

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE FEDERATION OF
TEACHERS FOR DOVER TEACHERS
UNION, AFT

v.

NATIONAL EDUCATION
ASSOCIATION/NEW HAMPSHIRE

CASE NOS. T-0305:14
T-0307:1
T-0373:6

NEW HAMPSHIRE FEDERATION OF
TEACHERS FOR FARMINGTON
TEACHERS ASSOCIATION, AFT

v.

NATIONAL EDUCATION
ASSOCIATION/NEW HAMPSHIRE

DECISION NO. 96-019

NEW HAMPSHIRE FEDERATION OF
TEACHERS FOR PROFILE
FEDERATION OF TEACHERS, AFT

v.

NATIONAL EDUCATION
ASSOCIATION/NEW HAMPSHIRE

APPEARANCES

Representing N.H. Federation of Teachers, AFT, AFL-CIO:

Emmanuel Krasner, Esq.

Representing NEA-New Hampshire:

James Allmendinger, Esq.

Also Appearing

Beverly M. Conway, Dover Teachers' Union
 Mary Jolles, Farmington Teachers Association
 Lynn Dicker, Farmington Teachers Association
 Theodore G. Wells, Jr., NEA-New Hampshire
 Patricia Arsenault, Profile, NEA-NH
 Edward Phanuef, New Hampshire Federation of Teachers

BACKGROUND

The New Hampshire Federation of Teachers, AFT, AFL-CIO, (Federation) in matters involving the Dover Teachers Union, the Farmington Teachers Association, and the Profile Federation of Teachers filed charges against the National Education Association/New Hampshire (Association) on December 12, 1995 in the form of a "Request for Order of the PELRB Directing Payment of Dues." The issue complained of first arose from disputes over local affiliations and payments of dues in 1988-89 between the Federation and the Association and was addressed in Hinsdale Federation of Teachers, Decision No. 89-03 [April 3, 1989 and subsequently in 133 N.H. 272 (1990)]. The Association filed a response on December 26, 1995 after which this matter was heard by the PELRB on February 15, 1996.

FINDINGS OF FACT

1. The disputes involving the various bargaining units complained about by the New Hampshire Federation of Teachers, AFT, AFL-CIO, in these proceedings involve dues payments at the time of and during the transition from one certified bargaining agent to another. On September 9, 1978, the Farmington Teachers Association, Local 3839, New Hampshire Federation of Teachers, AFT, AFL-CIO was certified as bargaining agent for Farmington teachers. (Case No. T-0307) That certification was changed to Farmington Teachers Association, NEA-New Hampshire on October 12, 1989. (Case No. T-0391) On October 18, 1979 the Dover Teachers Union, Local 3536, New Hampshire Federation of Teachers, AFT, AFL-CIO, was certified as bargaining agent for Dover teachers. (Case No. T-0316) That certification was changed to Dover Teachers Union, NEA-New Hampshire on October 11, 1989. (Case No. T-0392) On October 28, 1985, the Profile Federation of Teachers, Local 4401, AFT, AFL-CIO, was certified as bargaining agent for Profile teachers. (Case No. T-0373) That certification was

changed to Profile Federation of Teachers, NEA-New Hampshire on September 26, 1990. (Case No. T-0373:3.)

2. A similar issue was litigated between the Hinsdale Federation of Teachers, NEA-New Hampshire, the Hinsdale School Board and the New Hampshire Federation of Teachers (Case Nos. T-0386:1 and M-0603) in November of 1988 after the Association replaced the Federation as the certified bargaining agent for Hinsdale teachers. (PELRB Decision No. 89-03.) In that case, the PELRB established the date of its certification of a new bargaining agent to replace a former bargaining agent as the effective date when the new bargaining agent's rights and responsibilities attach, including its entitlement to dues. Specifically, it found, "the date in the change of dues payment will be the date found by the Board as the effective date of the change of affiliation, whether following an election, if required, or following internal local action effectively changing affiliation." This was later affirmed in Appeal of Hinsdale Federation of Teachers, NEA-New Hampshire, 133 NH 272 at 278 (1990).
3. After the changes in affiliation involving the Dover, Profile and Farmington teachers' bargaining units and after the Hinsdale decision, above, the Federation and the Association attempted, without success, to negotiate the apportionment of dues due and owing to each of their organizations as the result of the new certifications running to the NEA-New Hampshire affiliates. When these negotiations failed, the Federation then sought relief by filing a debt claim in Merrimack County Superior Court on March 19, 1992 against the Association, Docket No. 92-C-0281. In that action, the Federation sought \$43,496.37 from the Dover Teachers Union, \$2,260.13 from the Farmington Teachers Association and \$3,281.47 from the Profile Federation of Teachers. Because it found that the Federation must seek enforcement of any PELRB order by a petition for enforcement brought by the PELRB itself, the Superior Court dismissed the civil debt action on November 1, 1995 without prejudice. The Federation's request for relief was thereafter filed with the PELRB on December 12, 1995.

4. The circumstances of each of the three bargaining units involved in this case are similar, with respect to having changed from a Federation affiliation to an Association affiliation, but different in how that change transpired. In the case of Dover teachers, there had been several attempts at changing bargaining agents. According to the parties' stipulation in Case No. T-0305:3, later to be found in the form of Decision No. 89-53, bargaining unit employees voted on June 21, 1988 and again on September 13, 1988 to change their affiliation from the Federation to the Association. On September 28, 1988, the Dover Teachers attempted to implement this change in bargaining agents by giving notice and claiming compliance with Rule 301.05. The Federation filed an objection to that procedure/petition on October 7, 1988. After a review by the PELRB and its counsel, a hearing was set for the challenged petition whereupon the PELRB later issued Decision No. 89-53 on August 10, 1989. The issue of dues entitlement was raised in these proceedings, e.g., the Federation's Requests for Rulings of Law dated February 22, 1989 and filed April 3, 1989. In Decision No. 89-53, the PELRB held that actions which "materially change the representation" require an election to alter that representation. It also denied both the petition to change the affiliation by using Rule 301.05 procedures as well as the Federation's request for dues or "agency fee" until such time as an election shall have been conducted. Formal change of bargaining agent status to NEA-NH did not occur until October 11, 1989.
5. The Farmington teachers filed a Petition to Recognize a Change in Affiliation from the Federation to the Association on June 12, 1989 using the provisions of Rule 301.05. They amended their petition on July 2, 1989. The Federation filed an objection to the aforesaid petition on July 14, 1989, which cited the Hinsdale case (Decision No. 89-03, February 22, 1989) for the proposition that no change in affiliation, materially impacting the identity and workings of a certified bargaining agent, may be recognized until an election has resolved the identity of the entity properly to be certified as bargaining agent and also arguing that the incumbent bargaining agent was entitled to dues in the meantime. On September 5,

1989, the Association filed a Petition for Certification for approximately 83 employees of the teachers' bargaining unit. An election was then scheduled for 2:30 to 4:00 p.m. on October 12, 1989 which resulted in the Association's being certified by a vote of 55 to 1. Following the certification election of October 12, 1989, no complaint or request for enforcement of any obligation to pay dues to the Federation was filed by it with the PELRB within six (6) months of the date of the act complained of, i.e., the prior non-payment of dues to the Federation. RSA 273-A:6 VII.

6. On or about December 20, 1989, the Profile teachers informed the Federation that it would disaffiliate, if that was permissible, and enter into a service contract with NEA-New Hampshire for assistance in acting and performing the duties of the bargaining agent. On March 8, 1990, the Federation filed unfair labor practice (ULP) charges against the Profile Federation of Teachers and the Association claiming that it, the Federation, was the certified bargaining agent, that it had negotiated a new CBA from September 1, 1989 through August 30, 1992, that the Association had missed the window period in which to file for a representation election, and that the Association was estopped from pursuing a change in bargaining agent under Rule 301.05. The PELRB issued Decision No. 90-76 on August 22, 1990 saying that the Profile Federation of Teachers, Local 4401, AFT was the exclusive representative until a representation election should determine otherwise and ordering that such an election be held. That election was held September 26, 1990 with the Profile Federation of Teachers, NEA-New Hampshire being certified by a vote of 22 to 3. Thereafter, the Federation filed a Motion for Clarification of Decision No. 90-76. After conducting a hearing and reviewing evidence the PELRB ruled, *inter alia*, that "the Profile Federation of Teachers [NEA-New Hampshire] is obligated to pay its proportionate share of the dues to the AFT State and National affiliates up to the date of the election, September 26, 1990." (Decision No. 91-33, June 3, 1991.)


DECISION AND ORDER

After reviewing the claims pertaining to the three bargaining units in the context of these proceedings, we address them individually as follows:

- (1) We DISMISS the Federation's claim as it pertains to the Dover teachers' unit because the PELRB has already spoken to and denied relief with respect to dues claimed in Decision No. 89-53.
- (2) We DISMISS the Federation's claim as it pertains to the Farmington teachers' unit because it has neither filed nor pursued any claim for unpaid dues or for enforcement with this agency within six (6) months of the Association's being certified as bargaining agent.
- (3) We AFFIRM the Federation's claim as it pertains to the Profile teachers' bargaining unit and enforce the PELRB's directive in Decision No. 91-33 whereby the Profile teachers were to have paid their proportionate share of dues up to the date of that election held on September 26, 1990. Should the parties not be in agreement with the amount due the Federation under that order, the parties shall meet and negotiate thereon within thirty (30) days of the date hereof. If they have not agreed to the amount due upon the expiration of that thirty (30) day period, either party may petition the PELRB for further hearing between the 31st and 60th day from the date hereof.

So ordered.

Signed this 1st day of MAY, 1996.



JACK BUCKLEY
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members William Kidder and Richard Molan present and voting.