

**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of	*	
The New Hampshire Insurance Department	*	
	*	
Petitioners	*	Case No. S-0415-1
v.	*	
	*	
SEA/SEIU Local 1984, AFL-CIO	*	Decision No. 2006-156
	*	
Respondent	*	
	*	

APPEARANCES

Representing Classified Employee Petitioners of the New Hampshire Insurance Department

Deborah J. O'Loughlin, N.H. Insurance Department  
Charles Burdette, N.H. Insurance Department

Representing SEA/SEIU Local 1984, AFL-CIO

John Krupski, Esq., Cook & Molan, P.A.

BACKGROUND

The New Hampshire Insurance Department ("NHID") filed a petition for decertification on August 16, 2006. The petitioner is identified as the NHID in the original petition, which the PELRB understands to refer to the employees identified in the petition, who submitted interest cards, and who are members of the bargaining unit or units at issue. The petitioner has since amended this to read "Classified Employee Petitioners of the New Hampshire Insurance Department."

The SEA/SEIU Local 1984 ("SEA") filed a responsive pleading on August 31, 2006. SEA claims 1) that only a unit member or group of unit members may file a decertification petition; 2) that the employees of the NHID belong to two separate units, consisting of a supervisory employees unit certified by the Board in 1980 and a non-supervisory employee unit certified by the Board in 2004 (Decision No. 2004-046); 3) that Charles Burdette is a member of the supervisory unit and he improperly signed and is identified as the representative in the petition; 4) that the petition fails to establish the 30% requisite showing of interest; 5) that an informal pre-hearing conference held on

August 30, 2006 was improper because the parties were not sent and did not file pre-hearing conference worksheets; 6) that the SEA otherwise complains about the conduct of the informal pre-hearing conference; 7) that statutory prerequisites must be deemed satisfied by the Board of the PELRB before any pre-election hearing may be held; and 8) that SEA's objections must be resolved by a full Board of the Public Employee Labor Relations Board before a pre-election hearing may be held.

An informal pre-hearing conference was conducted on August 24, 2006 and a pre-hearing order issued on August 30, 2006 (Decision 2006-137). A second informal pre-hearing conference was conducted on September 15, 2006 and an order issued on that date (Decision 2006-150).

A hearing took place on September 21, 2006. At the outset of the hearing it was noted that the petitioners' previously filed amendments were allowed without ruling on whether any particular aspect of the amendments was necessary. Also at the outset of the hearing the SEA filed a Motion to Withdraw Request for Adjudicatory Hearing. The SEA recites the basis for the motion and states that it withdraws its request for an adjudicatory hearing, without prejudice, but specifically reserving all exceptions and objections previously filed. At the hearing the SEA asserted it was entitled to the withdrawal as a matter of right pursuant to Pub 201.04, which states that "[a] complaint may be withdrawn at any time by the complainant upon written notification to the board."

In substance, the SEA stated that in fact it had no objection to the petition for decertification in this case proceeding to the election process, that the SEA did not intend to raise at a pre-election conference any of the objections or exceptions stated in its pleadings filed to date, and that it only expected to address typical voter eligibility issues such as probationary employee status. The SEA also stated that by proceeding in this manner in this case it did not intend to waive or relinquish its objections or exceptions filed in other pending cases. The SEA also requested that the PELRB rule on its pending September 12, 2006 Motion to Add the State of New Hampshire Through the Governor's Office.

#### DECISION

The term "complaint" refers to an unfair labor practice complaint and thus Pub 201.04 does not directly apply to the SEA's motion, but the PELRB recognizes that in general during contested proceedings a party may formally withdraw objections and exceptions – the issue is whether this may be done with or without prejudice. In this case, regardless of whether Pub 201.04 applies, the PELRB does not believe that the SEA is entitled at this juncture in the case to proceed with a withdrawal "without prejudice" and "specifically reserving all exceptions and objections previously filed." Accordingly, the motion is denied. The PELRB acknowledges that it is not treating the SEA's decision to allow the instant petition to proceed to election to constitute a waiver or relinquishment of its objections and exceptions on file in other pending cases. However, the SEA will not be permitted to raise or litigate further any of the objections or exceptions it has raised and filed to date in this matter, as it was provided with the opportunity to do so on September 21, 2006 and the SEA elected not to proceed.

Although in view of the SEA's decision not to contest this petition on the merits it would seem unnecessary to address any pending SEA motions, it is noted that the SEA's pending

Motion to Stay is moot. The SEA did request at the September 21, 2006 hearing that the PELRB rule on its September 12, 2006 Motion to Add the State of New Hampshire Through the Governor's Office. Without deciding whether such a ruling is required at this juncture in the proceedings, the PELRB addresses the motion as follows.

The petition named the State of New Hampshire – Insurance Department as the employer. Under RSA 273-A:1, X a state agency such as the Insurance Department qualifies as a public employer. The preamble of the parties' collective bargaining agreement, previously filed with the PELRB per the requirements of RSA 273-A and also submitted as an exhibit in other, related cases (for example, P-0787 and 788), identifies the "Insurance Department, State of New Hampshire" as the employer.

Neither RSA 273-A:3 nor 273-A:9 require the addition of the State of New Hampshire through the Governor's Office as a party in the case, despite SEA's arguments to the contrary. RSA 273-A:3 doesn't address the question. RSA 273-A:9 only requires that the state, represented by the governor's office, negotiate all cost items and terms and conditions of employment (i.e. the contents of the parties' collective bargaining agreement). It does not require that governor's office be specifically named and included as a party in decertification proceedings. In fact, the very agreement the governor's office is to negotiate under RSA 273-A:9 specifically identifies the employer as the "Insurance Department, State of New Hampshire" as already noted.

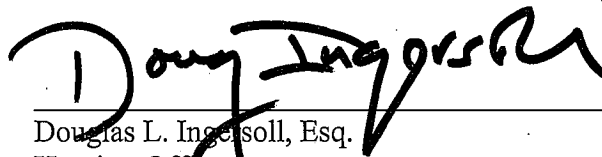
SEA's reliance on PELRB Decision 2002-129 is misplaced (the SEA has raised this decision to support virtually identical motions filed in other cases). In that case the Commissioner of Employment Security as petitioner filed a request for declaratory ruling per Pub 206. One issue was whether the commissioner was a public employer or employee under the provisions of RSA 273-A. The PELRB ruled that the State of New Hampshire was the employer. The PELRB did not rule that the employer is the State of New Hampshire Through the Governor's Office as the SEA urges in this case, and the PELRB did not address whether the State of New Hampshire – Department of Employment Security was a public employer.

In the instant case the petitioners are not claiming that the Commissioner of the Insurance Department is the public employer – they claim the employer is the State of New Hampshire – Department of Insurance. This claim is consistent with PELRB Decision 2002-129 and the authorities and facts discussed, the collective bargaining agreement, and RSA 273-A.

Further, there is no question here that the governor's office is aware of the ongoing decertification proceedings at the PELRB concerning a number of agencies. Attorney Michael Brown of the attorney general's office filed a special appearance in consolidated cases P-0787 and 0788 (involving the New England Police Benevolent Association and the Department of Safety, Division of Motor Vehicles) for the limited purpose of opposing the SEA's request to have the Governor's office formally involved in those proceedings. The instant motion is in substance identical to the one opposed by attorney Brown in consolidated cases P-0787 and 0788.

In closing, it is noted that the SEA did not present any evidence at the hearing. The petitioner filed one multi-page exhibit received as a full exhibit and identified as Petitioners' Exhibit 1. As stated before the close of hearing on September 21, 2006 the record is closed - no post hearing briefs are required or should be filed. A pre-election conference will take place on September 27, 2006 at 10:00 a.m. at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So Ordered.

  
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Douglas L. Ingersoll, Esq.  
Hearing Officer

Date Issued: September 22, 2006

Distribution:

Charles Burdette and Deborah O'Loughlin, NHID  
John Krupski, Esq.