



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

**NEW ENGLAND POLICE BENEVOLENT  
ASSOCIATION, INC., LOCAL 260**

**PETITIONER**

**and**

**CASE NO. S-0440-1  
DECISION NO. 2008-268**

**STATE OF NH, LIQUOR COMMISSION -  
BUREAU OF ENFORCEMENT AND LICENSING AND  
STATE EMPLOYEES ASSOCIATION OF NH, INC.,  
SEIU LOCAL 1984**

**RESPONDENTS**

**APPEARANCES**

Representing: NEPBA Local 260, IUPA, AFL-CIO  
Peter J. Perroni, Esq., Lowell, Massachusetts

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

Representing: State of New Hampshire, Liquor Commission – Bureau of Enforcement  
and Licensing  
Michael Brown, Esq., New Hampshire Attorney General's Office

**BACKGROUND**

On August 6, 2008 the New England Police Benevolent Association, Inc., Local 260 ("NEPBA") filed a petition and interest cards seeking to modify an existing bargaining unit comprised of all classified employees of the New Hampshire Liquor Commission currently

represented by the State Employees Association of NH, SEA/SEIU Local 1984 ("SEA") in order to create a separate and new bargaining unit consisting of all Liquor Investigators I and II and Sergeants employed by the State of New Hampshire Liquor Commission, Bureau of Enforcement and Licensing ("Liquor Commission"). On August 21, 2008 the SEA filed its response, stating its agreement with the NEPBA's request to modify the existing bargaining unit to create a new bargaining unit and conduct an election. The SEA requests that as incumbent representative its name should be placed on the election ballot. On August 29, 2008 the State filed a list of employees in the proposed bargaining unit but has not otherwise filed an answer, objection, or exception to the petition. The NEPBA's request to form a new bargaining unit and have an election to determine the exclusive representative of the new bargaining unit was approved per PELRB Decision No. 2008-174 issued September 3, 2008 and Order of Election issued September 18, 2008.

Following PELRB requests of September 18, 2008 and October 2, 2008 to the Liquor Commission, on October 8, 2008 the Liquor Commission filed the required list of employees and their residential addresses, and on October 29, 2008 the PELRB scheduled a pre-election conference for November 12, 2008. On November 10, 2008 the PELRB received the SEA's Amended Response to Petition for Certification/Modification dated October 30, 2008 in which for the first time the SEA raised an objection to the conduct of the election, claiming it would violate Pub 301.01, 302.05 (d), and RSA 273-A:11, I (b). The NEPBA filed its response on November 12, 2008, claiming that the SEA has already agreed to the conduct of an election in this case and the SEA's current objection is beyond the Pub 301.01 (p) time period in which the SEA is entitled to file exceptions and objections to the NEPBA petition.

Following the November 12, 2008 pre-election conference the parties agreed to submit this matter for decision based upon stipulated facts and briefs, all of which were filed by November 26, 2008. The parties' stipulated facts are set forth below as Findings of Fact 3-7.

#### FINDINGS OF FACT

1. The State of New Hampshire, Liquor Commission – Bureau of Enforcement and Licensing is a public employer within the meaning of RSA 273-A:1, X.
2. The SEA is the certified exclusive representative of the State of New Hampshire Liquor Commission bargaining unit consisting of all classified employees with the State of New Hampshire Liquor Commission.
3. The NEPBA filed a Petition for Certification with the PELRB on August 7, 2008.
4. On August 21, 2008, the SEA filed its response to the petition, wherein the SEA agreed that the current certification should be modified and agreed that “an election is in order pursuant to Pub. 303.01 . . . .”
5. October 18, 2008, is a day 120 days before the February 15, 2009 budget submission date of the State.
6. On October 29, 2008, the PELRB sent the parties a notice that a pre-election conference would take place on November 11, 2008.
7. On October 29, 2008, the SEA filed an Amended response to the NEPBA's petition attempting to assert that an election could not take place pursuant to Pub. 301.01, 302.05 and RSA 273-A:11, I (b).<sup>1</sup>

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<sup>1</sup> Due to the failure of the PELRB WAN system, the PELRB did not receive this electronic filing until November 10, 2008.

## DECISION

### DECISION SUMMARY

The SEA's objection to the conduct of the election in this case was properly raised at a time when the SEA reasonably ascertained that the election would actually take place beyond the time period allowed under RSA 273-A: 11, I (b). The SEA's objection to the conduct of the election on or after October 18, 2008 is sustained in accordance with *Appeal of State Employees' Association*, 156 N.H. 507 (2007).

### JURISDICTION

The PELRB has jurisdiction over certification and modification proceedings to determine bargaining units and conduct elections involving public employers, public employees, and employee organizations pursuant to RSA 273-A:8 and 10 and Pub 301 and 302.

### DISCUSSION

This case is similar to representation proceedings also involving the NEPBA and the SEA filed in 2006. See PELRB Decisions 2006-169 (Highway Patrol Officers); 2006-174 (Fish and Game Officers); and *Appeal of State Employees' Association*, 156 N.H. 507 (2007) (Fish and Game Officers). The Fish and Game and Highway Patrol cases both involved the NEPBA's efforts to modify an existing bargaining unit of state employees represented by the SEA by creating a new bargaining unit followed by an election to determine the exclusive representative, if any, of the new bargaining unit. As was true in this case, the Fish and Game and Highway Patrol proceedings began with NEPBA petitions submitted during the Pub 301.01 filing period.<sup>2</sup> However, in the case involving Fish and Game employees, the election was conducted within the 120 day period referenced in RSA 273-A:11, I (b) in reliance upon the court's earlier decision in

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<sup>2</sup> In 2008 the board adopted rule changes changing the filing window to 240 to 180 days prior to the budget submission date. In 2006 the filing window was 210 to 150 days prior to the budget submission date.

*Appeal of Cheney*, 119 N.H. 822 (1979) for the reasons set forth in PELRB Decision No. 2006-174. On appeal, the court did not set aside the election but did overrule the long standing decision in *Cheney*, effectively eliminating any administrative discretion within the PELRB's authority to conduct elections after the statutory deadline, even when the delay in completing the election process can be attributed to administrative reasons as opposed to fault, delay, or dilatory tactics of a party.

Through no fault of the NEPBA, the pre-election conference and the election in this case were not scheduled or held prior to October 18, 2008. The NEPBA's argument concerning the timeliness of the SEA's objection has merit in general, as parties are required to raise exceptions and objections to certification and modification petitions within the time period specified by Pub 301. However, at the time the SEA filed its answer on August 21, 2008, it was not reasonably ascertainable to the parties to this proceeding or to the PELRB that in fact the PELRB would be unable to complete the election process within the time frame imposed by RSA 273-A:11, I (b) for reasons related to insufficient staffing. The SEA did raise its objection in conjunction with the scheduling and conduct of the pre-election conference and at a point in time when it was evident that the election would have to be conducted beyond the time period specified under RSA 273-A:11, I (b).

Under *Appeal of State Employees' Association*, 156 N.H. 507 (2007), the election bar imposed by RSA 273-A:11, I (b) applies, even though this may otherwise frustrate the efforts of Liquor Commission employees who have properly and timely filed a petition seeking an election to have an opportunity to choose an exclusive representative other than the SEA. Accordingly, the SEA's objection to the conduct of the election on or after October 18, 2008 is sustained. The NEPBA petition is dismissed without prejudice to any future requests the NEPBA may file

seeking an election during a permissible time period on the basis of the bargaining unit determined in these proceedings.

So ordered.

December 31, 2008

  
DONALD E. MITCHELL  
Executive Director

Distribution:

Peter J. Perroni, Esq.

Glenn R. Milner, Esq.

Chief Eddie Edwards, NH Liquor Commission - Bureau of Enforcement

Michael Brown, Esq.