



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Robin Mongeon, et al.	*	
	*	
Complainants	*	Case No. S-0439-1
	*	
v.	*	Decision No. 2008-106
	*	
Thomas S. Burack, DES Commissioner & Gary Smith, President, SEA/SEIU Local 1984	*	
	*	
Respondents	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Robin Mongeon and nine other State Department of Environmental Service employees (the "complainants") filed an unfair labor practice complaint on March 21, 2008 alleging that the State of New Hampshire, Department of Environmental Services (the "State") and the SEA/SEIU Local 1984 ("SEA") committed an unfair labor practice in violation of RSA 273-A:5 I (a) & (g) and RSA 273-A:5 II (a) & (g) by charging the complainants with an agency fee that is allegedly unlawful. In essence, complainants contend they are supervisors within the meaning of RSA 273-A:8, II and are improperly included in the same bargaining unit as the employees they supervise. Mr. Evans withdrew his complaint on April 11, 2008, reducing the total number of complainants in this case to eight.

The complainants request as remedies that the PELRB: 1) determine that all the charging parties are supervisors whose jobs involve a significant exercise of discretion pursuant to RSA 273-A:8 II; 2) determine that the DES Bargaining unit as certified on May 6, 2004 is unlawful pursuant to RSA 273-A:8 II; 3) order the respondents to cease and desist collecting agency fees from the charging parties as the fee is for unlawful representation; and 4) order the respondents to refund all agency fee monies to the charging parties that have been collected by the respondents beginning August 18, 2006 and appearing in paychecks starting September 15, 2006.

On April 4, 2008 the State filed its answer denying the unfair labor practice charge and the SEA filed its answer denying the unfair labor practice charge on April 7, 2008. Both the State and the SEA have filed a motion to dismiss claiming the complaint is untimely. At the pre-

hearing the State and SEA clarified that they dispute whether any of the complainants are supervisors under RSA 273-A:8, II.

The undersigned Hearing Officer conducted a pre-hearing conference on May 13, 2008 at 9:00 p.m. at the offices of the Public Employee Labor Relations Board in Concord.

PARTICIPATING REPRESENTATIVES

For the Complainants: Robin Mongeon, Karlee Kenison, Margaret Bastien, Joyce P Bledsoe, Stergios Spanos

For the State: Rosemary Wiant, Esq.

For the SEA: Glenn R. Milner, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the complainants are supervisors within the meaning of RSA 273-A:8, II?

Whether the collection of an agency fee from the complainants is unlawful?

Whether the complaint is untimely?

WITNESSES

For the Complainants:

1. Robin Mongeon
2. Karlee Kenison
3. Robert Tardif
4. Kendall Perkins
5. William Evans
6. James Falicon
7. Stergios Spanos
8. Margaret Bastien
9. Michael Fitzgerald
10. Sara Willingham
11. Joyce Bledsoe

For the State:

1. Michael Walls
2. Karen Hutchins
3. Sara Willingham

4. Pamela Sopczyk

For the SEA:

1. Kathy Desjardin
2. Gary Smith
3. Thomas Manning
4. Sara Willingham
5. Thomas Burack
6. Richard E. Molan, Esq.

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 any hearing in this matter.

EXHIBITS

For the Complainants:

1. RSA 273-A:5 Unfair Labor Practices Prohibited
2. RSA 273-A:8 Determining Bargaining Unit
3. DES amended certification May 6, 2004
4. Appeal of Manchester Board of School Committee, 129 N.H. 151
5. Appeal of East Derry Fire Precinct, 137 N.H. 607
6. General Job Specifications
7. Supplemental Job Descriptions
8. Organizational Charts
9. Michael Nolin letter dated 6/6/06
10. Collective Bargaining Agreement Section 5.8.1 Agency Fee
11. Payroll Stub showing the "SEA Fair Share" deduction
12. Sara Willingham letter to Robin Mongeon dated 2/7/08, including attachments
13. City of Concord v. Public Employee Labor Relations Board State of New Hampshire, 119 N.H. 725

For the State:

1. All exhibits identified in the complaint
2. Correspondence between the State and Petitioners
3. Personnel Records

For the Union:

1. 2005-2007 Collective Bargaining Agreement
2. Organizational Structure of the Department of Environmental Services
3. Complete personnel files of charging parties
4. Any and all pleadings in this matter

5. Any and All documents filed as exhibits to pleadings
6. Any document or exhibit included in the Petitioner's exhibit list not otherwise introduced by the Petitioner; and
7. Any and All documents required for impeachment purposes.

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 the exhibits listed above will be available at any hearing in this matter.

LENGTH OF HEARING

Not applicable at this time, see decision portion of pre-hearing order.

DECISION

1. At the pre-hearing the State and the SEA agreed to attempt to identify which state employees, including but not limited to the complainants in this case and in other pending/similar cases, may be supervisors within the meaning of RSA 273-A:8, II and accordingly may in fact belong to a separate "supervisors" bargaining unit or units previously certified by the PELRB. The State and the SEA agreed that 45 days is sufficient to complete this process, and they will keep the complainants informed of their progress, providing the complainants with the opportunity for meaningful input, although it should be noted that the State and the SEA are currently in possession of a fair amount of the information that the complainants rely upon to support their claim that they are RSA 273-A:8, II supervisors. This process is intended to encourage an agreed upon resolution of some or all of the issues in this case. The complainants should be aware that this pre-hearing order does not grant to the State and/or the SEA the authority to conclusively determine the issues raised in this case, including whether or not the complainants or other state employees are RSA 273-A:8, II supervisors, as it may be that issues raised in the complaint may have to ultimately resolve through the PELRB adjudicatory process despite the efforts of the parties in accordance with this paragraph.

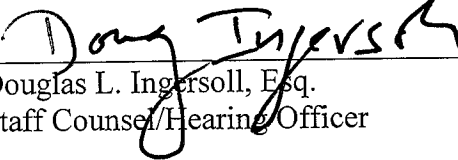
2. All parties understand that if the complainants properly belong to a supervisors' bargaining unit(s) the issues raised in the current complaint may become moot, either because the complainants have to pay an agency fee as a member of a different bargaining unit or because the specific issues raised in this complaint are otherwise resolved or eliminated. I make no determination at this time as to the future status of this case when the process outlined in paragraph 1 is completed, and this pre-hearing order does not constitute a finding as to the agency fee obligation of the complainants and/or other state employees in the event it is ultimately determined that their positions are included within a supervisors' bargaining unit(s).

3. Attorney Wiant will provide the complainants with a copy of the existing supervisors' bargaining unit certification.

4. PELRB Case No.s S-0393-3 and S-0393-4 involve facts and issues that are similar to those raised in this case. Although the State and the SEA's answers are not yet due in S-0393-4, they agree it is proper at this time to schedule a further pre-hearing conference in this case and in S-0393-3 and S-0393-4 for June 9, 2008, at which time consolidation and the status of the activities outlined in paragraph one will be reviewed in addition to the regular matters addressed at pre-hearing conferences, including the scheduling of a hearing date. A scheduling notice will issue setting a further pre-hearing conference for June 9, 2008 at 9:00 a.m.

So ordered.

May 14, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

Per Attached Service List