



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of the  
New Hampshire Office of Information Technology

Petitioner

v.

State of New Hampshire

Respondent

Case No. S-0411-1

Decision No. 2007-017

Classified Employee Complainants of the  
New Hampshire Office of Information Technology

Complainant

v.

State of New Hampshire

and

SEA/SEIU Local 1984

Respondents

Case No. S-0411-2

APPEARANCES

Representing the Complainant

Dane E. Prescott, IT Manager IV, Office of Technology Management

Representing the State of New Hampshire

Michael K. Brown, Esq., Senior Assistant Attorney General

Representing SEA, SEIU Local 1984

John S. Krupski, Esq., Cook & Molan, P.A.

DECISION AND ORDER

BACKGROUND

In Case No. S-0411-1 the Complainant filed an unfair labor practice complaint related to an August 12, 2003 modification petition which requested modification of the existing certification of the Department of Administration & Control Department of Centralized Data Processing ("CDP") to reflect the new Office of Information Technology. The Complainant claims the CDP did not exist at the time the petition was filed, that the certification which issued states a "representation election" was held, that Sara Willingham and the State misrepresented the facts that a representation election by a majority of the employees of OIT was conducted, and that the modification petition was fraudulent, all constituting an unfair labor practice pursuant to RSA 273-A:5 (I)(b). The Complainant states that the State notified OIT employees that they were subject to the Agency Fee provision contained in the SEA collective bargaining agreement on July 18, 2006 and July 28, 2006, that Complainant filed the instant complaint within 6 months of this notification, and the statute of limitations should be tolled per Pub 201.02 (a).

The State filed an answer and motion to dismiss on October 2, 2006. The State denies that the modification petition was fraudulent or that the State or Sara Willingham misrepresented the facts surrounding the certification. The State contends that the modification reflected reorganization of State government both in 1983 and when OIT was created, a representation election was held before the creation of OIT, that although CDP did not exist when OIT was created, the bargaining subunits did, and that since August 15, 2003 it has been common knowledge among OIT classified employees that they were either members of the SEA or eligible to join the SEA. The State claims the complaint should be dismissed as it relates to conduct that occurred in either 2003 or 2004 and should be dismissed pursuant to RSA 273-A:6, VII.

In Case No. S-0411-2, the Complainant claims that the State and the SEA have conspired to create an environment whereby State employees are coerced and encouraged to join the union as a condition of employment as evidenced by directives issued by Sara Willingham, State Manager of Employee Relations. These included requiring the individual State Agency Human Resources offices to include the SEA/SEIU in State Employee Orientations for new employees, requiring Agency Appointing Authorities to issue memorandums in June, July, and August 2006 requiring that employees submit SEA union enrollment cards directly to the SEA, and requiring Agency Appointing Authorities to withhold involuntary payroll deductions from employees, all in violation of RSA 273-A:5, I (a),(b) and (c).

The Complainant also claims that the SEA coerced, intimidated, and bullied new employees into joining the SEA at State Employee Orientations without fully explaining all employee options, that the SEA coerced, intimidated, and bullied State employees into allowing these coercive tactics at State Employee Orientations, and also demanded that employees sign payroll authorization forms as a result of reaching the union membership percentages that invoke the Fair Share provision, all in violation of RSA 273-A:5, II (a) and (c).

On September 30, 2006 the SEA filed its answer. The SEA states in relevant part that: 1) Mr. Prescott should be deemed the sole Complainant; 2) Complainant states legal conclusions, not factual allegations; 3) any allegations against the SEA are denied; 4) the petition is barred in whole or in part by RSA 273-A:6; 5) Complainant lacks standing; 6) negotiated compulsory agency fees are proper; 6) the petition fails to state a cause of action upon which relief may be granted.

On October 2, 2006 the State filed its answer. The State claims that: 1) Sara Willingham did not encourage state employees to join the SEA; 2) the State did not use coercive membership enrollment practices or conspire with the SEA; 3) §3.10 of the CBA allows the SEA/SEIU to participate in new employee orientation; 4) memoranda were sent to employees regarding agency fee deductions pursuant to the CBA; and 5) agency fees have been deducted from some employee paychecks pursuant to the CBA.

On October 2, 2006 the State filed motions to dismiss both Case No. S-0411-1 and Case No. S-0411-2. The Complainant timely filed its objections to both. The basis for the State's request for dismissal is that to the extent the Complainant is complaining about the agency fee or its required implementation, RSA 273-A:6, VII bars the claim as in this case the State was doing nothing more than implementing provisions of a CBA negotiated in 1999 and 2001.

The hearing officer conducted an informal pre-hearing conference on October 4, 2006. Following the pre-hearing, an order issued stating the following:

At the pre-hearing conference the parties agreed that the PELRB should decide the motion to dismiss before proceeding with a hearing on the merits, currently scheduled for November 29, 2006. Accordingly, petitioner shall file any further pleadings, amendments or otherwise, on or before November 3, 2006. The SEA and the State shall file any further responsive pleadings on or before November 10, 2006. Any briefs shall be filed on or before November 14, 2006.

A hearing on the Motion to Dismiss shall be held on November 14, 2006 at 9:30 a.m. at the PELRB in Concord, New Hampshire. (PELRB Decision Nos. 2006-192, 2006-194).

The SEA/SEIU filed a motion to dismiss the complaint on November 13, 2006. Given the date of filing, the Complainant's objection was heard orally at the hearing on motions that was conducted on November 14, 2006.

On November 14, 2006 all parties were present or represented at this hearing conducted before the Board. The hearing on that day went with all parties presenting oral argument regarding their respective motions and objections. At the conclusion of this hearing the Board took the matter

of dismissals under advisement and further ordered all parties to proceed to prepare and attend the previously scheduled final hearing on November 29, 2006. The Board subsequently issued its decision denying the motions to dismiss filed by both Respondents at that time, without prejudice at that time, as the Board felt it wanted to hear evidence via offers of proof or testimony, if necessary. (See PELRB Decision Nos. 2006-215, 2006-218). The Board instructed the parties to be prepared to argue the dismissals again at the November 29, 2006 hearing.

## DISCUSSION

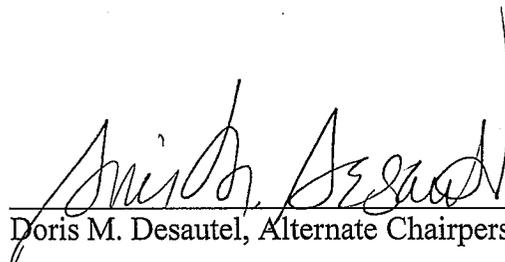
On November 29, 2006 the final hearing merits was convened with the Board first addressing, the State's Motion to Dismiss in Case No. 0411-1. After the parties' brief argument and offers of proof that followed the allegations and assertions contained within the written filings of both, the Complainant requested that this complaint be withdrawn. There was no objection from the Respondent and the Board ruled accordingly. Therefore, the complaint as stated in Case No. 0411-1, is dismissed.

Following the withdrawal and resultant dismissal of Case No. 0411-1, the Complainant and the two Respondents, namely the State of New Hampshire and SEA/SEIU, Local 1984, went forward on their motions to dismiss Case No. 0411-2. All parties were given the opportunity to make oral argument and make offers of proof in support of their respective positions. Again, the parties' arguments paralleled those expressed within their written filings.

After considering the parties' arguments and offers of proof in connection with these motions and the objections thereto, the Board awards a dismissal to the Respondents, finding that the Complainant lacks standing to bring the complaint as he has not demonstrated any legal harm suffered by him. The Board comes to this conclusion providing, however, that the Respondent State participate in discussions with the Complainant to discuss the approach to be used and the method of conduct of future "new employee orientation sessions."

So ordered.

Signed this 13<sup>th</sup> day of February, 2007

  
Doris M. Desautel, Alternate Chairperson

By unanimous decision. Doris M. Desautel presiding. Members Teresa B. Jones and Carol M. Granfield present and voting.

Distribution:

Dane E. Prescott  
Michael K. Brown, Esq.  
John S. Krupski, Esq.