



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of the
New Hampshire Office of Information Technology

Petitioner

v.

SEA/SEIU Local 1984

Respondent

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Case No. S-0411-3

Decision No. 2006-181

APPEARANCES

Representing Petitioners

Dane Prescott

Representing: State Employees' Association of NH, Inc., SEIU Local 1984

John S. Krupski, Esq.

BACKGROUND

The Classified Employee Petitioners of the New Hampshire Office of Information Technology ("Petitioners") filed a petition for decertification on September 15, 2006. On September 29, 2006 the petitioners filed an amendment and supplement to the Petition for Decertification.

The SEA/SEIU Local 1984 ("SEA") filed an Objection and Exception in response on September 30, 2006. The SEA claims: 1) that the petitioner lacks standing; 2) that the petitioner fails to present the requisite 30% showing of interest; 3) based on information and belief, petitioner has submitted cards by individuals ineligible to vote or be a part of the bargaining unit; 4) only unit members or a group of unit members may file a petition for decertification; 5) the petition for decertification combines two bargaining units for purposes of decertification; 6) the petitioner has not satisfied the procedural and statutory prerequisites for an election; 7) that a full Board of the PELRB must deem the statutory prerequisites satisfied before any pre-election hearing may be held; and 8) 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.

The undersigned hearing officer conducted an informal pre-hearing conference on October 2, 2006 at the PELRB offices in Concord, New Hampshire. On its pre-hearing worksheet, the SEA listed the following witnesses: Sara Willingham, Lorri Hayes, Dane Prescott, and Richard C. Bailey, Jr. The SEA also listed the collective bargaining agreement, the certifications, job descriptions, a roster, and cards as exhibits. At the pre-hearing conference the subject matter of witness testimony was discussed, and counsel for the SEA stated that Ms. Willingham, the State's Manager of Employee Relations, would testify concerning the 2 separate bargaining units the SEA references in its objection and exceptions, as would Ms. Hayes, an SEA employee and representative. Counsel for the SEA also advised that testimony would be elicited from Mr. Prescott, an OIT employee, concerning satisfaction of the 30% interest, and that Mr. Bailey would be questioned about confidential employee positions. The petitioner, through Mr. Prescott, indicated it did not intend to call any witnesses and had already submitted material to the PELRB and reserved the right to supplement these submissions.

The undersigned hearing officer conducted a hearing on October 13, 2006 at the PELRB in Concord, New Hampshire.

DECISION AND ORDER

Jurisdiction

The PELRB has jurisdiction over decertification petitions involving public employers, public employees, and employee organizations pursuant to the general provisions of RSA 273-A and the specific provisions of Pub 301.03.

Discussion

At the hearing the petitioner, consistent with its position at the pre-hearing conference, stated it did not want to call any witnesses except as necessary in rebuttal. The petitioner asked for previously submitted pleadings to be recognized as exhibits, which was done without objection.

When the SEA was provided the opportunity to preview its hearing presentation, counsel for the SEA stated that he would not call any witnesses at the hearing. Further, counsel for the SEA did not submit any exhibits at the hearing. Counsel for the SEA did reiterate several legal arguments that the petition was deficient on its face, it was untimely filed, and that no election could be conducted because of the 120 day election bar imposed by RSA 273-A:11.

The PELRB understood the petition filed on September 15, 2006 to be filed by employees who signed decertification cards, and not the New Hampshire Office of Information Technology itself. To the extent there is any question on this issue, it is clearly resolved by the language which appears at page 3 of the petition filed on September 15, 2006, wherein it states "[t]he Petitioner, the New Hampshire Governor's Office of Information Technology *employees identified as those employees who have signed decertification signature cards* (see attachment), have also filed an Unfair Labor Practice complaint..."(emphasis added) Under Pub 301.03 the employees who signed cards may properly petition for decertification.

The SEA failed to develop its claim that the petition improperly combines two bargaining units (stated in its objection and exceptions and also at pre-hearing when counsel for the SEA described the testimony to be elicited from Ms. Willingham and Ms. Hayes). The only certification brought to the PELRB's attention (and the only certification about which the PELRB is aware) currently concerning Office of Information Technology employees is Petitioner's Exhibit 3, which is PELRB Decision No. 2003-091 in Case No. S-0411, dated August 15, 2003. The history of this August 15, 2003 certification establishes that it issued without an election. It is also true that there has never been an election with respect to at least a portion, if not all, of the various certifications for the units in which current Office of Information Technology employees were located prior to the August 15, 2003 certification. See Case No. S-0411, Modification Petition Filed August 12, 2003. Case No. S-0411 contains several of the underlying certifications and establishes that the new Office of Information Technology Unit pulled into one unit, among others, all employees previously covered under the December 7, 1976 Recognition under Ch. 490:3, Laws 1975, for the Centralized Data Processing Department (a "grandfathered" unit for which no election has ever been held under RSA 273-A). Accordingly, given this history, the PELRB finds that the petition has not combined two bargaining units as alleged by the petitioners.

The SEA argues that the petition was untimely filed pursuant to Pub 301 and is otherwise barred from proceeding to election pursuant to RSA 273-A:11. In fact, the petition was timely filed as it was submitted on September 15, 2006, which is a date within the "filing window" established under Pub 301.01. The fact that petitioner submitted supplemental pleadings on September 29, 2006 (approximately 10 days after the filing window closed, submitted in a package with petitioner's pre-hearing worksheet) does not render the petition untimely. The petition was sufficient in terms of form, content, and number of decertification cards as originally filed. A review of the petitioner's "Amendment and Supplement to Petition for Decertification" dated September 28, 2006 (contained in Petitioner's Exhibit 2) shows that petitioner's additional pleadings did not add decertification cards or otherwise alter, revise, or change the essential nature, content and purpose of the petition in a manner that requires the PELRB to treat the petition as though it was actually filed on September 29, 2006.

The SEA's current argument as to the operation of RSA 273-A requires a review of the SEA's position on the statute in another decertification proceeding. At the October 11, 2006 hearing on Case No.s S-0306-4,5&6, involving decertification petitions filed by employees at the New Hampshire Department of Employment Security, the SEA stated its position that the RSA 273-A:11 election bar does not apply to decertification proceedings, as in the event the employees are successful in decertifying the SEA as exclusive representative, there will no longer be any organization required to give notice of an intent to bargain (or for that matter enforce the terms of a collective bargaining agreement). See Pub 301.03(b). If the decertification petition is defeated at election, then the SEA continues its relationship with the employer – a relationship which is active and ongoing during the pendency of these proceedings. In view of the SEA's agreement in this recent decertification adjudicatory proceeding that the election bar does not apply to decertification proceedings it would appear the SEA is precluded from raising it as a possible bar in this case.

In any event, the PELRB finds the provisions of RSA 273-A:11 do not preclude an election in this case for the reasons discussed in Case No.s S-0431 & 0432 involving petitions filed by New England Police Benevolent Association ("NEPBA") to modify and create two new bargaining units consisting of employees of the Law Enforcement Division of the Department of Fish and Game. In that case the PELRB decision addressed the interplay of the filing window and the election window as follows:

"The NEPBA petitions were timely filed and these matters will now proceed to election. Pub 301.01 (a) sets the time frame for the filing of certification petitions at "no more than 210 days and no less than 150 days prior to the budget submission date of the affected public employer" (the "filing window"). As noted in other proceedings, the budget submission date for the State is February 15. It is reasonable to conclude that one of the underlying presumptions of the filing window is that proper certification petitions submitted during the filing window will ultimately result in the conduct of an election within the "election window," which is "not more than 180 nor less than 120 days prior to the budget submission date." See RSA 273-A:11, I (b). However, in this case it may be necessary to conduct the election inside the 120 day deadline (but the Order of Election can issue within the 180 to 120 day period).

There is precedent for conducting elections after the 120 time period imposed by RSA 273-A:11, I (b). See The State Employees' Association of New Hampshire Inc. v. Elizabeth W. Cheney and Public Employee Labor Relations Board, 119 N.H. 822, 825 (1979) and PELRB Decision No. 79009. In Cheney the PELRB addressed whether a decertification election could be conducted after the expiration of the election window:

"The Board, therefore, finds that the petition having been timely filed, and the budget submission date being September 21 in the year the contract expires, namely 1979, that an election is proper. Difficulties in arranging for hearings and the extension granted to the employees earlier makes the holding of such an election within the 120 days prior to the budget submission date impossible. The Board finds, however, that, as with many of the time periods in the statute, the administration of the law must be made to fit its purposes. When there is doubt as to the choice of employees in a bargaining unit as has been raised properly in this case by the petition for decertification, and especially when there is a unit representation for which (sic) was established prior to the effective date of RSA 273-A:3, and given the special circumstances of this case, the setting of the election date prior to the 120 days and not the actual election prior to 120 days is found by the Board to be in keeping with the spirit of the law. An election, therefore, will be scheduled by the Board for June 12, 1979."

PELRB Decision No. 79009 at 3. On appeal the New Hampshire Supreme Court affirmed the PELRB's decision, stating:

"There is 'no doubt that this court is the final arbiter of the intent of

the legislature as expressed in the words of a statute considered as a whole.' We have, however, consistently recognized that the legislature has vested the PELRB with authority to define the terms of RSA ch. 273-A and to fill in the 'interstices.' Although the board's determinations are not controlling, they are nevertheless persuasive, and are considered to be *prima facie* lawful and reasonable, and will be upheld unless they constitute a clear abuse of discretion. The PELRB rulings at issue find adequate support in the record and are in keeping with the spirit of the law. Under the circumstances presented, wherein the public employees had no voice in choosing the SEA as their bargaining representative under RSA ch. 273-A, the PELRB's application of the statute was proper and reasonable. We cannot say that its rulings were erroneous or constituted a clear abuse of discretion."(citations omitted)(emphasis in original)

As was true in the Cheney case, there has never been an election for the underlying bargaining unit in this case. In the present case, any delay in the conduct of the actual election is not attributable to NEPBA, as NEPBA filed its petitions within the prescribed time period. *The delay in the actual conduct of election proceedings in this case, if any, is attributable to the fact that there have been multiple petitions filed within a short time frame, all concerning bargaining units currently represented by the SEA, and which seek either a decertification election, or modification and a certification election.* Counsel for the SEA is familiar with these other pending matters by virtue of the representation he has provided to the SEA in those cases. The SEA has responded to these filings by submitting multiple objections and exceptions and by requesting the conduct of informal pre-hearing conferences and adjudicatory hearings on its exceptions and objections, all of which the SEA is entitled to do, but all of which slows the processing of pending matters. During this time period the PELRB has also received related unfair labor practice complaints as well as unrelated filings, all of which have to be processed as well. The reasoning of Cheney is as applicable to the present certification proceedings as it is to decertification proceedings – both types of proceedings are subject to the same filing and election window. The circumstances of this case justify these matters proceeding to election, even if the election takes place beyond the election window, for the reasons discussed." (emphasis added)

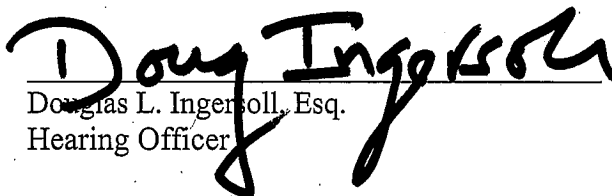
PELRB Decision No. 2006-174 at 8-9 (October 12, 2006). The instant case is one of the "multiple" petitions referenced in the NEPBA & Fish and Game decision. The instant case is eligible and qualified to proceed to election for the reasons articulated in the NEPBA & Fish and Game decision. As was true in Cheney and the PELRB Fish and Game matter, there was no election in connection with the issuance of the August 15, 2003 Office of Information Technology employees certification, and the same is true with respect to at least one, if not more, of the underlying units that were effectively consolidated to create the Office of Information Technology unit.

Accordingly, this matter shall proceed to pre-election conference and election, even though the election itself may take place after the close of the election window (on or about

October 18, 2006). The petitioner has satisfied the requirements of RSA 273-A and PELRB rules, including the requisite showing of a 30% interest under Pub 301.01 (f).

A pre-election conference shall be held on October 18, 2006 at 10:30 a.m. at the PELRB in Concord, New Hampshire and election on October 27, 2006 at a time and location to be established.

So Ordered.


Douglas L. Ingersoll, Esq.
Hearing Officer

Date Issued: October 16, 2006

Distribution:

Dane Prescott
John Krupski, Esq.
Richard C. Bailey, Jr.