



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

National Correctional Employees Union

and

Merrimack County Department of Corrections

and

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

Case No. G-0192-9
Decision No. 2017-081

Order

On April 13, 2017, the National Correctional Employees Union (NCEU) filed a challenge petition for certification requesting an election under RSA 273-A:10 to resolve a question of representation of the following Merrimack County Department of Corrections (County) bargaining unit:

Unit: Corrections Officer, Medical Services Coordinator, Corrections Nurse, Maintenance Engineer, Maintenance Worker II, Training Officer, and Group II Case Manager.

Excluded: Charge Nurse, Administrator, Director of Operations, Director of Safety and Security, Director of Inmate Work Program, Director of Rehabilitation, Secretary, Administrative Secretary, Lieutenants, Sergeants, and Corporals.

See PELRB Decision 2017-004 (January 12, 2017). This bargaining unit is currently represented by the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA). *Id.* The petition is supported by the requisite number of confidential petition authorization cards as required under RSA 273-A:10, I (a); A:10, II; and Pub 301.01 (f), (h), (i), and (k). See PELRB Report re Confidential Inspection of Authorization Cards (April 21, 2017).

The SEA moves to intervene and objects to the certification petition under RSA 273-A:11, I (b). The SEA argues that the certification petition is untimely and barred by the contract bar rule and that the SEA has the right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement (CBA). The SEA asserts 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 the petition filed by NCEU.”

The County filed a “limited objection” stating that it has no objection to the challenge petition or to election as long as, in case the NCEU prevails in the election, “the supervisory employee bargaining unit and the correctional officer bargaining unit are administered as functionally separate units, with no interchange or overlap of union officers, stewards, or bargaining teams.”

Based upon the parties’ filings in this case, there are no issues of material and relevant fact in dispute that require an adjudicatory hearing. See N.H. Admin. Rules, Pub 201.06 (a).

The SEA’s claim that the petition is barred or untimely is not persuasive for the following reasons. 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). 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.

Further, Pub 301.01 (a) provides in relevant part:

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 most recent CBA, on file with the PELRB pursuant to RSA 273-A:16, I, provides on the first page that the effective dates of the agreement are January 1, 2013 through December 31, 2015. Article 25.1 of the CBA states that it "shall remain in full force and effect ending at 11:59 p.m. on December 31, 2015, or until it is replaced by a successor agreement, whichever is later." The NCEU petition in this case was filed on April 13, 2017, more than a year after the stated expiration date of December 31, 2015. An "extension clause" in a CBA, like the "until it is replaced by a successor agreement" language in this case, is insufficient to create a bar to the NCEU petition under RSA 273-A:11, I (b). It is also insufficient to trigger the Pub 301.01 (a) requirement that petitions filed during the term of a contract "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." In *NEPBA, Inc., Local 270 et al and State of New Hampshire, Department of Corrections and State Employees Association of NH, Inc., SEIU Local 1984*¹, the PELRB rejected the SEA's attempt to use contract extension language to set up a bar to the NEPBA modification and certification petitions. In that case the petitions were filed on July 1, 2009, the day after the stated term of the contract. The PELRB ruled that the SEA, as 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 . . ." 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

¹ PELRB Decision No. 2009-216, appeal withdrawn, Supreme Court Case No. 2010-100.

determined. The expiration date will not be known until the execution of a successor contract, an anticipated but still a future event.

PELRB Decision No. 2009-216. The PELRB has issued similar orders in prior cases involving the NCEU and the SEA. See *State Employees' Association of New Hampshire, Inc., SEIU Local 1984 and Merrimack County Department of Corrections and National Correctional Employees Union, Inc.*, PELRB Decision No. 2016-265 (November 9, 2016); *National Correctional Employees Union and County of Merrimack and State Employees Association of New Hampshire, Inc. SEIU Local 1984*, PELRB Decision No. 2012-100 (May 11, 2012); and *National Correctional Employees Union and County of Merrimack and State Employees Association of New Hampshire, Inc. SEIU Local 1984*, PELRB Decision No. 2010-208 (November 17, 2010). Therefore, for the purposes of these proceedings, the petition was filed after the term of the contract and is, therefore, not barred by RSA 273-A:11, I (b), RSA 273-A:10 or Pub 301.01 (a).

I also find that the County's limited objection is insufficient to prevent this case from proceeding to election. Accordingly, the NCEU's request for an election to resolve a question of representation and to determine the exclusive representative of the existing bargaining unit, if any, is granted. The ballot shall contain the following three choices: "National Correctional Employees Union," "State Employees' Association of New Hampshire, Inc., SEIU Local 1984," and "No Representative." An Order for Election shall issue and a pre-election conference shall be conducted in accordance with Pub 303.02.

So ordered.

Date: 5/4/2017


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