



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER TEACHERS UNION/NEA-NEW HAMPSHIRE
NEA

Petitioner

and

NEW HAMPSHIRE FEDERATION OF TEACHERS
AFT, AFL-CIO

Respondent

CASE NO. T-0305:3

DECISION NO. 89-53

APPEARANCES

Representing Dover Teachers' Union/NEA-New Hampshire, NEA:

James Allmendinger, Esq., Counsel
Beverly Conway, President

Representing New Hampshire Federation of Teachers:

Emmanuel Krasner, Esq., Counsel
Edward Phaneuf, President

BACKGROUND

This case arises from a Petition by the Dover Teachers' Union/NEA-New Hampshire, NEA to change the certified bargaining representatives' affiliation pursuant to PUB. 301.05. The Petition asserted, *inter alia*, that the Dover Teachers Union, pursuant to its local constitution and by-laws appropriately amended such documents to reflect an affiliation change from the New Hampshire Federation of Teachers and American Federation of Teachers to the New Hampshire Education Association (NEA-New Hampshire) and the National Education Association. The Petition indicated that a vote was held amongst the members of the DTU in accordance with their constitution and by-laws to effect this change.

The New Hampshire Federation of Teachers, through its Counsel, objected to the granting of an amended certification and a hearing was held before the Board to determine compliance with the Board's Rules.

FINDINGS OF FACT

1. The Dover Teachers' Association, NEA/NEA, was granted status as the exclusive bargaining representative for the Dover Teachers on December 7, 1976, Case No. T-0224. This certification was granted pursuant to the so-called "grandfathering clause" of Chapter 430 of the Laws of 1975.

2. In Case No. T-0305, the Dover Teachers' Union, NHFT/AFT, challenged the Dover Teachers Association, NHEA/NEA, at which time an election was held on September 21, 1978, such election resulting in a tie vote.

3. In 1979, the Dover Teachers' Union, Local 3536, NHFT/AFT, once again petitioned for an election in the Dover School District. An election was conducted between the DTU and the Dover Teachers Association, NHEA/NEA. That election was held on October 18, 1979 resulting in a majority vote for the DTU, NHFT/AFT.

4. There can be no doubt that the several contested elections held in this unit, central to the representation issue, was the character and nature of the competing organizations affiliations. The Board is most cognizant of the competitiveness of the several organizations in this matter and it cannot be held to decide these matters in a vacuum inasmuch as the Board has been an integral part of the conduct of these past elections.

5. The election results in 1979 did materially change the representation of the Dover Teachers from the Dover Education Association to the Dover Teachers' Union; that material change included its state and national affiliations. Therefore, an alteration of that type of affiliation in a manner which has been contested, as in this case, does require an election pursuant to the normal challenge provisions of RSA 273-A. In determining the nature of the contest, the Board notes that it is most important in this case that the change of affiliation is being challenged by the incumbent New Hampshire Federation of Teachers, AFT.

This finding by the Board follows in line with its previous decision in Hinsdale Federation of Teachers/NEA-New Hampshire, NEA v. Hinsdale School District and related cases, PELRB Decision No. 89-03, inasmuch as the Board specifically noted that "...the Board will consider on a case by case basis, individual requests for changes in affiliation." We note that in the Hinsdale case, the New Hampshire Federation of Teachers challenged the allocation of dues not the certification. As well, the local petitioned for an election when its status was not clear, and the Board granted such an election. This case is decidedly different and turns on the difference in facts as set forth above.

6. The Federation's request that the Board order essentially an "agency fee" to be paid by the Teachers in this bargaining unit may not be granted since there is no grant of such power to the Board pursuant to the statutory scheme, nor will the Board grant in its proceedings negotiable issues not gained at the bargaining table.

DISCUSSION

The Board is acutely aware of the delicate balancing act which must take place in permitting exclusive bargaining representatives to change affiliation without having to invoke all of the statutory election paraphernalia with its obligation to insure that the spirit of the statute, as well as its responsibility to insure that employees' rights be protected are enforced. However, as a case-by-case review strongly indicates there are certain situations which result in the matter being contested by the various parties involved. It is in those situations where the various organizations have been previously involved in the statutes normal election process and in which case, the employees have truly made a comparative decision between the organizations, both local state and national, that the Board will withhold a change in certification and require that the electoral process, as outlined in the statute and rules, be followed. In those cases, where there is no actual dispute as to the change in certification,

and the other requirements of the rules can, in fact, be met, the Board will continue to grant the petitioner's request on the basis that the squandering of the Board's very limited resources can, and will be, avoided.

In the instant case, it cannot be denied that there has been a long history of competition between recognizable, definable and cognizable employee organizations. Denying that the fact will only and unduly promote a game of semantics rather than the issue of representation which this Board is charged with safeguarding.

ORDER

Consistent with the findings of the Board, the PELRB orders that:

A. The Petition by the Dover Teachers' Union, NEA-New Hampshire, NEA be denied;

B. The exclusive representative status as certified by this Board in 1979 shall stand until and unless the appropriate statutory provisions pertaining to elections are met;

C. The New Hampshire Federation of teachers, AFT's request for the establishment of an agency fee in this unit is denied.

Signed this 10th day of August, 1989.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Also present members Richard E. Molan, Esq., Seymour Osman and Evelyn C. LeBrun, Executive Director.