



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Certain Classified Employees of the	*	
Public Utilities Commission	*	
	*	Case No. S-0419-1
Petitioner	*	
v.	*	
	*	Decision No. 2008-060
SEA of NH, Inc., Local 1984, SEIU	*	
	*	
Respondent	*	
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PRE-HEARING MEMORANDUM AND ORDER

PARTICIPATING REPRESENTATIVES AT PRE-HEARING CONFERENCE

For the Petitioners: Lynn Fabrizio and Jody O'Marra

For the Respondent: John Krupski, Esq.

BACKGROUND

The undersigned hearing officer conducted an informal pre-hearing conference on March 14, 2008 at the PELRB offices in Concord, New Hampshire. An election, by secret written ballot, cast by eligible voters, was conducted by the PELRB on March 4, 2008 to determine whether the SEA of NH, Inc., Local 1984 SEIU would be decertified as the exclusive representative of a bargaining unit comprised of individuals employed within the State of New Hampshire's Public Utility Commission. An election for this purpose among these employees had been attempted on two prior occasions. The first election, conducted on October 11, 2006 resulted in an order of decertification, but was deemed void on appeal by the court because the employer did not distribute a list of employee home addresses as required by Admin R. Pub 303.01 (b) and the PELRB did not compel the production of those home instead ruling that privacy rights outweighed the production of employees' home addresses in violation of its own rules. After due notice, a second election ordered by the court was conducted on January 9, 2008

and after its conduct the PELRB was informed by the public employer that the list of employees provided to the PELRB and to the parties was inaccurate. The result of this second election also was in favor of decertification. The parties filed post election cross pleadings regarding conduct affecting the outcome of an election. The PELRB subsequently issued its order for a third election deeming the failure of a complete voter list to sufficiently call into question the validity of the election. After due notice, a third election was conducted on March 4, 2008 at which a single voter's eligibility was challenged by the SEA/SEIU. Following a tally of all votes, it was determined that the challenged ballot could determine the outcome of the election.

The challenge by SEA/SEIU calls into question the vote of Michael D. Harrington on the basis of his eligibility to vote.

ISSUE PRESENTED FOR BOARD REVIEW

(1) Whether the PUC employee casting the challenged ballot is ineligible to vote because he is deemed to be in a "confidential" relationship with the employer pursuant to RSA 273-A:1, IX (c) as applied in unit determinations.

WITNESSES

For the challenging party, SEA/SEIU:

- a. Thomas B. Getz, Chairman, NH PUC
- b. Clifton C. Below, Commissioner, NH PUC
- c. Michael D. Harrington, Senior Regional Policy Advisor, NH PUC
- d. Any and all witnesses named by the opposing party on its Witness list not called by them during the course of the presentation of its case and any rebuttal witnesses.

For the defending party, Classified Employee Petitioners of the NH PUC:

- a. Michael D. Harrington, Senior Regional Policy Advisor, NH PUC;
- b. Any and all witnesses named by the opposing party on its Witness list not called by them during the course of the presentation of its case and any rebuttal witnesses.

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Supplemental job description for Regulatory Policy Advisor.

For the SEA/SEIU:

1. Organization chart "short" form as contained in NH PUC Biennial Report;
2. Organizational Chart "long" form dated 1/7/08 or 2/6/08;

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that all listed exhibits will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing is one day inclusive of all cross examination.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before March 21, 2008 in order to agree upon any uncontested facts to which they can stipulate and therefore need not be subject of testimony at the evidentiary hearing. The parties' representatives shall memorialize those facts and file that document with the PELRB prior to the date of hearing.
2. The parties' representatives shall also confer for the purpose of exchanging final witness and exhibit lists. The parties' representatives shall also meet or otherwise confer to pre-mark any and all exhibits, for identification prior to the time of hearing and have sufficient copies available for distribution at the time of hearing as required. Any party encountering any conduct, including refusal to produce documents or other exhibits in response to a reasonable request of the other is to notify the requesting party and the PELRB immediately. And both parties shall make reasonable effort to agree on a time at which a conference call among the PELRB and the two parties may be conducted. Failure to comply may subject the party found to be acting unreasonably or not making itself available for a conference call at a time designated by the PELRB to an award of costs in favor of the opposing party.

3. Each party is granted authority to issue subpoenas to any necessary witnesses in accordance with common subpoena practices.

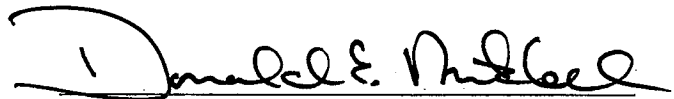
4. An evidentiary hearing on the SEA/SEIU ballot challenge will be held on:

March 26, 2008 commencing at 9:30 AM*

* Note change in starting time

So Ordered.

Date Issued: March 18, 2008



Donald E. Mitchell, Esq.
Presiding Officer

Distribution:

Thomas Getz, Chairman NH PUC
John S. Krupski, Esq., SEA/SEIU
Glen Milner, Esq., SEA/SEIU
Dennis Kinnan, SEA/SEIU
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