



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SEIU, Local 1984, Court Security Officers

Petitioner

v.

Administrative Office of the Courts,  
New Hampshire Judicial Branch

Respondent

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Case No. S-0407

Decision No. 2002-071

DECISION AND ORDER

REPRESENTATIVES

For the SEIU, Local 1984, Court Security Officers (Petitioner):

Jay Ward

For the Administrative Office of the Courts, New Hampshire Judicial Branch (Respondent):

Elizabeth L. Hodges, Esquire, Deputy General Counsel

BACKGROUND

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 "Judicial Branch") filed its answer in

which it asserted that there are twenty-three full time Court Security Officers, four of whom are supervisory employees. It also asserted that there is only one part-time Court Security Officer as a result of Supreme Court Order 2001-003. The remaining part-time Court Security Officers, then numbering fifty-two, were claimed, by the Judicial Branch, to be "per diem" employees and considered "on call", or "irregular" as referred to in RSA 273-A1, IX (d). The Judicial Branch 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.

On April 2, 2002 a Pre-Hearing Conference was conducted with both parties represented and participating. An Order issued that same day scheduling a hearing on the merits originally for May 20, 2002 and that hearing was rescheduled by the PELRB to be conducted on June 5, 2002.

On April 11, 2002 the Judicial Branch filed an amended answer to assert an alternative argument raising the issue of the insufficiency of a "community of interest" with the full-time Court Security Officers in the event those employees working less than full-time were deemed to be public employees under RSA 273-A.

On April 30, 2002 the Judicial Branch filed a Motion to Dismiss asserting that the positions for which the Union has requested certification are no longer in existence. The titles of regular part-time and temporary part-time court security officers having been abolished and the incumbents laid off on August 23, 2001 by virtue of New Hampshire Supreme Court Administrative Order 2001-003. By leave of the PELRB, the Union's late objection to the Motion to Dismiss was accepted on May 15, 2002 answering, inter alia, that employee title changes do not alter the substantive issues before the PELRB. In keeping with its past prevailing practice, the PELRB reserved ruling upon the Judicial Branch's Motion to Dismiss until such time as the hearing on the merits was to be conducted.

On May 20, 2002 the Judicial Branch filed a Clarification and Response to the Union Response to the Motion to Dismiss detailing the manner of notice of all previous pleadings given to the Union and denying any obfuscation in submitting its Motion to Dismiss to the PELRB.

The hearing was convened on June 5, 2002 at the offices of the Public Employee Labor Relations Board before the undersigned Hearing Officer. Both parties were represented at the hearing. Before considering either the pending Motion to Dismiss or the merits of the issues presented, several preliminary matters were addressed. First, both parties waived any right to recusal of the Hearing Officer. Second, the Judicial Branch waived any objection to the Union's late filing of its response to the Judicial Branch's Motion to Dismiss. Third, the parties, through their representatives, agreed and stipulated as follows:

## PARTIES' AGREED STIPULATIONS

1. The Public Employee Labor Relations Board has jurisdiction to hear the matters raised by each party.
2. Both parties waived any objection to the Hearing Officer taking administrative notice of the following: Administrative Order 2001-003 of the New Hampshire Supreme Court, dated July 27, 2002; and similarly waived any objection to administrative notice of Chapter 170, Session Laws 2001, approved on July 5, 2001 and effective January 1, 2002.
3. The New Hampshire Judicial Branch ("Judicial Branch") acts through the Administrative Office of the Courts ("AOC") for the employment of persons to carry out the functions of court security throughout its court system and therefore, effective January 1, 2002, it became a public employer within the meaning of RSA 273-A:1 X, as amended.
4. The SEIU, Local 1984 ("Union") seeks to become the exclusive bargaining representative of a proposed bargaining unit comprised of certain employees of the Respondent who perform court security duties at the several courts within the New Hampshire Judicial Branch.
5. The parties stipulated to the submission of, and waived any objection to, the admission of the following Joint Exhibits:
  1. Judicial Branch Personnel Rules
  2. Supreme Court Administrative Order 2001-003
  3. Job Description for position of Court Officer I
  4. Job Description for position of Court Officer II
  5. Administrative Office of the Courts Per Diem CSO Assignment Sheet
  6. Master CSO Schedule for the Week Ending 5/25/02
  7. Court Security Officer Hours Worked Since Pay Period 2002-006
  8. Administrative Office of the Courts Position Announcement #01-68
6. The parties consented and stipulated that all non-supervisory full-time Court Security Officers, and that position presently held by Kevin W. Sheehan, possessed a sufficient community of interest and were collectively of sufficient number to enable a bargaining unit to be formed comprised of those nineteen (19) non-supervisory employees listed on page 3 of Joint Exhibit #5.

DECISION

The Judicial Branch reiterated its Motion to Dismiss the Union's Petition for Certification to the extent that it requested incorporation of any other positions into the bargaining unit that was formed by agreement of the parties. The basis for this motion was the alleged non-existence of any part-time Court Security Officers. It called for a determination of the classification of the job positions, and the characterizations of the tasks performed by those in the positions being petitioned for by the Union. After giving the parties the opportunity to make proffers of proof and argument, the Hearing Officer determined that a ruling on that motion would be deferred and considered concurrent with the hearing on the merits of the petition. The Hearing Officer then invited the Union to begin its case.

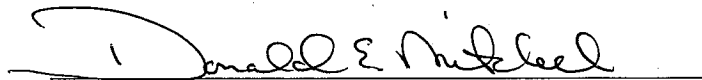
The Union waived an opening, and informed the Hearing Officer that its witnesses had not appeared to provide testimony. Upon further inquiry, the Union did not provide sufficient information regarding the non-appearance of its witnesses to justify a continuance. It did not call any other witnesses and offered nothing further as part of its case or in support of its petition before concluding its case. Thereafter, the Judicial Branch moved for a dismissal based upon the Union's failure to prove its case.

The Union, as the petitioner in these proceedings, bears the burden to prove, by a preponderance of the evidence, that the members proposed for inclusion in the bargaining unit meet the requirements of RSA 273-A, Rule Pub 201.06. Given the state of the record at the conclusion of the Union's case, there was insufficient evidence for the Hearing Officer to consider in determining the appropriateness for inclusion or exclusion of additional positions into the bargaining unit.

Therefore, on the Judicial Branch's Motion to Dismiss for failure to carry its burden, the Union's Petition is partially dismissed, without prejudice, as to all positions except those agreed to above in Stipulation #6. Accordingly, a Certification of Bargaining Unit and Order for Election shall be issued from the Public Labor Relations Board.

So Ordered

Signed this 10<sup>th</sup> day of June, 2002



Donald E. Mitchell, Esq.  
Hearing Officer