



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Classified Employee Petitioners of the  
New Hampshire Public Utilities Commission

and

State Employees' Association of NH, Inc.,  
SEIU Local 1984

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Case No. S-0419-1

Decision 2008-015

**ORDER ON SEA/SEIU LOCAL 1984'S  
OBJECTION TO CONDUCT AFFECTING OUTCOME OF ELECTION**

On January 14, 2008 the SEA filed an Objection to Conduct Affecting Outcome of Election based upon the potential omission of an eligible voter from the list of eligible voters as described in the January 10, 2008 letter from Donald M. Kries, General Counsel to the Public Utilities Commission ("PUC") and the timing of the PELRB's January 9, 2008 Notice of Decertification of Exclusive Representative. The petitioners filed their response to the SEA's objection on January 14, 2008.

At the election, a majority of eligible employees voted 26-24 for no representation. After the election both parties executed a January 9, 2008 Report of Election and a Certification on Conduct of Decertification Election. As reflected in the report, the SEA challenged 1 ballot, a challenge which was subsequently withdrawn, and accordingly the formerly "challenged" ballot was counted. In the certification both parties agreed that "all eligible voters were given an opportunity to vote ..."

Post election objections are allowed under Pub 303.11, which provides:

Hearing on Challenges and Objections. All objections to the conduct of an election by the representative of the board and to conduct affecting the outcome of an election not occurring at the polling area shall be filed with the board within 5 days

after the report of election is filed under Pub 303.10. If challenges or objections are filed, the board shall conduct any hearing it has directed within 10 days of the date they are filed.

As to the SEA's suggestion that there was a "rush to election," a complaint raised for the first time in the current SEA objection, the board observes that the interval between the pre-election conference and the election in this case is, if anything, greater than is typically true in PELRB election proceedings. Further, Pub 303.02 (a) contains the admonition that pre-election proceedings should be conducted "as expeditiously as possible," and the SEA expressly agreed to the January 9, 2008 election date, as evidenced by the December 5, 2007 Pre-Election Conference form.

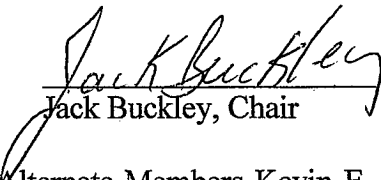
The board finds that whether another election should be conducted on account of Mr. Brennan's omission from the list of eligible voters is a close question. Under the board's rules, the PUC was required to file an employee list at the time an order of election issued and to "update this voting list by delivering to each party receiving a copy of the original list the name and classification of any person newly eligible for inclusion in the bargaining unit up to the end of the eligibility period agreed to by the parties or, failing agreement, determined by the board at the pre-election conference." Pub 303.01(b). The SEA has a related responsibility to investigate and assess the accuracy of the employee voting lists provided by the PUC, since Pub 303.03 (a) specifically provides that "[d]isputes regarding the accuracy of the voting list shall be raised at the pre-election conference. The board shall resolve any disputes regarding the accuracy of the updated list prior to the day scheduled for the election." The pre-election conference in this matter was conducted on December 5, 2008 following the PUC's production of a voting list, dated November 27, 2007, and following the PUC's acceptance of Mr. Brennan's transfer on November 30, 2007.

Under these rules, it is evident that the PUC and the SEA share responsibility for the fact that Mr. Brennan's omission from the list of eligible voters was not discovered until after the election was held. As between the SEA and the PUC, the PUC is the more culpable party, since the PUC should have been administratively aware of Mr. Brennan's transfer from the Office of Information Technology to the PUC on November 30, 2007, yet the PUC did not raise this fact to the board or the parties until the day after the election was held, at which time attorney Kreis' letter was filed. The PUC's obligation to file an accurate list of employees and also process and report to the parties and the board any changes in the composition of that list in a timely manner during election proceedings is not an insignificant or inconsequential responsibility, as it relates to a core and fundamental aspect of the election process.

Upon consideration of the circumstances of this case, including the potential effect on the final election result, the board finds that Mr. Brennan's omission from the employee list was sufficiently material to call into question the validity of the election proceedings to a degree which requires the conduct of a new election. Accordingly, the results of the January 9, 2008 election are set aside and the previous order of decertification is therefore vacated. This matter shall proceed as expeditiously as possible to another pre-election conference and election.

So Ordered.

Signed this 5<sup>th</sup> day of February, 2008.

  
Jack Buckley, Chair

By unanimous decision. Chair Jack Buckley. Alternate Members Kevin E. Cash and Sanford Roberts, Esq. present and voting.

Distribution:

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