



State of New Hampshire
Public Employee Labor Relations Board

New Hampshire Higher Education Union

and

Community College System of New Hampshire

and

State Employees' Association of New Hampshire, SEIU Local 1984

Case No. E-0165-2

Decision No. 2016-252

Order

On October 11, 2016, the New Hampshire Higher Education Union (NHHEU) filed a challenge petition requesting an election to determine the exclusive representative of the existing bargaining unit comprised of certain employees of the Community College System of New Hampshire (CCSNH) currently represented by the State Employees' Association of New Hampshire, SEIU Local 1984 (SEA). See PELRB Decision No. 2014-258 (November 20, 2014). The petition is supported by the requisite number of authorization cards. See PELRB Report Re: Confidential Inspection of Authorization Cards (October 17, 2016).

Per PELRB Decision No. 2014-258, the subject bargaining unit contains the following CCSNH positions:

Unit: Community College Instructor, Community College Assistant Professor, Community College Associate Professor, and Community College Professor.

Excluded: All positions listed in the Certification of Representative and Order to Negotiate, PELRB Decision No. 2011-074; all positions listed in the Certification of Representative and Order to Negotiate, PELRB Decision No. 2010-210; and supervisory and other positions excluded as a matter of law.

The SEA objects to the election petition on the ground that the petition and a representation election are barred by the “contract bar” under RSA 273-A:10 and RSA 273-A:11.¹ The SEA argues that “[i]n light of the duration clause, the Parties’ CBA remains in effect thus RSA 273-A:10 and RSA 273-A:11 bars [sic] the petition filed by NHHEU.”² For the following reasons, the SEA’s objection is insufficient to require dismissal of the election petition or prevent the conduct of a secret ballot election to resolve a question of representation.

The PELRB’s authority to conduct elections involving a challenge to an incumbent exclusive representative is set forth in RSA 273-A:10, VI (c). See also Pub 301.01. The timeliness of the challenge petition for representation election is determined under the standards set forth in RSA 273-A:11 (b) and Pub 301.01 (a) and (b). RSA 273 A:11 (b) provides that an incumbent exclusive representative is entitled to “[t]he 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.

See *id.* Further, Pub 301.01 (a) provides in relevant part that:

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).

The PELRB has consistently held that, for the purposes of RSA 273-A:11 (b) “contract

¹The CCSNH has not objected to the petition.

²The most recent collective bargaining agreement (CBA) between the CCSNH and the SEA, on file with the PELRB per RSA 273-A:16, contains the following duration/extension clause:

40.1 This agreement as executed by the Parties shall continue in full force and effect from [the date of signing] until midnight June 30, 2015, or until such time as a new Agreement is executed.

bar” application, a contract expires on stated expiration date and the existence of an extension clause does not mean that the PELRB cannot, as argued by the SEA, conduct a secret ballot election to resolve a question of representation of the existing bargaining unit. See *National Correctional Employees Union, Inc. and County of Merrimack and State Employees’ Association of New Hampshire, Inc., SEIU Local 1984*, PELRB Decision No. 2012-100. See also *NEPBA, Inc., Local 270 et al and State of New Hampshire, Department of Corrections and State Employees Association of NH, Inc., SEIU Local 1984*, PELRB Decision No. 2009-216; *National Correctional Employees Union and County of Merrimack and State Employees Association of New Hampshire, Inc. SEIU Local 1984*, PELRB Decision No. 2010-208; *Maintenance and Custodial Employees of Concord School District v. American Federation of State, County and Municipal Employees, Local 1580*, PELRB Decision No. 84-82; and *Supervisory Bargaining Unit, Local 856, IAFF and Local 856, IAFF*, PELRB Decision No. 84-21.

In *NEPBA, Inc., Local 270*, the case involving a challenge to the exclusive representative of an existing bargaining unit, the PELRB concluded that the incumbent exclusive representative was “not entitled to raise and rely upon the continuation language to defer the most recent collective bargaining agreement’s expiration date and thereby delay or prevent the conduct of elections ...” PELRB Decision No. 2009-216. The Board explained:

The right to maintain such challenges is statutory, see RSA 273-A:10, VI (c), and an incumbent exclusive representative’s right to avoid such challenges is limited per RSA 273-A:11, (b). The language and purpose of Pub 301.01 in particular, as well as this board’s prior decision in *Maintenance and Custodial Employees of Concord School District*, establish that the right of public employees to obtain representation elections to challenge an incumbent exclusive representative ... cannot be abridged or otherwise diminished through the use of contractual devices like the continuation language contained in the SEA and the State’s most recent collective bargaining agreement. Using such continuation language to identify the collective bargaining agreement’s expiration date means that an expiration date as of the time these petitions were filed cannot be determined. The expiration date will not be known until the execution of a successor contract, an anticipated but still a future event.

Id. In addition, as most CBAs contain an extension/continuation language, to allow such language to serve as a bar to an election would deprive public employees and employee organizations of their statutory rights to decertify and challenge the certified exclusive representative, respectively. Based on these authorities, the SEA is not entitled to rely on the extension clause to defeat NHHEU's challenge election petition.

In this case, the most recent CBA expired on June 30, 2015, and the challenge election petition was filed on October 11, 2016, more than a year after the expiration of the CBA. Therefore, the RSA 273-A:11 (b) "contract bar" does not apply to this case, and the SEA's objection based on RSA 273-A:10 and RSA 273 A:11 is 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 require a hearing. See Pub 201.06 (a). The filings and the applicable law require that the PELRB proceed with the conduct of a secret ballot election to resolve a question of representation of the existing bargaining unit. Therefore, the NHHEU's request for a secret ballot election is granted.

Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the existing bargaining unit, if any. "State Employees' Association of New Hampshire, SEIU Local 1984", "New Hampshire Higher Education Union", and "No Representative" will appear as choices on the ballot. An Order for Election shall issue and a pre-election conference shall be conducted in accordance with Pub 303.02.

So ordered.

Date: 10/28/2016


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