affiliation with NEPBA, or choosing no representative. The Durham Police case is also distinguishable because the Durham Police Officers' Association was the original certified exclusive representative and the PELRB subsequently and formally recognized a Pub 301.04 affiliation between the Durham Police Officers' Association and IBPO. The occurrence of a prior affiliation between the Durham Police Officers' Association and IBPO was plain and evident.

The PELRB understands the Association's remaining general argument to be a general plea to conduct an election because such an order is consistent with and/or required by the general scheme of RSA 273-A and PELRB rules. The PELRB appreciates and recognizes the fact that many employees in the bargaining unit are unhappy with the Union as well as the fact that an overriding theme of the statutory framework is to foster and promote harmonious labor relations. Presumably labor discontent is usually in the background when the PELRB receives certification or decertification petitions involving an incumbent exclusive representative. However, given the facts and circumstances of this particular case, the PELRB's discretion as to the interpretation and enforcement of the provisions of RSA 273-A and its rules cannot be exercised in the manner urged by the Association.

Accordingly, the Association's requests for relief are denied.

So ordered.

Signed this 28th day of September, 2006.


Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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