



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Service Employees International Union,
Local 1984

Petitioner

v.

Administrative Office of the Courts,
New Hampshire Judicial Branch

Respondent

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Case No. S-0412

Decision No. 2004-008

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Service Employees International Union, Local 1984 (hereinafter "the Union") filed a Petition for Certification with the Public Employee Labor Relations Board (PELRB) on December 1, 2003 seeking to establish a bargaining unit consisting of all "full-time court reporters" employed by the Administrative Office of the Courts, New Hampshire Judicial Branch (hereinafter "the Employer").

The Employer filed its' answer to the Union's petition on December 16, 2003, wherein it asserts that the employees referenced in the petition are ineligible for inclusion in a bargaining unit as a matter of law. More specifically, the Employer contends that the court reporters are excluded from the definition of "public employee," within the meaning of RSA 273-A:1, IX (b), based upon the fact that they are "appointed" to their position by the chief executive of the Employer. In addition, the Employer claims that the court reporters are "confidential" employees, within the meaning of RSA 273-A:1, IX (c), and thus are excluded from the definition of "public employee" on this basis as well.

A pre-hearing conference was conducted at the offices of the PELRB on February 2, 2004 during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Union: Lorri Hayes, Esquire

For the Employer: Howard J. Zibel, Esquire

ISSUES FOR DETERMINATION

- (1) Are full-time court reporters excluded from the definition of "public employee," pursuant to RSA 273-A:1, IX (b), as persons appointed to office by the chief executive or legislative body of the public employer?
- (2) Are full-time court reporters excluded from the definition of "public employee," pursuant to RSA 273-A:1, IX (c), as persons whose duties imply a confidential relationship to the public employer?

STIPULATIONS

During the course of the pre-hearing conference, the parties agreed and stipulated to the following:

1. The PELRB has jurisdiction to hear this matter.
2. Full-time court reporters/stenographers share a "community of interest" within the meaning of RSA 273-A.

WITNESSES

For the Union:

1. Michelle McGinn, Court Reporter
2. Peter Bonnfide, Court Reporter
3. Laurie Gelinis, Court Reporter

For the Employer:

1. Chief Justice Walter Murphy
2. Chief Justice Robert Lynn
3. Donald Goodnow, Executive Director, Administrative Office of the Courts
4. Jeffrey Smith, Manager of Operations, Administrative Office of the Courts
5. Joan Bishop, Court Clerk Coordinator
6. Brian Kenyon, Deputy Clerk, Rockingham County
7. Holly Aquizap, Executive Secretary, Chief Justice of Superior 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 with 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. Court Reporter Job Description (#506-40)
2. NH Judicial Branch – Personnel Rules, (dated 3/96)

For the Union:

1. Selected personnel documents of court reporters.

For the Employer:

1. None other than those marked as "Joint."

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before **March 3, 2004** in order to compose a mutual statement of agreed facts. The parties representatives shall memorialize those facts upon which they can so stipulate and file said document with the PELRB at least five (5) days prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. 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.

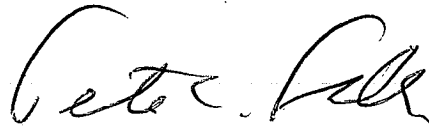
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

March 8, 2004 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 3rd day of February, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Lorri Hayes, Esquire
Howard Zibel, Esquire