



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| Town of Seabrook | * | |
| | * | |
| | * | |
| Complainant | * | Case No. M-0591-38 |
| | * | |
| v. | * | |
| | * | Decision No. 2002-154 |
| Local 1984 SEIU, SEA | * | |
| Seabrook Employees Association | * | |
| | * | |
| Respondent | * | |
| | * | |

ORDER

PARTICIPATING REPRESENTATIVES

For the Respondent: Robert D. Ciandella, Esquire

For the Complainant: Jeffrey L. Brown, Union Field Representative

BACKGROUND

The Town of Seabrook (hereinafter referred to as the "Town") filed an unfair labor practice charge on August 5, 2002 alleging, *inter alia*, that as to the Seabrook Employees Association, Local 1984 SEIU, SEA (hereinafter referred to as the "Union")

"11. The Union has failed to comply with [RSA 273-A] by failing to discharge its responsibility to fairly and equitably represent all employees of the unit, whether union or nonunion."

Following a previous Pre-Hearing Conference, this allegation was isolated for preliminary legal argument by the parties' joint request that the initial Pre-Hearing Decision and Order (Decision No. 2002-120) be amended to allow the parties to brief and argue the issue of the standing of the Town to assert such an allegation. The parties desired this determination prior to their undertaking the deposition of certain witnesses

whom they have identified and for whom they have already made application to the board. The board has granted the applications of both parties to depose witnesses and granted the parties request for a hearing. (See Decision #2002-138).

The Board chose to address an issue that had the potential of unnecessarily complicating and lengthening an evidentiary hearing due to evidence that would necessarily have to be sought during discovery and eventually presented on this particular allegation. To address this allegation, the Board solicited legal memoranda and oral argument on the question:

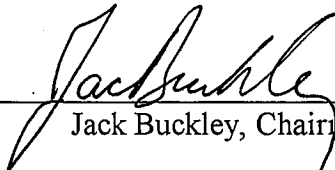
“Does the Town have standing to file a complaint of unfair labor practice against the Union alleging that the Union has failed to fairly represent members of the bargaining unit?”

A hearing was convened at the offices of the Public Employee Labor Relations Board on December 19, 2002 at which both parties were represented and made oral argument to the Board. After considering the parties' pleadings on record, their legal memoranda and oral arguments, the Board finds as follows:

1. The allegation contained in paragraph #11 of the Town's complaint asserts a claim, namely a failure to fairly represent a bargaining unit member, for which the Town as the "public employer" has no standing to bring and therefore that allegation is dismissed.
2. All other allegations contained within the Town's complaint survive and this matter shall proceed under the orders previously issued by the PELRB and not inconsistent with this order.
3. The evidentiary hearing on the Union's Motion to Dismiss and on the merits of the Town's allegations remains scheduled for January 16, 2003.

So-ordered.

Signed this 27 day of December, 2002



Jack Buckley, Chairman

By unanimous vote. Chairman Jack Buckley presiding. Member Seymour Osman and Alternate Member Terry Jones present and voting.

Distribution:

Robert D. Ciandella, Esquire

Jeffrey L. Brown, Union Field Representative, SEIU, SEA