



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Newfound Teachers' Union, AFT #6557, AFT-NH, AFL-CIO
and
Newfound Area School Board
and
Newfound Area Teachers' Association Affiliated with NEA-NH

Case No. E-0179-1
Decision No. 2015-116

I. Background:

On May 8, 2015 the Newfound Teachers' Union, AFT #6557, AFT-NH, AFL-CIO (AFT) filed a challenge election petition for a bargaining unit¹ consisting of the following Newfound Area School District employees:

Unit: All professional employees, including but not limited to teachers, guidance counselors, and nurses.

Excluded: Superintendent, assistant superintendent, principals, assistant principals, full-time administrators, teaching principals, guidance directors, athletic director, school-to-career coordinator, secretaries, paraprofessionals, custodians, kitchen staff, student services administrator and SAU #4 employees.

The unit is currently represented by the Newfound Area Teachers Association, Affiliated with NEA-NH (NEA). The AFT requests a secret ballot election to resolve a question of unit representation. The petition is supported by the requisite number of confidential petition authorization cards as required by RSA 273-A:10, I (a); A:10, II; and N.H. Admin. Rule, Pub 301.01 (f), (h), (i), and (k). See PELRB Report re Confidential Inspection of Authorization Cards (May 13, 2015).

¹ See PELRB Decision No. 2015-115 (June 5, 2015)(Order on AFT modification petition).

The PELRB issued a Notice of Filing to the NEA, the School Board Chair, and the District Superintendent, and provided them with a copy of the petition and informed them of the deadline for filing a response to the petition. The NEA filed an objection to the petition and a request for dismissal, arguing that the petition is barred by the provisions of RSA 273-A:11 (b) and pursuant to *Appeal of State Employee's Ass'n of NH, Inc., SEIU 1984*, 158 N.H. 258 (2009). Neither the School Board nor the School District has filed any objections to the petition, but the Superintendent did file the requisite Employee List in a timely manner.

The pleadings reflect that the unit was previously covered by a collective bargaining agreement for the 2013 to 2014 time period (2013-14 CBA).² However, in March of 2014 voters rejected a successor contract. By March of 2015 the NEA had negotiated and finalized a successor contract, with all requisite approvals, covering the 2015-16 and 2016-17 school years (2015-17 CBA).³

II. Discussion:

The PELRB's authority to conduct elections involving a challenge to an incumbent exclusive representative (the NEA in this case) is set forth in RSA 273-A:10, VI (c), N.H. Admin. Rule, Pub 301.01 and 301.03. There are limitations on when such petitions can be filed as provided in RSA 273-A:11, I (b) and N.H. Admin. Rule, Pub 301.01 (a). Under RSA 273-A:11, I (b) the NEA, as the 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.

(Emphasis added).

N.H. Admin. Rule, Pub 301.01 (a) provides, in part, that:

² The 2013-14 CBA is on file with the PELRB per RSA 273-A:16, I. The stated duration of the CBA is July 1, 2013 to June 30, 2014.

³ The 2015-17 CBA is also on file with the PELRB, and the stated duration of this CBA is July 1, 2015 to June 30, 2017.

A petition for certification as the exclusive representative of a bargaining unit for which a collective bargaining agreement constituting a bar to election under RSA 273-A:11, I (b) presently exists shall be filed no more than 240 days and no less than 180 days prior to the budget submission date of the affected public employer in the year that agreement expires, notwithstanding any provisions in the agreement for extension or renewal.

(Emphasis added).

Since the expiration of the 2013-14 CBA the terms and conditions of employment for unit employees have been determined under the status quo doctrine. See *Appeal of Strafford County Sheriff's Office & a.*, 167 N.H. 115, 117 (2014). The RSA 273-A:11, I (b) bar to election petitions does not apply in this case because the AFT did not file the petition during the term of the 2015-17 (CBA)(the term of this CBA begins July 1, 2015). Additionally, the NEA's reliance on *Appeal of State Employee's Ass'n of NH, Inc., SEIU 1984*, 158 N.H. 258 (2009) is misplaced. In that case the court determined that the New England Police Benevolent Association's (NEPBA) election petition, submitted to the PELRB on July 9, 2007, was filed during the term of a collective bargaining agreement which began July 1, 2007. In this case the AFT filed its petition before the term of the 2015-17 CBA. Finally, given our conclusions about the application of RSA 273-A:11, I (b) to this case we cannot find that "a collective bargaining agreement constituting a bar to election under RSA 273-A:11, I (b) presently exists" under N.H. Admin. Rule, Pub 301.01 (a).

III. Conclusion:

Accordingly, the NEA's objections to the AFT petition are overruled and its request for dismissal is denied. Consistent with the foregoing discussion, and based upon the parties' submissions in this case, there are no issues of material and relevant fact in dispute which require a hearing. See N.H. Admin. Rule, 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. An Order for Election shall issue forthwith and a pre-election conference shall be scheduled in accordance with N.H. Admin. Rule, Pub 303.02.

So ordered.

Date: June 5, 2015

/s/ Michele E. Kenney

Michele E. Kenney, Esq., Chair

By unanimous vote of Chair Michele E. Kenney, Esq., Board Member Carol M. Granfield, and Board Member Senator Mark Hounsell.

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