The court reversed and remanded this case (and this decision) to the PELRB per November 9, 2007 Supreme Court order in *Appeal State Employees' Association of NH, Inc., SEIU Local 1984, AFL-CIO*, NH Supreme Court Case No. 2007-105.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Public Utilities Commission	*	
Petitioner	*	Case No. S-0419-1
v.	*	
SEA/SEIU Local 1984, AFL-CIO	*	Decision No. 2006-159
Respondent	*	

APPEARANCES

Representing Petitioner

Jody O'Marra, N.H. Public Utilities Commission
Lynn Fabrizio, N.H. Public Utilities Commission

Representing Respondent

John Krupski, Esq., Cook & Molan, P.A.

Representing the State of New Hampshire

Michael K. Brown, Esq., Senior Assistant Attorney General, Civil Bureau

BACKGROUND

The New Hampshire Public Utilities Commission ("PUC") filed a petition for decertification on August 23, 2006. The petitioner is identified as the PUC, which the PELRB understands to refer to the employees identified in the petition, who submitted interest cards, and who are members of the bargaining unit or units at issue.

The SEA/SEIU Local 1984 ("SEA") filed a responsive pleading on September 7, 2006. SEA claims 1) that only a unit member or group of unit members may file a decertification petition; 2) that the employees of the PUC belong to two separate units, consisting of a supervisory employees unit certified by the Board in 1980 and a non-supervisory employee unit certified by the Board in

2004 (Decision No. 2004-041); 3) that Jody O'Marra is a member of the supervisory unit and therefore improperly signed and is identified as the representative in the petition; 4) that the petition fails to establish the 30% requisite showing of interest; 5) that these irregularities and nonconformance with PERLB rules have irreparably harmed the rights of the certified exclusive bargaining representative; 6) that the SEA requests an informal pre-hearing conference to be conducted prior to an adjudicatory hearing to address the SEA's exceptions and objections to the petition; and 7) that a full Board of the PELRB must deem the statutory prerequisites satisfied before any pre-election hearing may be held.

The undersigned hearing officer conducted an informal pre-hearing conference on September 15, 2006 at the PELRB offices in Concord, New Hampshire and the case is scheduled for a merits hearing on September 25, 2006. On September 21, 2006 the SEA filed a motion seeking to withdraw its request for adjudicatory hearing without prejudice as a matter of right per Pub 201.04. The Petitioner filed an objection arguing that the SEA was not entitled to withdraw its request without prejudice. In Decision 2006-158 the PELRB denied the SEA motion.

On September 21, 2006 Senior Assistant Attorney General Brown filed a special appearance for the State of New Hampshire as well as an Objection to Motion to Add State of New Hampshire By the Governor's Office as a Necessary and Indispensable Party.

On September 25, 2006 the SEA filed a Motion to Cancel Adjudicatory Hearing Due to Lack of Subject Matter Jurisdiction. At the start of the September 25, 2006 hearing the case was introduced and a recess taken to discuss the status of this matter off the record. Based on the off the record discussion, the following order is issued.

DECISION

1. The SEA does not object to the conduct of a pre-election conference and an election based upon one unit consisting of all classified employees of the Public Utilities Commission with the exception of those classified employees excluded from the definition of public employee under the provisions of RSA 273-A:1, IX per the amended certification dated May 6, 2004, Decision No. 2004-041.

2. The SEA's objections and exceptions filed to date in this matter are hereby dismissed with prejudice in this case, but without prejudice to any objections or exceptions the SEA may have on file or may file in other pending cases. The PELRB acknowledges that it is not treating the SEA's decision to allow the instant petition to proceed to election to constitute a waiver or relinquishment of its objections and exceptions on file in other pending cases and in particular that the doctrines of collateral estoppel and res judicata cannot be utilized against the SEA in other cases on account of the SEA's agreement to allow this matter to proceed to election. However, the SEA will not be permitted to raise or litigate further any of the objections or exceptions it has raised and filed to date in this matter, as it was provided with the opportunity to do so on September 25, 2006 and the SEA elected not to proceed.

3. At the pre-election conference the SEA will be allowed to raise objections to voter eligibility provided those objections are not within the scope of the objections or exceptions the SEA has raised in pleadings filed with the PELRB to date. The PELRB specifically recognizes the SEA's right to contest the probationary status of Public Utilities Commission employees and whether certain employees are ineligible to vote because they belong to the Office of the Consumer Advocate.

4. The parties agree that the SEA's Motion to Add State of New Hampshire By the Governor's Office as a Necessary and Indispensable Party is moot. The PELRB notes paragraph 1 of the SEA's Motion to Cancel Adjudicatory Hearing Due to Lack of Subject Matter Jurisdiction is incorrect, as the PELRB did receive and review the petitioner's objection (filed with the PELRB on Friday, September 22, 2006) before issuing its order in Decision No. 2006-158. Unfortunately, the SEA did not receive its copy of the petitioner's objection until the time of the September 25, 2006 hearing. Based on the agreement and understanding reached with the parties concerning the next activity in this case (proceeding to pre-election conference and to election), the PELRB finds that the SEA's Motion to Cancel Adjudicatory Hearing Due to Lack of Subject Matter Jurisdiction is moot.

5. It was also agreed that the PELRB would accept petitioner's exhibits filed in connection with the hearing of September 25, 2006 and those exhibits will be kept as marked and full exhibits in the file.

6. An Order of Election will be issued simultaneously with this decision. A pre-election conference is scheduled for October 2, 2006 at 12:00 p.m. at the PELRB offices in Concord, New Hampshire.

So Ordered.

Douglas L. Ingersoll, Esq.
Hearing Officer

Date Issued: September 25, 2006
Distribution:
Jody O'Marra and Lynn Fabrizio
John Krupski, Esq.
Michael Brown, Esq.