



State of New Hampshire
Public Employee Labor Relations Board

Group of Officers
and
Grafton County Department of Corrections
and
National Correctional Employees Union

Case No. G-0223-4
Decision No. 2017-144

Appearances:

Andre Provencal, Corrections Officer, Grafton County Department of Corrections, for the Group of Officers

Paul Brunetti, Esq., and John Richardson, Esq., Moncure & Barnicle, Brunswick, Maine, for the National Correctional Employees Union

Background:

On June 28, 2017, certain employees of the Grafton County Department of Corrections (County) filed a decertification petition seeking a secret ballot election to determine whether the National Correctional Employees Union (NCEU or Union) will continue as the certified exclusive representative of a Department of Corrections bargaining unit. See PELRB Decision No. 2016-243 (October 18, 2016). The Union objected to the petition and requested dismissal on the ground that the current collective bargaining agreement (CBA) constitutes a bar to the decertification petition under RSA 273-A:11 (b) and N.H. Admin. Rules Pub 301.01 (a) and (b).

The adjudicatory hearing was conducted on August 1, 2017 at the Public Employee Labor Relations Board (PELRB) offices in Concord. Prior to the hearing, the County informed the PELRB that it did not take a position in this matter and did not wish to actively participate or

be present at the hearing. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The decision is as follows.

Findings of Fact

1. The County is a public employer within the meaning of RSA 273-A:I, X.
2. Pursuant to the results of a prior election, the NCEU was certified as the exclusive representative for County full time corrections officers on October 18, 2016. See PELRB Decision No. 2016-243. The bargaining unit currently contains 24 non-probationary employees.
3. The NCEU and the County commenced contract negotiations in April of 2017.
4. Bryant Williams is the President of the NCEU Local 126 and a member of the Union's negotiating team.
5. On June 17, 2017, Mr. Williams sent a draft of the CBA with the following email message to the bargaining unit members:

Please review and talk with the other members. I will be looking to set up an informational and ratification meeting for Wednesday, June 21, 2017 from 2:30 pm – 4:30 pm. They want us to vote on it so that we can have it in place for the new budget.

Petitioners Exhibit 2.

6. On June 21, 2017, at 11:20 a.m., Mr. Williams sent the following email message to the bargaining unit members:

So the Union meeting and vote is going to be pushed back until Monday. Bill [Doyle, the NCEU Business Representative] went back to Julie [Libby, the County Administrator] and told her that the Vote would not pass because of the ET [earned time] times [sic]. He asked to have the current ET and Sick time policy to be put back into place. She said that she would get back to him and let him know, which is why we are pushing everything back.

See Petitioners Exhibit 2.

7. On June 22, 2017, Mr. Williams sent the following message to the bargaining unit members:

We are set for Monday 6/26 from 4 pm to 6 pm for informational meeting ratification vote. *If you can't make it let me know and I can absentee ballots [sic].* And we changed the language in the contract regarding the earn time so it reflexes [sic] what we are getting now.

Petitioners Exhibit 2 (emphasis added).

8. On June 25, 2017, Andre Provencal, a bargaining unit member, sent Mr. Williams a request for an absentee ballot. Petitioners Exhibit 2. Several other unit members requested absentee ballots. No absentee ballots were provided by the Union.

9. The Union's informational meeting and ratification vote took place on Monday, June 26, 2017, between 4 and 6 p.m. Out of 24 bargaining unit members only four, including the Union President and Union Steward, were present. At the end of the June 26, 2017 meeting, the four members present voted 4 to 0 to ratify the contract.

10. On June 27, 2017, Mr. Williams sent the following message to the bargaining unit members:

So the Union contract passed 4-0. Bill are [sic] Union rep did not send me absentee ballots to hand out, because we don't have by laws established yeah [sic], which he told me on Monday morning [June 26, 2017]. Without having proper procedures written down people could question the procedure. With that being said I will be getting a copy of by laws so the officers and [sic] sit down and get them drafted. Once we have what we think are acceptable by laws the Union members will vote on them to pass them or not. I have paperwork that everyone needs to fill out as to if you want to be apart [sic] of the Union and have a say in the vote dues [sic] are around 11 bucks a weeks [sic] and those that don't want to join it's around 8 bucks a week. If you don't want to join then you don't get to vote for the Union Officers and by laws. *The only thing you would get to vote for is the contract because it directly effects [sic] you.* If you want more information call me and I will answer all your questions to the best of my abilities ...

See Petitioners Exhibit 2 (emphasis added).

11. At the County Commissioners' meeting on June 27, 2017, County Administrator Libby informed the County Commissioners that the Union ratified the CBA the night before.

After discussion, the Commissioners voted unanimously to approve the CBA. See NCEU Exhibit 4.

12. A group of bargaining unit employees filed this petition for decertification on June 28, 2017.

13. The County Commissioners signed the 2017-2020 CBA on July 11, 2017. Union President Williams signed the CBA on July 17, 2017 and NCEU Business Representative William Doyle signed the CBA on July 21, 2017.

14. Article 47 of the agreement, titled "Duration," provides that "[t]his Agreement shall become effective upon execution by the parties and shall remain in full force and effect through June 30, 2020." See NCEU Exhibit 2.

Decision and Order

Decision Summary:

The Union's "contract bar" objection is overruled on the ground that the bargaining unit employees have not duly ratified the tentative agreement. The petitioners' request for the decertification election is granted.

Jurisdiction

The PELRB has jurisdiction over all representation election petitions pursuant to RSA 273-A:10 and Pub 301.03 and 301.01.

Discussion:

N.H. Admin. Rules Pub 301.03 governs decertification proceedings and provides in relevant part that a "petition for decertification alleging that the members of a bargaining unit no longer wish to be represented by the employee organization presently representing them shall ... be treated in the same fashion as a petition filed under Pub 301.01." N.H. Admin. Rules Pub 301.03 (a). Under N.H. Admin. Rules Pub 301.01 (a), a representation election petition involving

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 ..." RSA 273-A:11, I provides:

Public employers shall extend the following rights to the exclusive representative of a bargaining unit certified under RSA 273-A:8 ...

(b) 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.

The issue in this case is whether, at the time the petition was filed, a contract existed between the County and the Union constituting a bar to election under RSA 273-A:11 (b). See *Appeal of State Employees' Association of New Hampshire, Inc., SEIU, Local 1984*, 158 N.H. 258, 262 (2009)(court agreed with SEA that CBA barred challenge election petitions because they were filed after "CBA had been reduced to a writing, the legislature had approved legislation to fund all of its cost items, and voting on ratification had closed"). It is the Union's burden to prove that there was a contract in place at the time the petition was filed. See N.H. Admin. Rules Pub 201.06 (c). In this case, that means that the Union must offer evidence sufficient to show, at a minimum, that voting on contract ratification had been duly conducted and completed. Based upon the record, I find that, for the limited purposes of determining whether there is a contract bar to the petition, there were irregularities in the Union's ratification process which preclude a finding that bargaining unit employees duly ratified the tentative agreement.

In this case, the Union first notified employees that an absentee ballot voting option would be available, but later refused to provide absentee ballots to employees who requested

them. The Union's explanation (lack of by-laws), provided after the ratification vote took place, is woefully inadequate. At the very least, the procedures the Union was required to follow were the ones outlined to employees in advance of the vote. Alternatively, the Union could have rescheduled the ratification meeting to a later date, with proper notice to employees that only in-person voting would be allowed. The fact that only four employees participated in the ratification vote strongly suggests that the failure to provide absentee ballots suppressed voter participation.

Based on the foregoing, the Union has failed to adduce evidence sufficient to establish a RSA 273-A:11 (b) contract bar to the petition in this case. Accordingly, the Union's objection to the petition is overruled, and the petitioners' request for an election to resolve the question of representation of the existing bargaining unit described below is granted.

Unit: Full Time Corrections Officers.

Excluded: Corrections Corporals, Corrections Sergeants, Corrections Lieutenants, Corrections Captains, and all other employees of Grafton County.

An Order for Election shall issue and a pre-election conference shall be scheduled pursuant to Pub 303.02.

So ordered.

Date:

8/15/2017


Karina A. Lange, Esq.
Staff Counsel/Hearing Officer

Distribution: Andre Provencal, Corrections Officer
John Richardson, Esq.
Paul Brunetti, Esq.
Thomas Elliot, Superintendent