



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| SEABROOK DOG TRACK EMPLOYEES | : | |
| ASSOCIATION, TEAMSTERS | : | |
| LOCAL 633 OF NEW HAMPSHIRE | : | |
| | : | |
| Complainant | : | CASE NO. M-0706:1 |
| | : | |
| v. | : | DECISION NO. 94-124 |
| | : | |
| YANKEE GREYHOUND RACING, INC. | : | |
| | : | |
| Respondent | : | |

APPEARANCES

Representing Seabrook Dog Track Employees Association,
Teamsters Local 633 of New Hampshire:

John Burke, Esq.

Representing Yankee Greyhound Racing, Inc.:

Robert Chandler, Esq.

Also appearing:

Thomas D. Noonan, Teamsters Local 633
Robert M. Linnehan, Yankee Greyhound

BACKGROUND

Seabrook Dog Track Employees, Teamsters Local 633 of New Hampshire (Teamsters) filed unfair labor practice (ULP) charges against Yankee Greyhound Racing Inc. (Yankee) on November 15, 1994 alleging violations of RSA 273-C:6 I (a), (c), (e) and (g) as those provisions relate to an alleged refusal to bargain on the part of Yankee Greyhound Racing, Inc. Yankee filed its answer on November 23, 1994 acknowledging "that it has requested that bargaining be held in abeyance pending resolution of AFL-CIO Article 20 proceedings." The case was thereafter heard by the PELRB on December 20, 1994.

FINDINGS OF FACT

1. Yankee Greyhound Racing, Inc. is an "employer" engaged in dog or horse racing within the meaning of RSA 273-C:2 IV.
2. Seabrook Dog Track Employees Association, Teamsters Local 633 of New Hampshire is the duly certified bargaining agent, by affiliation pursuant to Rule PUB 301.05, for "all full-time and regular part-time mutual clerks, leadouts, admissions employees, parking lot attendants, including preferred parking, and maintenance employees including racing oval maintenance positions."
3. The Seabrook Dog Track Employees Association (Seabrook) filed a Petition for Certification on April 15, 1994. This petition was heard by the PELRB on May 24, 1994 after which the PELRB issued Decision No. 94-51 on July 6, 1994 formally establishing the bargaining unit. Unit composition had previously been conveyed orally to the parties at the conclusion of the May 24, 1994 hearing. At the same time, May 24, 1994, the PELRB extended the filing period of intervenors through June 24, 1994.
4. In addition to Seabrook, the Maine, New Hampshire and Vermont Laborers' District Council (Laborers) filed a showing of interest which failed to meet the 20% required for it to appear on the ballot under Rule PUB 301.03. Thus, the PELRB issued an Order To Proceed (Decision No. 94-81) on August 24, 1994 directing that an election be held between the two propositions of "Seabrook Dog Track Employees Association" and "no representative."
5. A bargaining agent election was held at the Seabrook Race Track on September 28, 1994 from 10:00 a.m. to noon and from 6:00-7:00 p.m. Fifty-seven (57) of 119 eligible voters voted with 55 voters voting for the Seabrook Dog Track Employees Association and 2 voters voting for no representative. A certification and order to negotiate was issued by the PELRB on that same date, September 28, 1994.
6. According to testimony presented to the PELRB, a steering committee of the membership met at 7:30 p.m. after the bargaining agent election on September 28, 1994, and, after considering several international unions with whom they might affiliate

under Rule PUB 301.05, voted unanimously to affiliate with Teamsters Local 633 of New Hampshire.

7. By letter of October 4, 1994, the attorney for Seabrook Dog Track Employees Association informed the PELRB that said employees had voted to affiliate with Teamsters Local 603 [sic] of New Hampshire. Thereafter, by letter of October 13, 1994 Seabrook's counsel provided the PELRB with a revised first page of the affiliation vote and asked that it be substituted for the original submission which contained a scrivener's error. The second submission identified the affiliated international as Teamsters Local 633. It also reaffirmed that the steering committee "had clear discretion and authority from the membership to bind the group" and that the secret ballot affiliation vote was unanimous.
8. On October 14, 1994 the PELRB issued an amended certification, in accordance with Rule PUB 301.05 and the representations submitted by Seabrook's counsel, which named the "Seabrook Dog Track Employees Association Teamsters Local 633 of New Hampshire" as the certified bargaining agent.
9. On October 21, 1994, Thomas D. Noonan, Business Agent for teamsters Local 633 of New Hampshire wrote a letter to Robert Linnehan at Yankee Greyhound Racing, Inc. in Seabrook, New Hampshire saying, in pertinent part, "Please accept this letter as Teamster Local 633's request to begin negotiations."
10. On November 3, 1994, Robert Chandler, counsel for Yankee, wrote Noonan, in pertinent part:

I am in receipt of a copy of your October 21, 1994 letter to Mr. Robert Linnehan in which you request the negotiations begin between Teamsters Local 633 and Yankee Greyhound Racing, Inc.

However, this morning I was informed by Bill Widmer, the Attorney for Local 10, International Union by Allied Novelty and Production Workers, that the International Union had filed, or was about to file, an Article XX regarding the affiliation of Seabrook Dog Track Employees Association with Teamsters Local 633. Apparently the International is claiming that the affiliation is barred for two years from the date Local 10 last represented bargaining unit employees at Seabrook.

Under the circumstances, it is inappropriate for my client to enter negotiations with Local 633 until the Article XX issue is resolved.

According to representations made to the PELRB during the hearing, the Article 20 proceedings were commenced on November 7, 1994 at the AFL-CIO. The Teamsters did not received notice of those charges until December 5, 1994, more than two weeks after the instant ULP was filed with PELRB.

11. Notwithstanding questions posed by counsel for Yankee during the December 20, 1994 hearing as to the adequacy of the documents provided by Seabrook Dog Track Employees to effectuate the affiliation with Teamsters Local 633, from the time of the bargaining agent election on September 28, 1994 until the date of the hearing, no employee or group of employees has approached the PELRB challenging or seeking to challenge either the bargaining agent election results or the adequacy of the notice and voting procedures associated with the affiliation process under Rule PUB 301.05.

DECISION AND ORDER

The exchange of documents, notably Mr. Noonan's letter of October 21, 1994 and Mr. Chandler's response of November 3, 1994 in Finding Nos. 9 and 10, respectively, is sufficient to establish a violation of the obligation to bargain imposed by the PELRB's amended Certification and Order to Bargain dated October 14, 1994 and RSA 273-C:4. Thus, there has been a ULP committed under RSA 273-C:6 I (e) and (g).

Mindful of the employer's concerns with the sufficiency of the affiliation documents submitted by Seabrook under Rule PUB 301.05, this Board reviewed the submissions themselves. We commence by noting that affiliation under Rule 301.05 is an administrative, rather than an adversarial, process. The three conditions of Rule 301.05 (a) require (1) that the internal rules of the exclusive representative, Seabrook in this instance, have been followed, (2) that the employees have had a reasonable opportunity to be informed, to have input and to vote "whether by direct vote, vote of their representative or other appropriate means," and (3) that the local organization did not change materially.


Seabrook's representations accompanying its counsel's letter of October 13, 1994 (Finding No. 7) stated "that the [steering] committee had clear direction and authority from the membership to bind the group." Given this representation and Finding No. 11, above, we find the internal rules requirement to have been satisfied. Next, Mariann Fraughton reported to the gathering that

"she had informed the employees of her findings [with respect to affiliation with various international unions] by written notice and also informed the membership that the Steering Committee's recommendation is that the Teamsters Local 633 is the one with which to affiliate." This statement along with the secret ballot vote of the Steering Committee, a unanimous result and Finding No. 11, above, cause us to conclude that the "reasonable opportunity" portion of Rule 301.05 (a) has been satisfied. Finally, the unit composition was identical from the PELRB's original certification on September 28, 1994 to the amended certification on October 14, 1994. The short period of time between the original certification and the affiliation vote assured that changes in unit composition and job responsibilities cannot be said to have occurred. We conclude that the local organization had "not change[d] materially." We are not persuaded by Yankee's arguing similarities to Local 402 and Local 10 in the Rockingham (Decision No. 93-121) case. Here, we are dealing with two viable and operating unions, Seabrook and Teamsters, not with a defunct organization where the membership was taken over, for lack of a better term, without prior notification or ability for input as contemplated by Rule 301.05 (a). To the contrary, Finding No. 11 in the Rockingham case, supra, would suggest the sufficiency of the documents submitted by counsel for Seabrook.

We find no authority in RSA 273-A or RSA 273-C suggesting that this Board's authority is limited by or subject to the outcome of Article 20 proceedings conducted before the AFL-CIO. Accordingly, we affirm the violations of RSA 273-C:6 I (e) and (g) found above and direct the employer to CEASE and DESIST from refusing to bargain with Teamsters Local 633 in its capacity as the exclusive bargaining agent for the designated employees of Yankee.

So ordered.

Signed this 27th day of December, 1994.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and E. Vincent Hall present and voting.