State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Classified Employee Petitioners of the New Hampshire Public Utilities Commission	*	
and	*	Case No. S-0419-1
State Employees' Association of NH, Inc., SEIU Local 1984	*	Decision 2007-174

SUPPLEMENTAL ORDER REGARDING STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC., SEIU LOCAL 1984'S OBJECTION TO CONDUCT OF PRE-ELECTION HEARING **AND** OBJECTION TO NOTICE OF PRE-ELECTION CONFERENCE

On November 9, 2007, the New Hampshire Supreme Court remanded this case to the PELRB "for a new election." The PELRB rules concerning the election process are set forth in Pub 303. Pub 303.01 states in part that "[w]hen an election sought under Pub 301.01 is in order, the board shall...issue an order for election." Pub 303.02 provides as follows:

> Pre-Election Conference
>
> (a) A representative of the board shall, as expeditiously as possible, conduct a pre-election conference at which the election date, eligibility period for voting by new employees, voting times, polling places and other election procedures not inconsistent with RSA 273-A or these rules shall be determined. Every effort shall be made to arrange voting procedures agreeable to all the parties to the election.

On November 16, 2007 the PELRB prepared but did not issue an Order of Election.[1] Also on November 16, 2007 PELRB staff inquired with all parties concerning their availability for a pre-election conference. On November 27, 2007 the PELRB issued the November 16, 2007 Order of Election, a November 27, 2007 Amended Order of Election, and a Notice of Pre-Election

[1] The Order of Election dated November 16, 2007 was issued on November 27, 2007 as was an Amended Order of Election, utilizing a new PELRB Order of Election form.

Conference setting the pre-election conference for 3:00 p.m. on December 5, 2007 at the Public Utilities Commission.

On November 28, 2007 the State Employees' Association of NH, Inc., SEIU Local 1984 ("SEA") filed an Objection to the Conduct of a Pre-Election Hearing. On November 29, 2007 the PELRB established December 4, 2007 as the deadline for any objection to the SEA's Objection to the Conduct of a Pre-Election Hearing. On November 30, 2007 the SEA filed an Objection to Notice of Pre-Election Conference. On November 30, 2007 the Classified Employee Petitioners of the New Hampshire Public Utilities Commission ("petitioners") filed their response to the SEA's objection to the conduct of a pre-election conference. Also on November 30, 2007 the SEA filed an Amendment to Objection to the Conduct of a Pre-Election Hearing. On December 4, 2007 the SEA's motions were denied and the pre-election conference was conducted as scheduled on December 5, 2007. This supplemental order is issued to state in greater detail the basis for the denials.

As a preliminary matter, it is important to note that December 5, 2007 pre-election activity involving the parties and a representative of the PELRB was a conference, and not a "hearing" as suggested by the heading in the caption of the SEA's November 28, 2007 objection. *See* Pub 303.02 (a).

The SEA complains that as of November 28, 2007 it had not received "the complete list of names and home addresses of employees in the bargaining unit and as a result the scheduling of a pre-election conference is premature" and also suggests that the Order of Election dated November 16, 2007 had been issued on November 16, 2007 to all parties but the SEA. However, as already recounted, the November 16, 2007 Order of Election did not issue until November 27, 2007 and so the SEA received the Order of Election on the same date as the other parties. As to the employee list, pursuant to Pub 303.01 (b), it is the employer's responsibility to forward the required list of employee names and home addresses to parties who shall appear on the ballot, which in this case is the SEA. The PUC submitted a filing with the PELRB on November 27, 2007 stating that it was providing the required employee list "to the PELRB, Ms.O'Marra, and to the State Employee's Association." The filings, including the petitioners' response submitted on November 28, 2007, indicate that on November 27, 2007 the PUC complied with its obligation to provide the employee list to the SEA, who is the party appearing on the ballot, even though a copy was not transmitted to counsel for the SEA until November 28, 2007. In any event, this chronology of events did not render the scheduling of the pre-election conference "premature" as asserted by the SEA.

In its November 28, 2007 objection the SEA also argues that the earliest possible date for an election on remand is 180 days prior to February 15, 2009, or on or about August 19, 2008. In effect, the SEA takes the position that at this juncture the petitioners are required to proceed as though they are filing a new petition for decertification, irrespective of the fact that the New Hampshire Supreme Court has remanded the case to the PELRB "for a new election."

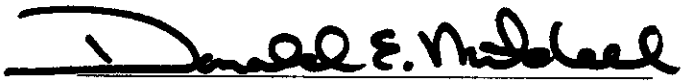
The SEA's argument is unpersuasive for a number of reasons. First, it requests that the PELRB proceed in a manner different from that explicitly ordered by the court in its remand order. Second, even assuming that the PELRB is required to engage in contract bar analysis as

though the November 9, 2007 remand order means the petitioners' case should be treated, in substance, as a brand new petition for decertification just filed with the PELRB, the SEA's argument lacks merit. This is because the SEA has not adduced sufficient evidence of a collective bargaining agreement covering the involved PUC employees. The SEA does not expressly assert in its pleadings that the involved PUC employees are covered by a current collective bargaining agreement. Instead, the SEA asserts that "there currently exists a valid Collective Bargaining Agreement between the State of New Hampshire and certain classified employees of the State of New Hampshire." The SEA includes a reference to the 2007-2009 Collective Bargaining Agreement on file with the PELRB. This CBA does not list the PUC in its preamble, in contrast to the preamble contained in the 2005-2007 CBA. See PELRB Record on Appeal, Supreme Court No. 2007-105 at 62-63 and Addendum One to this order, containing the preambles to the 2005-2007 and 2007-2009 CBAs. Accordingly, the SEA's contract bar analysis is misplaced.

The SEA also objected to the December 5, 2007 pre-election conference because "based upon information and belief, the NH Public Utilities Commission's offices do not have the capability to provide a transcript of the conference. [sic] The SEA intends to request a transcript of the pre-election conference and, therefore, requests that the Pre-Election Conference be held at the offices of the Public Employee Labor Relations Board where an official recording can be made. See, Pub 203.07." Pub 203.07 applies to hearings conducted under Pub 200, and not to pre-election conferences held under Pub 303.02. Pre-election conferences address matters such as "election date, eligibility period for voting by new employees, voting times, polling places and other election procedures not inconsistent with RSA 273-A or these rules..." Further, under this rule "[e]very effort shall be made to arrange voting procedures agreeable to all the parties to the election." After the election the SEA will have the opportunity to submit appropriate objections relating to the election and request a hearing under Pub 303.11.

So ordered.

Signed this 11th day of December, 2007.



Donald E. Mitchell, Esq.
Executive Director

ADDENDA ATTACHED
Distribution:
Sara Willingham, Manager of Employee Relations, State of NH
Thomas Getz, Commissioner, Public Utilities Commission
John S. Krupski, Esq.,
Jody O'Marra, Petitioner
Lynn Fabrizio, Petitioner

ADDENDUM ONE

Pet - 2

2005 - 2007
COLLECTIVE BARGAINING AGREEMENT

STATE EMPLOYEES' ASSOCIATION
of NEW HAMPSHIRE
Service Employees International Union
Local 1984
NHAFL-CIO

and

STATE OF NEW HAMPSHIRE

July 1, 2005

Preamble
COLLECTIVE BARGAINING AGREEMENT

This Agreement is made and entered into between the State Employees' Association of New Hampshire, Inc., SEIU, Local 1984, AFL-CIO, CLC hereinafter referred to as the "Association", and the _____,* State of New Hampshire, hereinafter referred to as the "Employer", collectively referred to hereinafter as the "Parties". It is the intent and purpose of the Parties to this Agreement to promote and improve the efficient administration of the _____,* State of New Hampshire and the well-being of the classified employees within the meaning of New Hampshire Revised Statutes Annotated 273-A, to establish a basic understanding relative to personnel policy, practices, and procedures and matters affecting conditions of employment with respect to which the Employer is empowered to negotiate, and to provide a means of amicable discussions and adjustment of matters of mutual interest. In consideration of the mutual covenants herein set forth, the Parties hereto intending to be bound hereby, agree as follows:

*Adjutant General, Dept. of
Administrative Services, Dept. of
Agriculture, Dept. of
Banking Department
Corrections, Dept. of
- State Prison for Men
- State Prison for Women
- Lakes Region Facility
- North Country Correctional Facility
- Secure Psychiatric Unit
- Field Services, Div. of

Cultural Resources, Dept. of
Education, Dept. of
Employment Security
Environmental Services, Dept. of
- Air Resources Division
- Water Division
- Waste Management Division
- Office of the Commissioner

Fish and Game, Dept. of
Health and Human Services, Dept. of

Glencliff Home for the Elderly
Juvenile Justice Services, Div. for
New Hampshire Hospital
Information Technology, Office of
Insurance Department
Labor Department
Liquor Commission
N.H. Community Technical College System
Pari-Mutuel Racing Commission
Public Utilities Commission
Resources & Economic Development, Dept. of
Revenue Administration, Dept. of
Safety, Dept. of
E-911
Emergency Management
Supervisory Unit
State Lottery Commission
Transportation, Dept. of
Treasury
Veterans Home

NOTE: Hereinafter, many individual sections of this Agreement open with a title presented in bold face type. These titles are not intended to be read as part of the negotiated language; they are intended only to improve the readability of the Agreement.

Article I
RECOGNITION and UNIT DESCRIPTION

1.1. **Recognition:** The Employer recognizes the Association which shall serve as exclusive representative of all classified employees in the bargaining unit with the exception of those classified employees excluded from the definition of public employee under the provisions of RSA 273-A:1, IX. The Association recognizes the responsibility of representing the interest of all employees in the unit without discrimination for the purpose as set forth in this Agreement.

1.2. **Other Agreements:** The Employer shall not enter into any agreements, regarding employment relations matters with any other organization or individual purporting to represent any group of employees in the bargaining unit, and shall not furnish any

ADDENDUM TWO

2007 - 2009

COLLECTIVE BARGAINING

AGREEMENT

STATE EMPLOYEES' ASSOCIATION

of NEW HAMPSHIRE

Service Employees International Union
Local 1984

and

STATE OF NEW HAMPSHIRE

July 1, 2007

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Employment Security
Environmental Services, Dept. of
- Air Resources Division
- Water Division
- Waste Management Division
- Office of the Commissioner

Fish and Game, Dept. of
Health and Human Services, Dept. of
- Glencliff Home for the Elderly
- Juvenile Justice Services, Div. for
- New Hampshire Hospital

Information Technology, Office of
Insurance Department
Labor Department
Liquor Commission
N.H. Community Technical College System
Pari-Mutuel Racing Commission