



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEPBA LOCAL 255/NH SUPERVISORY
CORRECTIONS OFFICERS, IUPA, AFL-CIO**

CASE NO. S-0438-1

and

**STATE OF NEW HAMPSHIRE,
DEPARTMENT OF CORRECTIONS**

**NEPBA LOCAL 250/NH CORRECTIONS
OFFICERS, IUPA, AFL-CIO**

CASE NO. S-0437-1

and

**STATE OF NEW HAMPSHIRE,
DEPARTMENT OF CORRECTIONS**

DECISION NO. 2009-046

PRE-HEARING ORDER AND MEMORANDUM

Date of Conference: February 23, 2009

Appearances: Peter Perroni, Esq., NEPBA Local 250 and 255
Glenn Milner, Esq., SEA/SEIU Local 1984
Michael Brown, Esq., State of NH, Dept. of Corrections

Background:

In PELRB Decision 2007-153 the PELRB determined that the unsigned 2007-2009 collective bargaining agreement between the State and certain Department of Corrections

employees ("2007-09 CBA") did not bar the NEPBA Local 250 and 255 election petitions filed on July 9, 2007. The PELRB did not find that collective bargaining agreements are unenforceable unless signed.¹ At election, a majority of the voting employees choose the NEPBA to serve as their exclusive representative. The SEA appealed, and the court reversed and remanded the case. At the conclusion of its decision the court references filing and election window time frames, and states "[t]hese are among the issues that the parties may address on remand." Prior to the February 23, 2009 pre-hearing conference the NEPBA Local 250 and 255 ("NEPBA") and the SEA filed memorandum outlining the issues to be addressed on remand.

At the pre-hearing both parties acknowledged that the filing and election window time periods have no application to this case since the NEPBA sought to file its election petitions during a time when there was no collective bargaining agreement that could serve as a bar under RSA 273-A:11(b). *See also* Pub 301.01. The parties are in agreement that the filing and election windows would only apply if the NEPBA had filed its election petitions in the final year of an existing contract. However, the parties otherwise disagree as to PELRB proceedings on remand. In its memorandum, the NEPBA has identified a number of issues it would like to address on remand, and at the pre-hearing the NEPBA reviewed the evidence it would submit in support of these issues. The SEA contends that no further proceedings are required, and the PELRB should issue an order establishing the SEA as the exclusive representatives of the involved correction department employees.

¹ PELRB Decision 2007-153 expressly cites with approval decisions from other jurisdictions, such as Maine, on this subject: "Nothing in this decision is meant to say that the common law contract standards cited by the SEA do not generally apply to public sector collective bargaining agreements, and the previously discussed authorities do not stand for this proposition. Other jurisdictions have recognized as much. For example, the Maine Labor Relations Board has enforced the executed contract requirement in contract bar cases but has also said that an unsigned or oral agreement may constitute a valid collective bargaining agreement in another context."

Based upon the parties' written submissions and the pre-hearing conference, the issues in the remanded case include:

1) Whether the election results should be upheld based upon the court's decision in *Appeal of State Employees' Association of New Hampshire*, 156 N.H. 507 (2007)(involving certain Fish and Game department employees);

2) Whether the PELRB should delay any action on account of pending contract negotiations and state budget issues;

3) Whether under RSA 506:2, the 2007-09 CBA was unenforceable unless signed;

4) Whether the PELRB is precluded from recognizing the SEA as the exclusive representative of the involved Department of Corrections employees in the absence of an election; and

5) Whether the PELRB should enter an order establishing the SEA as the exclusive representative of the involved Department of Corrections employees.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case.

2. A hearing will be held to address the issues in this case, at which time the parties shall be provided with the opportunity to submit evidence in support of their respective positions.

3. The parties shall prepare and file a statement of stipulated facts on or before March 31, 2009.

4. The parties shall file preliminary Witness and Exhibit lists on or before March 20, 2009 and their final Witness and Exhibit lists on or before March 31, 2009.

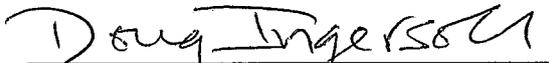
5. The parties shall pre-mark all exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **April 7, 2009 @ 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 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 10 days prior to the date of hearing.

So ordered.

March 9, 2009



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

Peter Perroni, Esq.

Glenn Milner, Esq.

Michael K. Brown, Esq.