



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEA of NH, Inc., Local 1984, SEIU

Petitioner

v.

State of New Hampshire, Department of Safety,
DMV

Respondent

*
*
*
*
*
*
*
*
*
*

Case No. S-0393-1

Decision No. 2006-155

ORDER RE: STATE EMPLOYEES' ASSOCIATION OF
NEW HAMPSHIRE INC., SEIU LOCAL 1984'S MOTION TO COMPLY WITH FORTY-
FIVE DAY ADJUDICATORY HEARING REQUIREMENT

BACKGROUND

On September 18, 2006 the State Employees' Association of New Hampshire, SEIU Local 1984, (hereinafter the "SEA") filed a "Motion to Comply with Forty-Five Day Adjudicatory Hearing Requirement." The SEA states that a hearing is required no later than 45 days after August 18, 2006 per Pub 205.01(a), or on or before October 2, 2006. The SEA claims the current October 12, 2006 hearing date may be too late to allow a vindication of the SEA's rights under contract and law – and that the:

"SEA will suffer irreparable harm in the event an election in the above-referenced matter (the NEPBA cases – P-0787 & 0788) is held before an adjudicatory hearing in the present matter. As alleged by the SEA, the DMV violated the collective bargaining agreement between the parties and the statutory provisions of RSA 273-A:5, 10 & 11 by endorsing and actively participating in the attempted usurpation of the exclusive representative status currently held by the SEA."

The SEA also seeks a "stay on any election proceedings, as opposed to an adjudicatory hearing, involving NEPBA until this matter is fully adjudicated by the Board."

The State of New Hampshire, Department of Safety, Division of Motor Vehicles ("DMV") objects, stating that the SEA has twice unsuccessfully filed for consolidation of the ULP case with the NEPBA certification and modification cases (No.s P-0787 & 0788), that the PELRB has complied with Pub 201.05, that the October 2, 2006 date is only seven business days earlier than the current October 12, 2006 hearing date, that the DMV has relied on the October 12, 2006 date from the outset and never would have agreed to continue the originally scheduled August 24, 2006 informal pre-hearing conference given SEA's current request, and that the SEA has waived any right to request an earlier hearing date since it has known about the October 12, 2006 hearing date since August 18, 2006 but waited until September 18, 2006 to file the instant motion.

DECISION

This matter is presently scheduled for informal pre-hearing conference on September 29, 2006 and hearing on October 12, 2006. It was previously scheduled for informal pre-hearing conference on August 24, 2006 but at the outset of that conference the SEA requested a continuance and DMV agreed. The PELRB established the September 29, 2006 date before the parties were released. The October 12, 2006 hearing date has remained unchanged since the August 18, 2006 scheduling notice issued.

By August 8, 2006 the SEA was fully aware of the original NEPBA petitions, filed July 31, 2006, as on that date the SEA appeared in the NEPBA case and filed exceptions. The SEA filed further objections on August 9, 2006. The original NEPBA petitions provided notice to the SEA that NEPBA was asking the PELRB to schedule elections as to two very specific proposed bargaining units comprised of DMV Highway Patrol Officers and that the State of New Hampshire, Department of Safety, Division of Motor Vehicles, through Director Virginia Beecher, had agreed to the composition of the proposed units. On August 18, 2006 NEPBA filed proposed amendments to its petitions, making clear that it was seeking to modify the existing bargaining unit to the extent necessary in connection with its certification/election requests.

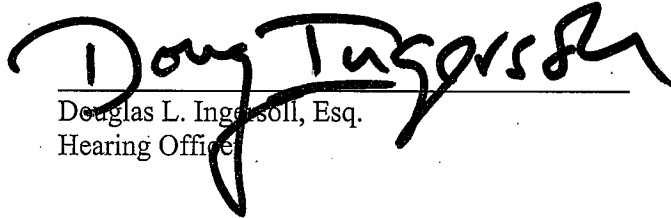
The ULP in this case (S-0393-1) was filed August 3, 2006 and was scheduled for an informal pre-hearing conference on August 24, 2006, immediately following the informal pre-hearing conference in the NEPBA proceedings. By August 24, 2006 the SEA had enough information to demand an earlier hearing date than October 12, 2006. It did not do so, but instead filed a motion to consolidate the ULP case with the NEPBA case on September 1, 2006. This motion was denied on September 7, 2006, Decision No. 2006-139 (the parties were notified electronically on that date). Instead of then filing a request for a hearing date earlier than October 12, 2006 SEA filed another motion to consolidate, which was denied on September 15, Decision 2006-149.

The SEA's request to advance the October 12, 2006 hearing date is denied. The SEA had ample opportunity to raise the request long before September 18, 2006 and the PELRB believes the SEA would have done so if the October 12, 2006 hearing date (and conducting a hearing on or before October 2, 2006) was truly a genuine, legitimate and important concern. The October

12, 2006 date was established on August 18, 2006, and to the extent the SEA had a right to demand an earlier hearing date the PERLB believes it has waived and relinquished any such right.

The merits hearing in the NEPBA proceedings was conducted on September 20, 2006. The SEA did not file any request in those proceedings to stay any election proceedings. The SEA cannot obtain a stay of any NEPBA election proceedings in Consolidated Case P-0787 & 0788 by making a filing in the ULP case and accordingly that request is denied on that basis. Nor has the SEA otherwise articulated a justifiable basis for imposing a stay on any NEPBA election proceedings that might be scheduled. SEA's vague allegations of irreparable harm and the SEA's reliance on the general allegations in the ULP case are not persuasive.

So ordered.
September 21, 2006.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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