



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, Inc.
Local 50
Petitioner
and
Case No: P-0787
State of New Hampshire, Department of Safety, DMV
Respondent
Decision No. 2006-138
New England Police Benevolent Association, Inc.
Local 55
Petitioner
and
Case No: P-0788
State of New Hampshire, Department of Safety, DMV
Respondent

ORDER ON PETITIONER'S MOTIONS TO AMEND

BACKGROUND

The New England Police Benevolent Association, Inc. ("NEPBA") filed two certification petitions on July 31, 2006. Case No. P-0787 seeks to certify a unit composed of 63 patrol officers and 3 corporals (the "Patrol Officers' Unit"). Case No. P-0788 seeks to certify a unit composed of 9 Sergeants, 3 Lieutenants, 1 Captain, and 1 Executive Major (the "Supervisors' Unit"). Both certification petitions identify the State of New Hampshire, Department of Safety, DMV as the Public Employer. Virginia Beecher signed the certification of the Public Employer's agreement with the composition of the unit on behalf of the State of New Hampshire, Department of Safety, DMV on both petitions. Based upon the two certification petitions, on August 4, 2006 the PELRB issued a notice scheduling a pre-election conference, for August 9, 2006.

On August 8, 2006 the State Employees' Association, SEIU Local 1984, AFL-CIO, CLC (the "SEA"), filed exceptions to the two certification petitions. Among other things, SEA contends that the employees involved in the two petitions are currently covered by existing SEA certifications, that NEPBA cannot serve as the exclusive representative for both units, that the proposed Supervisors' Unit contains non-supervisory employees, that no agreement has been reached for unit composition if the Department of Safety-Division of Motor Vehicles is not the employer of record for the involved employees, and that the SEA has information that Ms. Beecher in fact did not reach agreement with the bargaining unit in question.

On August 9, 2006 the SEA filed a Supplemental Objection and Exceptions. In this filing, among other things, the SEA challenges the PELRB's authority to conduct an election or pre-election conference in regard to the two petitions pursuant to the provisions of RSA 273-A:10. The SEA also claims that the petitions fail to recognize that the involved employees are part of an existing unit represented by the SEA. The SEA asks the PELRB to investigate the petitions and hold hearings.

The SEA also claims the petitions fail to identify the exclusive representative presently representing the bargaining unit contrary to applicable rules, the SEA has not been treated as a party to the two cases and has not received proper notice, the petitions are misleading as to whether the employer has agreed to the proposed unit and proposed exclusive representative, and the employer in this case is the Governor. Finally, the SEA claims the PELRB is acting with unusual and undue speed. The SEA seeks a dismissal of the petitions or a hearing prior to the conduct of any election or pre-election conference.

On August 18, 2006 NEPBA filed motions to amend the petition in both cases. NEPBA seeks, among other things, to amend each original petition by adding a petition to modify pursuant to PUB 302.05. NEPBA proposes to modify the existing bargaining unit described in PELRB decision 2002-058 by creating two new bargaining units, one consisting of the positions in the proposed Patrol Officers' Unit and the other consisting of the positions in the proposed Supervisory Officers' Unit.

On September 1, 2006 the SEA filed its objection to NEPBA's motions to amend. As to the motions to amend, SEA contends that NEPBA should be compelled to file a new petition for modification, that Pub 201.04 (allowing amendments upon due notice to all parties at any time) only applies to unfair labor practice proceedings, and that SEA should not be disenfranchised from its rights to notice, right to be heard, and procedural and substantive due process rights accorded by the statutory framework of RSA 273-A and the PELRB rules. SEA states additional objections in its pleadings to the merits of the underlying amendment in the event the motions to amend are granted. Those additional objections are not addressed or ruled upon at this time.

DECISION

While certification proceedings (unlike unfair labor practice proceedings) can generally proceed directly to the pre-election and election process, there are times when objections or exceptions to a certification petition require an adjudicatory hearing, as is true in this case. To the extent that the PELRB conducts adjudicatory proceedings concerning a certification petition the provisions of Pub 200, including Pub 201.04, provide a framework and guidance for those proceedings.

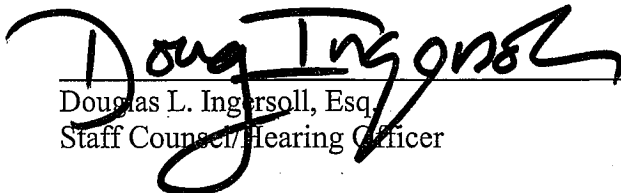
Neither the literal wording of Pub 201.04, nor more general concepts of due process (including fairness, notice, and right to be heard as applied to all parties, not just to the SEA) justify the denial of NEPBA's motions to amend. It has always been apparent from the content of the original petitions filed by NEPBA that NEPBA was seeking, in substance, to 1) modify an existing bargaining unit by the removal of certain employees and create new bargaining unit(s); and 2) thereafter provide the employees in the new unit(s) with the chance through the election process to choose a bargaining agent to act as their exclusive representative. The proposed amendment simply adds a formal characterization (modification) to what in substance was already stated in NEPBA's original petitions, thereby eliminating the issue of whether NEPBA could request or obtain a modification of an existing bargaining unit without specifically pleading a request for modification and citing to Pub 302.05.

With regard to the SEA's complaints about PELRB rules, RSA 273-A, and procedural and substantive due process, the following is also worth noting. An informal pre-hearing conference was held on August 24, 2006 (at which time NEPBA's motions to amend were pending) and a further informal pre-hearing conference has already been scheduled in this case for September 14, 2006, with a hearing on the merits scheduled for September 20 and continuing on September 21, 2006 if necessary. The PELRB has already received a number of pleadings from SEA. At the August 24, 2006 informal pre-hearing conference the parties, including the

SEA, participated in discussion about issues in the case. A further pre-hearing conference will take place where it is anticipated further discussion about issues and matters pertaining to this case will be discussed, and there will be a merits hearing at which time the parties (including the SEA) will be afforded the opportunity to present evidence and state objections. It is also anticipated that the parties will be afforded the opportunity to file pre-hearing or post hearing briefs according to a schedule to be determined by the PELRB.

Accordingly, NEPBA's motions to amend are granted.

So Ordered.


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

Date Issued: September 6, 2006

Distribution:

Peter Perroni, Esq., NEPBA
Glenn Milner, Esq.
Sheri J. Kelloway, Esq., State of NH, Dept. of Safety, DMV