



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

SEIU, Local 1984, Court Security Officers

Petitioner

v.

Administrative Office of the Courts,  
New Hampshire Judicial Branch

Respondent

---

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No. S-0407

Decision No. 2002-042

PRE-HEARING DECISION and ORDER

The Service Employees International Union, Local 1984 (hereinafter referred to as the "Union") filed a Petition for Certification on February 28, 2002 seeking to certify a bargaining unit comprised of nineteen full time Court Security Officers and fifty-nine part-time Court Security Officers. On March 15, 2002 the State of New Hampshire Judicial Branch, (hereinafter referred to as the "Court") filed its Answer in which it asserts that there are supervisory Court Security Officers among those who the Union proposes for inclusion in the bargaining unit. It also asserts that there is only one part-time Court Security Officer and, as a result of Supreme Court order 2001-003, the remaining part-time Court Security Officers, presently numbering fifty-two are classified as "on call", or "irregular" as referred to in RSA 273-A1, IX (d). The Court objects to the inclusion of any supervisory employees and any other Court Security Officers who work less than full time who have been proposed as members of the bargaining unit petitioned for by the Union

PARTICIPATING REPRESENTATIVES

For the Petitioner:

Brian Mitchell, Field Representative II/ Negotiator, SEIU,  
Local 1984  
Van Hardy, Organizer, SEIU National

For the Respondent: Elizabeth L. Hodges, Esquire, Deputy General Counsel  
Donald L. Goodnow, Director,  
Jeffrey D. Smith, Manager of Operations

ISSUES FOR DETERMINATION

1. Whether or not those employed as Court Security Officers on less than a full time basis are part-time or "on call", or "irregular positions" and excludable from the proposed bargaining unit?
2. Whether or not a sufficient community of interest exists among the full time Court Security Officers and those employed less than on other than a full time basis?
3. Whether or not any positions proposed for the bargaining unit are supervisory?

STIPULATIONS

The parties agree and stipulate as follows:

1. The PELRB has jurisdiction to hear this matter.
2. Administrative Notice of New Hampshire Supreme Court Administrative Order 2001-003 may be taken by the PELRB.

WITNESSES

For the Petitioner:

1. Andrew Fox, Court Security Officer
2. Larry Houghton, Court Security Officer
3. Michael Mone, Court Security Officer

For the Respondent:

1. Donald D. Goodnow, Director, Administrative Office of the Courts (AOC)
2. Jeffrey D. Smith, Manager of Operations AOC
3. James F. O'Neil, Security Manager,
4. Kevin Sheehan, Court Security Officer
5. David P. Thibodeau, Court Security Officer

6. Bernie Bernstein, Court Security Officer (paid per diem)
7. Paula Hurley, Clerk of Manchester District Court
8. Pam Kozlowski, Clerk of the Claremont District Court

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. 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 the hearing.

#### EXHIBITS

Joint Exhibits:

1. Job Description - Court Officer I
2. Job Description - Court Officer II

For the Petitioner:

1. No others identified at this time

For the Respondent:

1. Personnel Assignment Schedule depicting assignments of Court Security Officers (to be compiled by the Court).

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

#### LENGTH OF HEARING

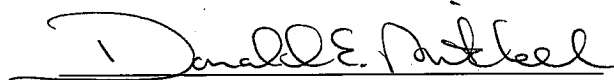
The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB within fifteen (15) days of the date of this Order.

## DECISION

1. Hearing Officer Mitchell has informed the parties that in years prior he was involved in litigation, in a representative capacity as counsel to a party that brought suit against the Supreme Court, *respondeat superior*, approximately ten years ago. Further, also in a representative capacity as counsel to a party in a separate action approximately fifteen years ago he took the deposition of James F. O'Neil, a prospective witness in the instant matter, in Mr. O'Neil's former capacity as Mayor of Dover, New Hampshire. The purpose of this revelation was to inform the parties and to allow either to request his recusal from sitting as the Hearing Officer in this matter. Either party may file an appropriate motion within seven (7) days of the date of this order if it seeks to have Mr. Mitchell recused. If no such motion is filed within that time period, no such motion shall thereafter be filed except for good cause shown so that this matter may proceed without unnecessary delay.
2. The Court has indicated its intention to amend its initial answer and objection to the Union's Petition for Certification to raise an alternative argument regarding a lack of a "community of interest" among certain employees proposed for inclusion in the bargaining unit. Such amendment shall be filed within ten (10) days of the date of this order.
3. On or before April 23, 2002 the parties' representatives shall meet and confer for the purpose of reviewing the Personnel Assignment Schedule compiled by the Court and to express requests for any other documents either party feels are reasonably necessary to the preparation of their respective case.
4. On or before April 30, 2002 copies of all previously requested documents or other objects shall be exchanged between the parties. In the event that either party has a reasonable belief that it has not received the information requested in Paragraph #1, above, it shall immediately inform the PELRB, in writing, of the information or document requested and the reason such information or said document is necessary to its case preparation. It shall contemporaneously provide a copy of its notification to the opposing party.
5. The party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to an evidentiary hearing. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than twenty (20) calendar days prior to the scheduled hearing date.

7. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Monday May 20, beginning at 9:30 A.M.

Signed this 2<sup>nd</sup> day of April, 2002.

A handwritten signature in cursive script that reads "Donald E. Mitchell". The signature is written in black ink and is positioned above a horizontal line.

Donald E. Mitchell, Esq.  
Hearings Officer