



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEPBA LOCAL 255, NH SUPERVISORY
CORRECTIONS UNIT**

PETITIONER

and

CASE NO. S-0438-2
DECISION NO. 2008-249

**STATE OF NEW HAMPSHIRE,
DEPARTMENT OF CORRECTIONS
AND SEA/SEIU LOCAL 1984**

RESPONDENTS

APPEARANCES

Representing: NEPBA Local 255, NH Supervisory Corrections Unit
Peter J. Perroni, Esq., Lowell, Massachusetts

Representing: State Employees Association of NH, Inc., SEIU Local 1984
Glenn R. Milner, Esq., Concord, New Hampshire

Representing: State of New Hampshire, Department of Corrections
John Vinson, Esq., New Hampshire Attorney General's Office

BACKGROUND

On July 31, 2008 the NEPBA Local 255, NH Supervisory Corrections' Officers Unit ("NEPBA") filed the above captioned Modification Petition seeking to add the positions of Unit

Managers, Investigators and Deputy Chief Investigators to the Supervisory Corrections' Officers Unit. On November 5, 2008 the NEPBA filed a Motion to Amend to add the position of Civilian Hearing Officers to its modification petition.

The State Employees Association of NH, Inc., SEIU Local 1984 ("SEA") filed its Exceptions to the Petition on August 15, 2008. The SEA contends that the bargaining unit with the proposed modifications fails to meet the requirements of RSA 273-A:8, Pub 302.02 and Pub 302.05.¹

The State filed a Motion for Late Entry and Motion to Provide a Statement of Interest to the Board on September 9, 2008. In its written statement the State requests that the board accept its concerns that: a) Unit Managers currently report to Majors, the senior uniformed staff, but management is considering having Unit Managers report directly to the Wardens, which change might be relevant to which labor organization would more appropriately represent Unit Managers; and b) Investigators are sometimes assigned to do confidential investigations for the Commissioner or Wardens.

The undersigned hearing officer conducted a hearing on November 10, 2008 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The NEPBA submitted its case via an offer of proof and exhibits, all of which were entered into the record without objection. The SEA did not present testimony or documentary evidence. Both the NEPBA and the SEA argued their respective positions at the hearing and filed post-hearing briefs. The State attended the hearing but did not submit evidence or argument and did not file a post-hearing brief.

¹ At the November 10, 2008 hearing the SEA withdrew its objections based upon RSA 273-A:8, II.

FINDINGS OF FACT

1. The State of New Hampshire, Department of Corrections is a public employer subject to the provisions of RSA 273-A.
2. The SEA is the certified exclusive representative of a Department of Corrections bargaining unit consisting of all classified employees with the exception of those classified employees excluded from the definition of public employee under the provision of RSA 273-A:1, IX per PELRB Decision No. 2004-037, and with the exception of those employees represented by the NEPBA as described below and as otherwise reflected in existing PELRB certifications on file.
3. The NEPBA is the certified exclusive representative of Local 255, NH Supervisory Corrections' Officers Unit per PELRB Decision No. 2008-014, Case No. S-0438-1, consisting of the following positions:

Corrections Officer Captains; Corrections Officer Lieutenants; and Corrections Officer Sergeants but excluding the position of Corrections Officer Major, employed by the State of New Hampshire, Department of Corrections.
4. The NEPBA's certification as exclusive representative is the result of the NEPBA's request to modify the existing SEA Department of Corrections' bargaining unit to create a new bargaining unit comprised of the above-described positions. The SEA's appeal of PELRB Decision No. 2008-014 is currently pending at the New Hampshire Supreme Court, Case No. 2008-0032.
5. Unit Managers report directly to Majors, and perform the same duties as Sergeants and Lieutenants. The position of Unit Manager is usually filled from the Department of Corrections employees in the uniformed ranks.

6. Unit Managers have custodial responsibility, carry hand cuffs, conduct cell searches, perform inventories and prisoner transports, and are subject to the same work rules as current bargaining unit members. Unit Managers complete the same training as well, and must qualify with firearms. Unit Managers also have a self-felt community of interest with Corrections Officers.

7. Investigators and Deputy Chief Investigators also have a self-felt community of interest with Corrections Officers, receive the same training and have the same certification requirements, and have similar custodial responsibilities.

8. The Hearings Officer position was created in 2008 as the result of the reclassification of position number 12934, Corrections Sergeant to Hearings Officer. After reclassification, the position continues to perform many of the pre-reclassification duties. The reclassification reflects a more accurate labeling of those duties. *See* NEPBA Exhibit 4.

9. The State did not offer any objections or concerns about the inclusion of the Hearing Officer position in the supervisors' bargaining unit.

DECISION

DECISION SUMMARY

The NEPBA's modification petition is granted. Neither Pub 302.02 nor 302.05 bar the modification request and there is a sufficient community of interest between the proposed additions to the bargaining unit and the positions covered by the existing certification.

JURISDICTION

The PELRB has jurisdiction of all petitions to determine and modify bargaining units pursuant to RSA 273-A:8 and Pub 302.05.

DISCUSSION

The SEA has raised objections to the NEPBA's modification petition based upon the provisions of Pub 302.02, Pub 302.05 (d) as well as the election bar imposed by RSA 273-A:11

(b). Pub 302.05 (d) provides:

An employee organization, other than the exclusive representative, may file a petition for modification only during time periods or under conditions when it would be entitled by statute or these rules to petition for an election to be certified as the exclusive representative. At other times, only the employer or exclusive representative may file a petition for modification of a bargaining unit.

The SEA argues that because the addition of the Unit Manager and Investigator positions to the Corrections Officers Supervisory bargaining unit would also change the SEA Department of Corrections bargaining unit the petition is subject to the requirements of Pub 302.05 (d). Assuming without deciding that such compliance is required, the SEA's argument is without merit because the petition was submitted during the filing period specified in Pub 302.05 (d).

The SEA also makes a timeliness argument based upon the statutory time period within which elections conducted during the time of an existing collective bargaining agreement must be held. In general, elections can be required in modification proceedings. *See* Pub 302.05 (b)(1) (A [modification] petition shall be denied if [t]he question is a matter amenable to settlement through the election process). The PELRB has conducted elections in modification proceedings when an existing bargaining unit is modified to create a new unit, in which case an election is held among the employees in the new bargaining unit to determine the new bargaining unit's exclusive representative, if any. PELRB Decision No. 90-69, cited by the SEA, is one such case. More recent decisions involving the same type of election in a modification proceeding where an existing bargaining unit has been modified to create a new bargaining unit include PELRB Decision No. 2008-014 (the same Supervisory Corrections' Unit at issue in this

case); PELRB Decision No. 2006-174 (2 new Fish and Game bargaining units created by modifying an existing SEA bargaining unit); and PELRB Decision No. 2006-169 (2 new Highway Patrol bargaining units created by modifying an existing SEA bargaining unit). However, unlike the cases cited, including the case cited by the SEA, the present case does not involve the creation of a new bargaining unit from an existing SEA bargaining unit – that process has already been completed. Further, the cited cases do not stand for the proposition that an election is required under Pub 302.05 anytime there is a modification proceeding involving a request to move a position from one existing bargaining unit to another existing bargaining unit. The PELRB has also conducted elections in modification proceedings if the petitioner is seeking to add a large number of employees to an existing bargaining unit relative to the number of employees covered by the existing bargaining unit. *See* PELRB Decision No. 2008-196.

Accordingly, the bar imposed by RSA 273-A:11 (b) does not apply because this case does not involve an election. The fact that the hearing was held and the decision issued within the time period when an election, if required, would be barred is immaterial.

The SEA also raises a general objection based upon Pub 302.02, the board's rule which addresses community of interest criteria. However, the SEA did not offer any evidence to support this objection. The evidence submitted by the NEPBA, as summarized in the Findings of Fact and the exhibits submitted into the record, together with the State's position in this case, are all sufficient to satisfy the requirements of RSA 273-A:8, I and Pub 302.02. The positions at issue in this case, including the Hearings Officer position before reclassification, were previously part of a much larger and more diverse bargaining unit comprised of all classified employees of the Department of Corrections with limited exceptions, all pursuant to the 2004 amended certification. If anything, the requested modification results in a stronger community of interest

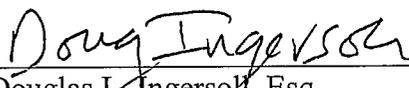
among the involved positions than is the case under the 2004 amended certification. While the State has submitted a statement of interest in this case and also attended the hearing, the State did not participate at the hearing and did not submit a post-hearing brief. The State's statement of interest does not reflect significant concerns or opposition to the proposed modification on the State's part as the public employer. There was no evidence that Unit Managers will begin reporting directly to the Wardens, and therefore the comments contained in the State's statement of interest on that subject do not require further consideration.

Accordingly, the NEPBA's modification petition is granted. An amended certification will issue based upon the following description of the bargaining unit:

Corrections Officer Captains, Corrections Officer Lieutenants, Corrections Officer Sergeants, Unit Managers, Investigators, Deputy Chief Investigators, and Hearings Officers employed by the State of New Hampshire, Department of Corrections. Excluded: Corrections Officer Major.

So ordered.

December 5, 2008



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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