



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

---

New Hampshire Public Workers' Assoc.	*	
	*	
	*	
Petitioner	*	Case No: S-0436
	*	Decision No. 2007-118
SEA/SEIU Local 1984	*	
	*	
Respondent	*	
	*	

---

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The New Hampshire Public Workers' Association ("NHPWA") filed a petition for certification on June 27, 2007. The NHPWA seeks an election with three ballot choices: 1) No Representative; 2) SEA/SEIU Local 1984; and 3) NHPWA.

The SEA/SEIU Local 1984 ("SEA") is the incumbent exclusive representative. The SEA filed exceptions to the petition on July 13, 2007 and requested a pre-hearing conference as well as an adjudicatory hearing on its exceptions. Although provided with notice of the petition, to date the County has not filed an appearance or responsive pleadings.

The undersigned Hearing Officer conducted a pre-hearing conference on August 8, 2007 at the PELRB offices in Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the NHPWA:           J. Joseph McKittrick, Esq.

For the SEA:             John S. Krupski, Esq.

For the County:         Thomas J. Flygare, Esq.

The specifics of the SEA's exceptions as stated and described by the SEA at the pre-hearing are as follows:

- A. In paragraph 1 of its exceptions, the SEA claims the petition is barred by the contract bar rule pursuant to RSA 273-A:11 (b). At the pre-hearing the SEA initially stated that this issue would only be ripe for review in the event the SEA and the County reach agreement on a successor contract during the pendency of these proceedings at this agency. However, the SEA subsequently adopted the additional argument raised by the County at the pre-hearing conference, through attorney Flygare, that the contract bar rule applies to this petition even though the parties have not reached agreement on a successor contract in accordance with PELRB Decision No. 2006-160.
- B. In paragraph 2 of its exceptions, the SEA reiterates its contract bar argument, relies on the requirement that the NHPWA demonstrate the requisite 30% showing of interest, and contends that the petition fails to provide conspicuous notice that petitions to intervene shall be filed within 15 days of the filing of the original petition.
- C. In paragraphs 3 and 4 of its exceptions, the SEA reiterates its reliance on the requirement that the NHPWA demonstrate the requisite 30% showing of interest to be determined by the undersigned hearing officer's review of the interest cards.
- D. In paragraph 5 of its exceptions the SEA reiterates its contract bar argument.
- E. In paragraph 6 of its exceptions, the SEA contends that the petition is subject to the election bar pursuant to RSA 273-A:10. The SEA acknowledges that there has not been an election within the past 12 months. However, the SEA contends that an unsuccessful request for an election was made within the last 12 months in Case No. S-0386-14, PELRB Decision No. 2006-160 which should preclude the present request for an election.
- F. In paragraph 7 of its exceptions, the SEA is simply requesting process from this agency in terms of a pre-hearing conference and an adjudicatory hearing.
- G. In paragraph 8 of its exceptions, the SEA is reiterating its argument based upon the provisions of RSA 273-A:10. The SEA stipulated at the pre-hearing that the references in paragraph 8 of its exceptions to RSA 273-A:8, Pub 302.05, and Pub 302.02 shall be stricken, and that "NHPWA" shall be substituted for "NEPBA."

Also at the pre-hearing the County claimed that September 15, 2007 is the date by which any election must be held pursuant to RSA 273-A:11, I(b). There has not yet been a determination on the application of this statutory provision to this case, but the parties are now all aware of the County's position in this regard. At the pre-hearing the SEA declined to waive the September 15, 2007 deadline to any degree to the extent the deadline applies.

ISSUE PRESENTED FOR BOARD REVIEW

Whether the NHPWA is entitled to an election pursuant to their petition for certification?

WITNESSES AND EXHIBITS

At the pre-hearing conference the parties stipulated to the facts and exhibits necessary to address the NHPWA's petition and the SEA's exceptions.

Stipulated facts:

1. The existing collective bargaining agreement expired on June 30, 2006 and the SEA and the County have not reached agreement on a successor contract.
2. The SEA and the County commenced negotiations for a successor contract during the summer of 2005.
2. The SEA and the County have completed fact finding.
3. Wages are the only outstanding issue in the pending negotiations.

Stipulated exhibits:

1. Pleadings filed in this case.
2. Pleadings in PELRB Case No. S-0386-14.
3. March 26, 2007 Secretary of State Certificate re: NHPWA LLC.
4. Collective Bargaining Agreement expiring June 30, 2006.

DECISION

At the pre-hearing, the NHPWA demanded an immediate election, with a hearing on any objections to the petition to be conducted post election. As stated at the pre-hearing, the NHPWA is to file a formal request, if any, for an immediate election no later than August 9, 2007. As discussed at the pre-hearing, the deadline for a responsive pleading to any such filing will be set upon the PELRB's receipt of such a demand for an immediate election.

I have reviewed the interest cards which are in the form published by the PELRB and which establish the requisite 30% showing of interest. Accordingly, this issue is resolved in favor of the NHPWA.

As to the petition to intervene notice issue, all parties agreed at the pre-hearing that the purpose of a petition to intervene in this case would be to obtain placement on the ballot. The NHPWA argued at the pre-hearing that the SEA does not have standing to raise this issue. I do not address the standing issue. On or before August 10, 2007 the NHPWA shall file a simple one page amendment to its petition setting forth, in a conspicuous manner, that petitions to intervene must be filed within fifteen days of the date of the filing of the amendment. The County, as public employer, shall display copies of the amendment pursuant to Pub 301.01 (m).

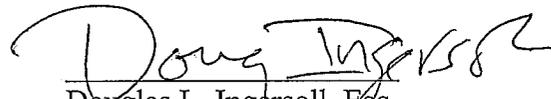
Although the need for an evidentiary hearing has been averted by the parties' fact stipulations, the SEA still requests that a hearing be held on August 20, 2007 (the currently scheduled hearing date) in order to present argument. The NHPWA objects to such a hearing. Subject to a ruling on any demand for immediate election which the NHPWA may file, a hearing will still be held on August 20, 2007 at 9:00 a.m. in order to provide the parties with the opportunity to present argument. The parties should submit copies of any authorities upon which they rely and/or submit any briefs they may wish to file on or before August 20, 2007.

#### LENGTH OF HEARING

The time set aside for the August 20, 2007 hearing will be 1 ½ hours. 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 three days prior to the date of the evidentiary hearing.

So ordered.

August 8, 2007.

  
Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

J. Joseph McKittrick, Esq.  
John S. Krupski, Esq.  
Thomas J. Flygare, Esq.