

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of the
New Hampshire Office of Information Technology

Petitioner

v.

State of New Hampshire

Respondent

Case No. S-0411-1

Decision No. 2006-192

PRE-HEARING ORDER AND MEMORANDUM

BACKGROUND

In Case No. S-0411-1 the Petitioner filed an unfair labor practice complaint related to an August 12, 2003 modification petition which requested modification of the existing certification of the Department of Administration & Control Department of Centralized Data Processing ("CDP") to reflect the new Office of Information Technology. The Petitioner claims the CDP did not exist at the time the petition was filed, that the certification which issued states a "representation election" was held, and that Sara Willingham and the State misrepresented the facts that a representation election by a majority of the employees of OIT was conducted, that the modification petition was fraudulent, all constituting an unfair labor practice pursuant to RSA 273-A:5 (I)(b). The Petitioner states that the State notified OIT employees that they were subject to the Agency Fee provision contained in the SEA collective bargaining agreement on July 18, 2006 and July 28, 2006, that Petitioner filed the instant complaint within 6 months of this notification, and the statute of limitations should be tolled per Pub 201.02 (a).

The Petitioner requests the revocation of the SEA certification, a suspension of all collection of Fair Share fees from OIT employees, and a 12 month ban on certification elections.

The State filed an answer and motion to dismiss on October 2, 2006. The State denies that the modification petition was fraudulent or that the State or Sara Willingham misrepresented the facts surrounding the certification. The State contends that the modification reflected reorganization of State government in 1983 and when OIT was created, that a representation election was held before the creation of OIT, that although CDP did not exist when OIT was created, the bargaining subunits

did, and that since August 15, 2003 it has been common knowledge among OIT classified employees that they were either members of the SEA or eligible to join the SEA. The State claims the complaint should be dismissed as it relates to conduct that occurred in either 2003 or 2004 and should be dismissed pursuant to RSA 273-A:6, VII.

The undersigned hearing officer conducted an informal pre-hearing conference on October 4, 2006.

Representing Petitioner

Dane Prescott

Representing: State of New Hampshire

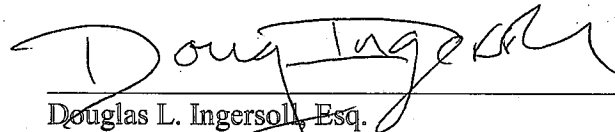
Michael K. Brown, Esq.

DECISION

At the pre-hearing conference the parties agreed that the PELRB should decide the motion to dismiss before proceeding with a hearing on the merits, currently scheduled for November 29, 2006. Accordingly, petitioner shall file any further pleadings, amendments or otherwise, on or before November 3, 2006. The SEA and the State shall file any further responsive pleadings on or before November 10, 2006. Any briefs shall be filed on or before November 14, 2006.

A hearing on the Motion to Dismiss shall be held on November 14, 2006 at 9:30 a.m. at the PELRB in Concord, New Hampshire.

So Ordered.



Douglas L. Ingersoll, Esq.
Hearing Officer

Date Issued: October 26, 2006

Distribution:

Dane Prescott
Michael K. Brown, Esq.