



**STATE OF NEW HAMPSHIRE**  
Public Employee Labor Relations Board

**National Correctional Employees Union**

and

**Hillsborough County Department of Corrections**

and

**AFSCME Local 3657, Hillsborough County  
Department of Corrections Employees**

**Case No. G-0018-6  
Decision No. 2016-299**

Order

On October 25, 2016, the National Correctional Employees Union (NCEU) filed a challenge petition for certification requesting a secret ballot election to resolve a question of representation of the following existing Hillsborough County Department of Corrections (HCDC) "rank-and-file" bargaining unit currently represented by the AFSCME Local 3657 (AFSCME):

**Unit:** All full time employees and regular permanent part time employees in the following classifications: Account Clerk I, Clerk Typist I, Secretary I, Correctional Officer I, Cook I, Nurse I, Maintenance Worker I, Switchboard Operator/Receptionist.

See PELRB Decision 2004-177 (November 15, 2004). The petition was supported by the requisite number of confidential petition authorization cards. See PELRB Report re Confidential Inspection of Authorization Cards (November 10, 2016).

The NCEU also previously (October 5, 2016) filed a separate challenge petition for certification seeking to represent the following employees of the HCDC (Case No. G-0014-1):

**Unit:** Lieutenants, Corrections Training Assistant, Maintenance Supervisor, Work Release Supervisor, Education Director, Records Supervisor, E.I.P. Supervisor, Classification/Corrections Officer, Project Supervisor, Housekeeping Assistant, Correctional Officer II (Sgts), Food Service Supervisor, Housekeeping Supervisor, Account Clerks II, Nurse II, Cook II, Maintenance II, Secretary II, Teacher, and Mental Health Clinician.

See PELRB Decision 2016-250 (October 26, 2016) (granting NCEU's request for secret ballot election). The NCEU was successful in its challenge in Case No. G-0014-1 and, pursuant to RSA 273-A and the results of the December 5, 2016 secret ballot election, was certified as the exclusive representative of this bargaining unit on December 13, 2016. See PELRB Decision No. 2016-292.

On November 9, 2016, the HCDC filed a timely objection to the NCEU's petition to represent the "rank-and-file" bargaining unit. In its objection, the HCDC asserts that the NCEU "proposes representing both the supervisor's and subordinates bargaining units simultaneously" and that simultaneous representation of supervisory employees' unit and the subordinate employees' unit violates RSA 273-A:8, II and "contains inherent conflicts that would interfere with Hillsborough County's ability to effectively direct the workforce and maintain public control over governmental functions."

On December 9, 2016, after the NCEU was certified by the PELRB as the exclusive representative of the bargaining unit containing, among others, HCDC Lieutenants and Supervisors (see Case No. G-0014-1), the HCDC and the AFSCME filed a Joint Motion to Dismiss Challenge Petition in this case (Case No. G-0018-6). In this motion, the HCDC and the AFSCME argue that, because the NCEU now represents the "supervisory" employee unit, it is precluded from representing the "subordinate" or rank-and-file employee unit under RSA 293-A:8, II and *Appeal of Manchester Board of School Committee*, 129 N.H. 151 (1987) and that, therefore, the NCEU's petition in this case is moot and should be dismissed. The movants also

argue that, because “the law is clearly established,” the hearing on objection/motion to dismiss is not necessary and that the case should be decided on pleadings.

On December 8, 2016, the NCEU filed an opposition to the HCDC’s November 9, 2016 objection. In its filing, the NCEU requests, among other things, that “the hearing scheduled for December 12, 2016 be waived as there are no material facts in dispute.”

Following the filing of the motion to dismiss, the adjudicatory hearing scheduled for December 12, 2016 was continued to allow the NCEU time to respond to the motion to dismiss. See PELRB Decision No. 2016-287. On December 15, 2016, the NCEU filed an opposition to HCDC’s objection and the motion to dismiss, in which it argues that the nature of the HCDC’s objection “is not relevant nor applicable because the NCEU has not and does not seek merger of the two bargaining units.” The NCEU also argues that the motion to dismiss should be rejected because in the motion the HCDC “raises, for the first time, its exception to the petition based upon the potential that the NCEU may represent both supervisors and rank and file corrections officer”; that this motion to dismiss is a “disguised exception”; and that it was untimely as it was not filed within 15 days after the filing of the petition as required under Pub 301.01 (p). The NCEU does not dispute the HCDC’s and AFSCME’s claim that this case involves a bargaining unit of rank-and-file or “subordinate” employees who are supervised by the bargaining unit employees currently represented by the NCEU. Neither does it dispute the HCDC’s and AFSCME’s assertion that, under the New Hampshire law, the same employee organization is precluded from representing both bargaining units simultaneously: a supervisors’ bargaining unit and a bargaining unit consisting of employees they supervise.

Based upon requests from all the parties to this case and pleadings submitted, I find that the hearing is not necessary and grant the parties’ request to decide this case on pleadings. See Pub 203.05.

Pub 301.01 provides in relevant part that exceptions to a petition for certification and petition to intervene “shall be filed within 15 days of the date the original petition is filed” and exceptions “shall set out a clear and concise explanation of any factual or legal reasons why the board should not entertain the petition.” Motions to dismiss, however, are governed by Administrative Rule Pub 203.04, which does not set forth a filing deadline for motions. Motions to dismiss can, therefore, be filed at any time while a case remains open. In this case, the HCDC filed an objection/exception to the NCEU’s petition on November 9, 2016, i.e., within 15 days of the date the NCEU’s petition was filed (October 25, 2016); and the objection/exception is, therefore, timely. Further, the substance of the HCDC’s objection is substantially similar to the substance of the December 9, 2016 motion to dismiss. In both filings, the HCDC argues that under the New Hampshire law, the NCEU is precluded from representing both supervisory bargaining unit and rank-and-file bargaining unit. I find the NCEU’s claim that the November 9 objection was based on alleged merger of bargaining units and, therefore “not relevant nor applicable” without merit. I also disagree with the NCEU that the December 9, 2016 motion to dismiss was a “disguised exception” that was somehow different in substance from the original objection. For the forgoing reasons, I find that both the November 9, 2015 objection/exception and the motion to dismiss were timely and substantially similar and deny the NCEU’s request to reject them as inapplicable or untimely.

Substantively, the basis for both the objection and the motion to dismiss is that, under the New Hampshire law, specifically, RSA 273-A:8, II and *Appeal of Manchester Board of School Committee*, 129 N.H. 151 (1987), the NCEU is precluded from representing the HCDC rank-and-file bargaining unit because it already represents the HCDC supervisory bargaining unit. RSA 273-A:8, II provides in part that “[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees

they supervise.” The New Hampshire Supreme Court in *Appeal of Manchester Board of School Committee*, supra, 129 N.H. 151, interpreted this statute to mean that “supervisory personnel may not retain the same exclusive representative as the rank-and-file employees they supervise.” Id. at 153.

In this case, the NCEU does not dispute that it is the exclusive representative for the HCDC supervisory personnel or that the employees it represents are “supervisory” within the meaning of RSA 273-A:8, II. On the contrary, the NCEU asserts that “there are no material facts in dispute” in this case, thereby agreeing with the HCDC’s characterization of subject bargaining units as “supervisory” and “subordinate”/rank-and-file. Furthermore, the NCEU in its oppositions to the objection and motion to dismiss does not address or dispute the HCDC’s and the AFSCME’s arguments based on RSA 273-A:8, II and *Appeal of Manchester Board of School Committee*.

Based on the foregoing, the HCDC’s and the AFSCME’s motion to dismiss is granted and the NCEU’s challenge petition for certification is dismissed. The request to award costs and fees is denied.

So ordered.

Date: 12/23/2016

  
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