



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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New England Police Benevolent Association, Inc.	*		
Local 50	*		
		Petitioner	*
		and	*
			*
State of New Hampshire, Department of Safety, DMV	*		Case No: P-0787
	*		
		Respondent	*
<hr/>			Decision No. 2006-149
New England Police Benevolent Association, Inc.	*		
Local 55	*		
		Petitioner	*
		and	*
			*
State of New Hampshire, Department of Safety, DMV	*		Case No: P-0788
	*		
		Respondent	*
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PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

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 9, 2006 the PELRB cancelled the pre-election conference and issued a notice scheduling a pre-hearing conference for August 24, 2006 and a hearing for September 14, 2006.

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

An informal pre-hearing conference was held on August 24, 2006 (SEA's Motion to Continue the August 24, 2006 informal pre-hearing conference was denied, Decision No. 2006-128.) (The SEA's Appeal of this Hearing Officer decision was denied on August 31, 2006, Decision No. 2006-132). A pre-hearing conference memorandum and order concerning the August 24, 2006 conference issued on August 30, 2006, Decision No. 2006-133 and a further informal pre-hearing conference was set for September 14, 2006 and a hearing on the merits for September 20, 2006 and if necessary continuing on September 21, 2006.

On September 7, 2006 the PELRB denied the SEA's Motion to Consolidate, Decision No. 2006-139, and the SEA's Motion to Add the State of New Hampshire by the Governor's Office as a Necessary and Indispensable Party, Decision No. 2006-140.

The undersigned hearing officer conducted a second informal pre-hearing conference on September 14, 2006 at the PELRB offices in Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For NEPBA: Peter Perroni, Esq.

For the SEA: John Krupski, Esq.

For the State of NH,

DECISION:

1. Per agreement of the parties, the PEPLRB will issue a subpoena duces tecum to Director Beecher and Mr. Ouellette. Attorney Kelloway has agreed to accept service via email and waive formal service, but she otherwise reserves any and all objections which will be raised via a motion to quash. The PELRB in fact issued the subpoena on September 14, 2006 with the notice that any motion to quash is due September 15, 2006 and any objections to such motion on September 18, 2006.
2. The SEA's September 14, 2006 Witness List also includes a request that a subpoena duces tecum issue to Carleen Bowman, Edward Marceau and Richard Shute seeking: 1) any and all information provided to members of the relevant bargaining units from NEPBA on June 8, 2006 or thereafter; and 2) any and all membership cards to any labor organization and date received. The SEA did not discuss this subpoena request at the pre-hearing and the written application does not indicate why the requested documents are relevant to the above-captioned matters. The requested documents do not relate to the certification/modification proceedings and accordingly this portion of the subpoena duces tecum request is denied.
3. Both parties identified their witnesses and exhibits in written submissions at the pre-hearing. At the pre-hearing the SEA orally added Officer II Kyle Aspinwall and Captain William Magee. Another listed witness, Lt. Carlberg, indicated he would check on the availability of certain witnesses and communicate his findings to attorney Krupski – based on this, attorney Krupski may make additional subpoena requests.
4. The SEA filed a second Motion to Consolidate. Like the earlier motion, the SEA again seeks to combine for hearing the above-captioned matters with case S-0393-1, which is a ULP case. The SEA argues that its motion should now be granted because of the allegations contained in an amendment filed in the ULP case. However, the amendment only reinforces the distinctions and differences between the proceedings the SEA seeks to consolidate. Accordingly, for this reason and the reasons stated in the earlier order (Decision 2006-139) the SEA's second motion to consolidate is denied.
5. The formal consolidation of the above-captioned matters (P-0787 with P-788) was discussed at the pre-hearing. Although the SEA would like P-0787 & 0788 consolidated with S-0393-1 (ULP case), the SEA objects to formally consolidating P-0787 & 0788. P-0787 & P-0788 have been scheduled and have proceeded together from the outset. They are virtually identical cases in terms of the background, general issues involved and relief sought. They are appropriate for formal consolidation and it is so ordered.

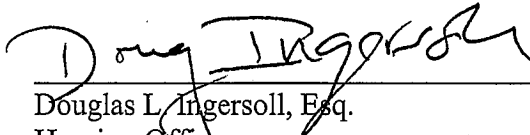
6. The likely scope of attorney Hayes testimony was discussed. It would appear to be limited to issues concerning the meaning and scope of Director Beecher's agreement as indicated on the petitions and the basis for attorney Hayes' disagreement with the information presented in the petition on the question. In any event, attorney Hayes is not acting as counsel in the case, that role is being filled by attorney Milner and in his absence attorney Krupski.
7. The SEA has asked to inspect the interest cards submitted in support of the petitions in a redacted form. Per Pub 301.01 (h) the individual petition cards are deemed confidential and may not be inspected by the SEA. Accordingly, attorney Perroni shall supply SEA's counsel with a blank card (omitting all address, name, position, or other possible identifying information) – in other words, before it was completed by employees.
8. Any post-hearing briefs the parties desire to file shall be submitted on or before September 27, 2006. The SEA's objection to this date is noted.
9. The principal issues to be heard in this case are: 1) whether via the certification and modification pleadings it has filed, NEPBA is entitled to have its application for the creation of two new units considered on the merits and elections scheduled; 2) whether Pub 302.05 (b)(2) specifically precludes NEPBA's modification request; 3) whether NEPBA seeks to have the same bargaining agent represent the proposed rank and file unit and the supervisor's unit and what significance, if any, should be attributed to the fact that the SEA currently acts as a common bargaining agent for supervisor's units and rank and file units; 4) the composition of the proposed units, whether agreement has been reached between NEPBA and the employer as to composition, the SEA's objections to the proposed compositions and the significance and/or impact of SEA objections.
10. The parties shall submit and exchange a list of all witnesses and the purpose of their testimony and a list of exhibits per Pub 203.
11. The parties' representatives shall meet, or otherwise confer, on or before September 20, 2006 in order to compose a mutual statement of agreed facts and stipulate to joint exhibits. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file that document with the PELRB on or before September 20, 2006.

12. 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:

September 20, 2006 @ 9:00 AM and continuing on September 21, 2006 if necessary

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

So Ordered.



Douglas L. Ingersoll, Esq.
Hearing Officer

Date Issued: September 15, 2006

Distribution:

Peter Perroni, Esq., NEPBA

Glenn Milner, Esq.

Sheri J. Kelloway, Esq., State of NH, Dept. of Safety, DMV