



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**State Employees' Association of New Hampshire, Inc.,  
SEIU Local 1984**

**and**

**County of Merrimack**

**and**

**National Correctional Employees Union, Inc.**

**Case No. G-0192-3  
Decision No. 2013-064**

**ORDER**

On April 1, 2013 the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA) filed a challenge petition for certification requesting a secret ballot election to resolve a question of representation of an existing Merrimack County Department of Corrections (County) bargaining unit currently represented by the National Correctional Employees Union (NCEU). See PELRB Decision No. 2012-144 (June 25, 2012). The petition is supported by the requisite number of confidential authorization cards. See PELRB Report re Confidential Inspection of Authorization Cards (April 12, 2013). Both the NCEU and the County object to the petition.

The NCEU requests dismissal of the petition on the ground that, because the NCEU was certified as an exclusive representative of the bargaining unit on June 25, 2012 (less than a year ago), the petition is allegedly barred by a "certification bar" under RSA 273-A:10, III. The NCEU also urges the PELRB "to infer a one (1) year certification bar in order to avoid unremitting petitioning at the hands of a minority faction."

RSA 273-A:10, III provides as follows:

The ballot shall contain a space permitting a vote against representation by any employee organization whatever; and no election shall be held within 12 months after an election in which a majority of those voting cast ballots *against representation by any employee organization.*

(Emphasis added.) The statutory language is clear and unambiguous and provides that a 12-month election bar applies only when employees vote “against representation by any employee organization,” i.e. when the majority of voting employees select the choice of “No Representative” on election ballot.

During the previous election to resolve a question of representation of the subject bargaining unit, conducted on June 11, 2012, the majority of employees voted for the NCEU and not for “No Representative.” See PELRB Decisions Nos. 2012-143 and 2012-144. Therefore, the election bar in RSA 273-A:10, III does not apply. Further, neither the petition nor the election are barred by the RSA 273-A:11 (b) “contract bar”<sup>1</sup> because, currently, there is no collective bargaining agreement between the NCEU and the County.<sup>2</sup> See *National Correctional Employees Union, Inc. and County of Merrimack and State Employees’ Association of New Hampshire, Inc., SEIU Local 1984*, PELRB Decision 2012-100. Accordingly, the NCEU’s objection is overruled and its request to dismiss the petition is denied.

The County objects to the composition of the existing, and duly certified, bargaining unit. These objections/exceptions might be relevant if this petition proposed the creation of a new bargaining unit or requested the modification of an existing bargaining unit. This petition does not request either the creation of a new unit or the modification of an existing unit. Instead, it is a

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<sup>1</sup> RSA 273 A:11 (b) provides that an incumbent exclusive representative is entitled to:

The right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire.

<sup>2</sup> The latest CBA expired on December 31, 2012. See PELRB Decision 2012-100.

challenge petition requesting a secret ballot election to resolve a question of representation of an *existing* bargaining unit. Challenge election petitions do not involve or require the determination of the appropriateness of an existing unit's composition. See *National Correctional Employees Union, Inc. and County of Merrimack and State Employees' Association of New Hampshire, Inc., SEIU Local 1984*, PELRB Decision 2012-100. See also *National Correctional Employees Union, Inc. and County of Merrimack and State Employees' Association of New Hampshire, Inc., SEIU Local 1984*, PELRB Decision No. 2010-208; *New England Police Benevolent Association and Town of North Hampton and Teamsters Local 633 of New Hampshire*, PELRB Decision No. 2011-007. Accordingly, the County's objections/exceptions based on the composition of the existing bargaining unit are not relevant and are overruled.

Based on the foregoing and on the parties' submissions in the case, there are no issues of material and relevant fact in dispute that would require an adjudicatory hearing. See Pub 201.06 (a). The filings and the applicable law require the PELRB to proceed with the conduct of a secret ballot election to resolve a question of representation of the existing bargaining unit. Accordingly, an Order for Election shall issue forthwith and a pre-election conference shall be scheduled in accordance with Pub 303.02.

So ordered.

May 2, 2013

  
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