



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire,
SEIU, Local 1984, AFL-CIO

Complainant

v.

State of New Hampshire, Department of Safety,
Division of Motor Vehicles

Respondent

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Case No. S-0393-1

Decision No. 2006-163

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The SEA, SEIU Local 1984 ("SEA") filed an unfair labor practice complaint on August 3, 2006 alleging that the State of New Hampshire, Department of Safety, Division of Motor Vehicles ("State") committed a number of unfair labor practices. The SEA's subsequently stated additional allegations in the body of its September 13, 2006 Objection to Motion to Dismiss.

Specifically, the SEA claims that: 1) the State in 2005, acting through Director Beecher or Department of Safety staff, met with Highway Patrol and Enforcement officers without Union representation to offer them a similar contract to the agreement reached with the State Police Association and requested that the Union not be informed of the meeting contrary to the CBA; 2) Director Beecher's signature on the New England Police Benevolent Association petitions (Case No. P-0787 & 0788) interfered with the SEA's existing bargaining unit certification (set forth in Decision 2002-058) and was otherwise improper because the State of New Hampshire is the employer; 3) the State interfered with the SEA by providing aide, assistance and endorsement to NEPBA, a rival labor organization; 4) on or about June 8, 2006 the State required bargaining unit members to observe a presentation by NEPBA concerning terms and conditions of employment and thereby usurped the exclusive representative status of the SEA; 5) the State provided NEPBA the opportunity to solicit funds and membership cards from bargaining unit members during duty hours; 6) the State has provided NEPBA with access to the Department of Safety email and the internal telephone system in order to allow NEPBA to interfere with and usurp the

SEA's status as exclusive representative; and 7) the State allowed members of the bargaining unit, without loss of pay or benefits, to encourage members of the current bargaining unit to reject the representation of the SEA, all in violation of RSA 273-A:5, I(a),(b),(e),(g) and (h).

The Association requests that the PELRB find that the State has committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (e), (g) and (h), as well as RSA 273-A:11 I (a) and (b) and as a remedy, (1) order the State to withdraw its agreement to the petition for certification; and (2) order the State to reimburse the petitioner for all costs incurred, including a reasonable market value of representation and attorney's fees.

On January 17, 2006, the State filed its answer denying the Association's charges of unfair labor practice and subsequently filed a Motion to Dismiss the Association's charges. By way of further answer, the State says some of the claims are late and that nothing it did was improper. Accordingly, the State requests that the PELRB: 1) find that the State has not committed an Unfair Labor Practice; 2) dismiss the Association's complaint; 3) deny the relief sought by the Association; and 4) grant such other relief to the State as deemed just and appropriate under the circumstances.

The undersigned hearing officer conducted an informal pre-hearing conference at PELRB offices, Concord, New Hampshire on September 29, 2006.

PARTICIPATING REPRESENTATIVES

For the Association: John Krupski and Lorri Hayes, Esq.

For the State: William Knorr, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the State engaged in direct dealing with bargaining unit members in 2005 as claimed by the SEA?
- (2) Whether in 2006 the State improperly interfered with and usurped the SEA's status as exclusive representative of the bargaining unit by its agreement to NEPBA's proposed unit compositions, by providing assistance and endorsement to NEPBA and otherwise by facilitating NEPBA efforts to obtain support among bargaining unit members, all as claimed by the SEA?

WITNESSES

For the Association:

1. Lori Hayes, Esq.
2. Virginia C. Beecher, Director, NH DMV
3. Lt. William Carlberg
4. Sara Willingham, Manager, Employee Relations

5. Claude Ouellette
6. Executive Major Wayne Perrault
7. Carleen Bowman, Officer
8. Edward Marceau, Officer
9. Richard Shute, Officer
10. Corey Carlberg

For the State:

1. Virginia C. Beecher, Director, NH DMV
2. Sara Willingham, Manager, Employee Relations

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Association:

1. Collective Bargaining Agreement for 2005-2007
2. Amended Certification dated 5/16/02
3. Information provided to bargaining unit members on June 8, 2006 or thereafter
4. Membership cards
5. Electronic Mail between NEPBA and the State of New Hampshire
6. List of phone calls between 978-454-3800 or 978-454-2767 to/from Officer Bowman, Officer Marceau, Lt. Carlberg (DMV numbers or DMV cell phones)
7. DMV Standard Operating Manual
8. Pleadings
9. Exhibits to Pleadings
10. Impeachment Documents

For the State:

1. Petition for Certification NEPBA Local 55
2. Memoranda from Virginia C. Beecher to Commissioner Flynn dated 8/3/06
3. Petition for Certification NEPBA Local 50

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each

party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one-half day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

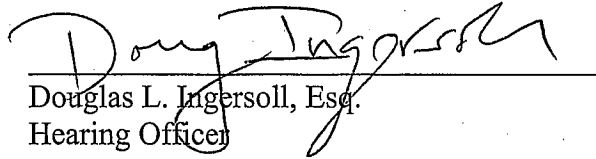
1. At the pre-hearing it was established that the State will file, if necessary, any objections whether based on inability to produce or otherwise to the SEA's subpoena requests no later than October 4, 2006. The SEA indicates Director Beecher requests 1 and 2 can be resolved by the parties. The time period for the Director Beecher requests 3-5 is limited to January 1, 2006 to July 31, 2006. Request 4 is limited to documents exchanged between NEPBA and Executive Major Perrault, Lt. Carlberg, Officer Bowman, and Director Beecher. Request 5 only relates to DMV calls to or from the named individuals on DMV land line or cell phone. The Bowman/Marceau/Shute request concerns any materials provided at the June 8, 2006 meeting referenced in the SEA's pleadings as well as membership cards.
2. The parties' representatives shall meet, or otherwise confer, on or before October 7 2006 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document, along with any corresponding exhibits, with the PELRB no later than October 8, 2006.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than October 4, 2006.
5. 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:

October 12, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 29th day of September, 2006.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

John Krupski, Esq.

Lorri Hayes, Esq.

Sheri Kelloway, Esq.

William Knorr, Esq.