



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. 2006-142
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 ADD THE STATE OF NEW HAMPSHIRE BY THE GOVERNOR'S OFFICE AS A NECESSARY AND INDISPENSABLE PARTY

BACKGROUND

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, Director of Motor Vehicles, signed the certification of the Public Employer's agreement with the composition of the proposed 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.

On August 21, 2006 attorney Sherry J. Kelloway filed an appearance as counsel for the New Hampshire Department of Safety, Division of Motor Vehicles. She participated in that capacity at the August 24, 2006 informal pre-hearing conference.

The SEA now asks the PELRB to order that the State of New Hampshire through the Governor's Office (the "Governor's Office") appear in this case as a necessary and indispensable party prior to the conduct of any further proceedings. In the alternative, the SEA requests that the PELRB dismiss these proceedings for failure to name a necessary and indispensable party. The SEA contends that by law the Public Employer is the Governor's office and NEPBA's petitions should have named the Governor's office. The SEA contends that the Governor's office presence on the record is essential to a final and binding resolution of the issues presented and because the Office of the Governor's rights and obligations as a Public Employer in this and future cases would be concluded by a judgment in this case. The SEA also contends that because the Governor's office has a statutory duty to negotiate with the exclusive representative it must be named a party to this case because certification and modification proceedings necessarily involve and affect the statutory duty.

Senior Assistant Attorney General Michael Brown filed a special appearance and an objection to the SEA's motion on September 6, 2006. Attorney Brown's objection notes that under RSA 273-A:1,X a public employer is "the state and any political subdivision thereof, any quasi-public corporation, council, commission, agency or authority..." Presumably Attorney Brown is stating that the New Hampshire Department of Safety, Division of Motor Vehicles qualifies as a public employer under this statutory provision. Attorney Brown also states that the Governor is charged with representing the State in negotiating cost items and terms and conditions of employment affecting state employees per RSA 273-A:9,I. Attorney Brown asserts that the Governor's office is not a necessary and indispensable party as claimed by the SEA. Attorney Brown also states that these proceedings will be "monitored" by Sara Willingham, the State's

manager of employee relations, and that she will "participate and ensure that the mandates of RSA 273-A are followed and the State's interests are adequately considered."

NEPBA has also objected to the SEA's motion. NEPBA asserts that it has already properly identified and involved the public employer in this case (the State of New Hampshire, Department of Safety, Division of Motor Vehicles) and its representative, Director of Motor Vehicles Virginia Beecher. NEPBA states that Ms. Beecher was nominated by the Commissioner of Safety and appointed by the Governor with the consent of Governor's council per RSA 21-P:3 and that Ms. Beecher has actual and apparent authority to act for the public employer relative to these petitions. Further, NEPBA notes that both Ms. Willingham and attorney Brown were notified by the PELRB of the pendency of these proceedings and that all parties with an interest in the petitions should file a notice of appearance. NEPBA also notes that SEA has copied attorney Michael A. Delaney, counsel to the Governor, with its motion and to the extent the public employer wishes to appear in this case in a manner other than via attorney Kelloway's appearance it has been provided with the opportunity to do so.

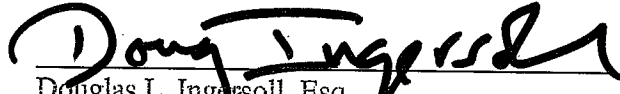
#### DECISION

This order is not intended as a ruling as to whether the public employer's active participation in this case is necessary or whether the public employer as identified by NEPBA in its petitions qualifies as a proper public employer within the meaning of RSA 273-A:1, X. Those issues are reserved and will be addressed if necessary at the hearing on the merits. It does appear that the Governor's office does not believe that its statutory obligations include a requirement that it separately and formally participate as "The State of New Hampshire through the Governor's Office" in certification or modification proceedings, notwithstanding the SEA's arguments to the contrary. As noted, attorney Kelloway has appeared and is representing the Department of Safety, Division of Motor Vehicles. The PELRB finds that in conjunction with attorney Brown's objection, NEPBA has articulated sufficient factual and legal arguments to support its position that the public employer is already an active and involved party in this case and that NEPBA should be allowed to proceed on that basis. The PELRB agrees - although as stated, the PELRB is reserving the ultimate ruling on the question for the hearing on the merits.

It should be noted that the PELRB is somewhat perplexed by the contents of paragraph 5 in attorney Brown's objection and accordingly will offer a few comments to avoid future misunderstanding. Neither RSA 273-A nor PELRB rules recognize, permit or allow the participation of "monitors" in its proceedings. This is so regardless of whether such monitors seek to participate in the case or seek to "ensure that the mandates of RSA 273-A are followed and that the State's interests are adequately considered." Attorney Brown appeared specially for the purpose of objecting to a very specific request that the Governor's office become formally involved in this proceeding. It should be understood that the Governor's office cannot informally or unofficially participate through a "monitor." While PELRB proceedings are public, actual participation in the proceedings is restricted to recognized parties (in this case through their respective counsel who have appeared) and individuals who testify as witnesses. As to the State of New Hampshire this means attorney Kelloway representing the Department of Safety, Division of Motor Vehicles. Further, it should also be noted that it is the PELRB's obligation to ensure that the mandates of RSA 273-A are followed during the course of its proceedings.

Accordingly, the SEA's motion is denied.

So Ordered.

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

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