



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, Inc.
Local 50
Petitioner
and
State of New Hampshire, Department of Safety, DMV
Respondent
Case No: P-0787
Decision No. 2006-139
New England Police Benevolent Association, Inc.
Local 55
Petitioner
and
State of New Hampshire, Department of Safety, DMV
Respondent
Case No: P-0788

ORDER ON STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC.,
SEIU LOCAL 1984, AFL-CIO, CLC'S MOTION TO CONSOLIDATE

BACKGROUND

The State Employee's Association of New Hampshire, Inc., SEIU Local 1984, AFL-CIO, CLC ("SEA") seeks consolidation of the above captioned matters (the certification and modification cases) with a pending unfair labor practice proceeding (SEA v. State of New Hampshire, Department of Safety, Division of Motor Vehicles, PELRB Case No. S-0393-1)(the "ULP" case).

The SEA filed the ULP case on August 3, 2006. The SEA complains that the State of New Hampshire, Department of Safety, Division of Motor Vehicles (the "State") violated the parties' collective bargaining agreement because: 1) former State Police Officers (who had filled a position within the Bureau of Highway Patrol) would continue to receive the same wages and other benefits as that created by the collective bargaining agreement between the State Police Association and the State of New Hampshire; 2) in April 2005, Virginia C. Beecher (Director of Motor Vehicles, Department of Safety, State of New Hampshire) and/or members of the Department of Safety staff met with New Hampshire Highway Patrol and Enforcement officers to offer them a similar contract to the agreement reached with the State Police Association. The SEA claims this meeting took place without Union representation and the request was made not to inform the Union regarding the meeting; and 3) Virginia C. Beecher, in her capacity as Director of Motor Vehicles, Department of Safety, State of New Hampshire, signed the two petitions filed in the certification and modification

cases when the State of New Hampshire is actually the employer and Ms. Beecher thereby interfered with the SEA's existing certifications. The SEA contends that the State violated RSA 273-A:5,I(a),(b),(e),(g) and (h) and RSA 273-A:11,I(a) and (b). The New England Police Benevolent Association, Inc. ("NEPBA") is not a party to the ULP case.

In the certification and modification cases, 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, Department of Motor Vehicles as the Public Employer. Virginia C. 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, Department of Motor Vehicles on both petitions.

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 (as to unit composition) 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 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. The PELRB granted the motion to amend on September 6, 2006, Decision No. 2006-138.

The SEA now seeks to consolidate the ULP case with the certification and modification cases because the SEA complains about Ms. Beecher's signature on NEPBA's original petitions in both cases. The SEA also seeks consolidation because, among other things, the SEA seeks in the ULP case to have the State's alleged agreement in the certification and modification cases considered null and void. The SEA contends consolidation is also appropriate because there are common issues of law and fact and the cases will likely involve identical witnesses.

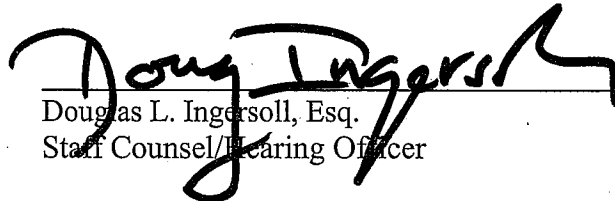
DECISION

The PELRB is not persuaded by the SEA's arguments for consolidation. The PELRB views the certification and modification cases to be sufficiently and materially distinct and different from the ULP case to the extent that consolidation is not appropriate. There are different parties involved in the two cases - NEPBA is not involved in the ULP matter. While the SEA does complain in both cases about Ms. Beecher's agreement to the composition of the proposed units, there are other issues raised in the ULP matter that are not raised in nor are they germane to the certification and modification cases. Likewise, there are a number of issues in the certification and modification cases (other than the Beecher signature issue) that are irrelevant to the ULP case.

With respect to Ms. Beecher, it should be noted that at the August 24, 2006 informal pre-hearing conference in the certification and modification cases the SEA accepted that Ms. Beecher was only expressing agreement as to unit composition, and that she took no position on what organization should serve as exclusive representative. That this is true is evidenced by the content of NEPBA's petitions and a subsequent letter filed by Ms. Beecher, which the SEA indicated it had reviewed and accepted. It would appear that the only issue remaining on this point is whether Ms. Beecher's signature as Director of the Division of Motor Vehicles, Department of Safety, State of New Hampshire, qualified as an act of the public employer - as discussed at the informal pre-hearing conference, this appears to be a legal issue. It is not necessary for the cases to be consolidated in order to address this question.

The PELRB believes that ultimately these matters will be processed more efficiently if they remain separate. Accordingly, the SEA's motion to consolidate is denied.

So Ordered.



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

Date Issued: September 7, 2006

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