



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Public Utilities Commission

Petitioner

v.

SEA/SEIU Local 1984, AFL-CIO

Respondent

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Case No. S-0419-1

Decision No. 2006-158

**ORDER ON SEA/SEIU LOCAL 1984, AFL-CIO MOTION
TO WITHDRAW REQUEST FOR ADJUDICATORY HEARING**

BACKGROUND

The New Hampshire Public Utilities Commission ("PUC") filed a petition for decertification on August 23, 2006. The petitioner is identified as the PUC, 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 SEA/SEIU Local 1984 ("SEA") filed a responsive pleading on September 7, 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 PUC 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. 2004-041); 3) that Jody O'Marra is a member of the supervisory unit and therefore 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 these irregularities and nonconformance with PERLB rules have irreparably harmed the rights of the certified exclusive bargaining representative; 6) that the SEA requests an informal pre-hearing conference to be conducted prior to an adjudicatory hearing to address the SEA's exceptions and objections to the petition; and 7) that a full Board of the PELRB must deem the statutory prerequisites satisfied before any pre-election hearing may be held.

The undersigned hearing officer conducted an informal pre-hearing conference on September 15, 2006 at the PELRB offices in Concord, New Hampshire and the case is scheduled for a merits hearing on September 25, 2006. On September 21, 2006 the SEA filed the instant

motion, seeking to withdraw its request for adjudicatory hearing without prejudice as a matter of right per Pub 201.04.

DECISION

The SEA filed a similar motion in Case No. S-0415-1 involving employees of the New Hampshire Insurance Department. 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it was entitled to the withdrawal as a matter of right pursuant to Pub 201.04, which states that “[a] complaint may be withdrawn at any time by the complainant upon written notification to the board.” As recounted in Decision 2006-156, the motion was denied.

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 thereby in effect preserve all exceptions and objections previously filed and subsequently seek to litigate the objections and exceptions with the Board. Accordingly, the motion is denied.

So Ordered.


Douglas L. Ingersoll, Esq.
Hearing Officer

Date Issued: September 22, 2006

Distribution:

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