



**State of New Hampshire**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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New Hampshire Insurance Department

Petitioner

v.

SEA/SEIU Local 1984, AFL-CIO

Respondent

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Case No. S-0415-1

Decision No. 2006-137

**PRE-HEARING CONFERENCE MEMORANDUM AND ORDER**

and

**NOTICE OF INFORMAL PRE-HEARING CONFERENCE  
AND ADJUDICATORY HEARING**

BACKGROUND:

The New Hampshire Insurance Department ("NHID") filed a petition for decertification on August 16, 2006. The petitioner is identified as the NHID, which the PELRB understands to refer to the employees identified in the petition, who submitted interest cards, and who are members of the bargaining unit or units at issue.

The SEA/SEIU Local 1984 ("SEA") filed a responsive pleading on August 31, 2006. SEA claims 1) that only a unit member or group of unit members may file a decertification petition; 2) that the employees of the NHID belong to two separate units, consisting of a supervisory employees unit certified by the Board in 1980 and a non-supervisory employee unit certified by the Board in 2004 (Decision No. 2004-046); 3) that Charles Burdette is a member of the supervisory unit and he improperly signed and is identified as the representative in the petition; 4) that the petition fails to establish the 30% requisite showing of interest; 5) that an informal pre-hearing conference held on August 30, 2006 was improper because the parties were not sent and did not file pre-hearing conference worksheets; 6) that the SEA otherwise complains about the conduct of the informal pre-hearing conference; 7) that statutory prerequisites must be deemed satisfied by the Board of the PELRB before any pre-election hearing may be held; and 8) that SEA's objections must be resolved by a full Board of the Public Employee Labor Relations Board before a pre-election hearing may be held.

As noted in the SEA's August 31, 2006 responsive pleading, an informal pre-hearing conference (not an adjudicatory proceeding) was conducted on August 30, 2006.

PARTICIPATING REPRESENTATIVES AT PRE-HEARING CONFERENCE:

For NHID: Deborah O'Loughlin

For the SEA: John Krupski, Esq.

The SEA was represented by counsel (John Krupski) but the NHID was not. Deborah O'Loughlin, who spoke for the NHID, is a NHID employee, but not an attorney. At the outset the SEA was advised that it was anticipated that the SEA could participate in the conference in a meaningful way even though their formal answer was not due until the day after the conference.

In fact, the conference was helpful in understanding several aspects of the petition for decertification and in clarifying some issues. NHID clarified that it was not seeking to alter the composition of an existing bargaining unit. NHID clarified that it was seeking to replace the SEA with a new bargaining representative composed of some combination of the group of employees who favored removing the SEA as exclusive representative. As stated by the SEA at the conference, the decertification process was clarified for the understanding of the involved parties – it was noted that decertification may lead to an election, but the election choice is between no representative or having the SEA as representative. In the event no representative is chosen, there can be no further election for 12 months. It does not lead to an election where a choice on the ballot is to have a new bargaining agent – that requires filing a petition for certification. In making these comments the SEA stated the decertification petition could be withdrawn and a certification petition filed. The SEA did not mention that the NHID could also seek to amend its decertification petition to include a request for certification, which is another procedural option in the event NHID seeks to replace the SEA with a new bargaining agent. Deborah O'Loughlin, who spoke for NHID at the conference, indicated she understood attorney Krupski's remarks but did not indicate whether she intended to withdraw her petition and file a certification petition.

The hearing officer also reviewed the 2004 certification with the parties, and specifically asked the NHID whether the NHID was asking the PELRB to modify the 2004 certification. Ms. O'Loughlin advised that she was not familiar with the certification, but provided the impression that she was not seeking to have it changed. At no time did the SEA raise or discuss the 1980 supervisors certification discussed in the pleading it filed the day after the conference.

In order to conduct an election, the PELRB must determine what bargaining unit or units are involved, what positions are in which unit, and the names of employees in particular units who are eligible to vote. The SEA has pointed out that there are two certifications for the NHID, and SEA contends that Mr. Burdette, for example, is a supervisory employee who is in the supervisors' unit. It is noted that neither the 1980 nor the 2004 certifications list any positions, so it is not possible to tell which positions belong with which unit by examining the face of those two certifications. (The PELRB takes administrative notice of the March 18, 1977 decision (Case No. S-0322) which describes the bargaining unit for the insurance department as all classified employees with the exception of certain listed supervisory positions.) The SEA was involved in proceedings leading to the issuance of both certifications (the 2004 certificate issued

after the filing of an agreed upon modification petition submitted by the SEA, Lorri Hayes, Esq. as representative and the State of New Hampshire, Sara Willingham as representative). Presumably the SEA and the State of New Hampshire have documentation showing which positions belong in which unit.

The petition for decertification cannot be frustrated or dismissed at this time because the applicable unit certifications do not identify on their face the positions within each unit, which in turn impairs the PELRB's ability to evaluate showing of interest cards submitted with the petition for decertification. It is the PELRB's intent to effectuate to the extent possible the provisions, spirit and intent of RSA 273-A and PELRB rules. Of relevance to this case is the fact that RSA 273-A and PELRB rules provide and contemplate providing bargaining unit members with the opportunity to periodically seek elections for the purpose of decertifying an existing bargaining agent and having no representative or for the purpose of having a new certified bargaining agent. In this particular case this requires proceedings to, among other things, identify which NHID employees are in the supervisors' unit and which NHID employees are in the non-supervisors' unit.

DECISION:

Accordingly, this case shall proceed as follows:

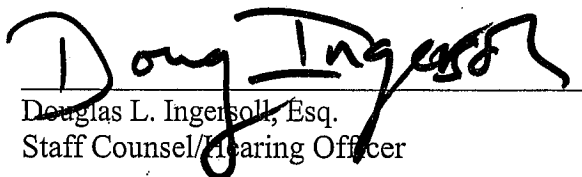
- 1) A further informal pre-hearing conference will be conducted on September 15, 2006 at 9:00 a.m. The parties shall complete and submit a pre-hearing worksheet on or before 9:00 a.m. on September 15, 2006.
- 2) On or before September 14, 2006 the parties shall confer and stipulate to the extent possible as to which unit NHID employees belong (by name and position). This stipulation shall be submitted at the September 15, 2006 conference. The parties shall also submit their respective list of unit positions and employees upon which they are in disagreement, if any, and be prepared to discuss the same at the conference.
- 3) A hearing will be held in this matter on September 21, 2006 at 9:00 a.m. The hearing will continue until completed, and if necessary will continue on September 22, 2006.
- 4) Any motions, including any motions to amend, shall be filed on or before September 12, 2006. All objections to any such motions shall be filed on or before September 20, 2006 at 9:00 a.m., although the parties should be prepared to informally discuss any objections they may have to pending motions at the September 15, 2006 conference.

So Ordered.

Date Issued: September 1, 2006

Distribution:

Charles Burdette and Deborah O'Loughlin, NHID  
John Krupski, Esq.

  
Douglas L. Ingersoll, Esq.  
Staff Counsel/Hearing Officer