



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Hudson Police Employee Association**

**and**

**Town of Hudson**

**and**

**AFSCME Council 93**

**Case No. G-0130-3**

**Decision No. 2010-219**

**Appearances:**

John S. Krupski, Esq., Molan, Milner & Krupski, PLLC, Concord, New Hampshire for the Hudson Police Employee Association

Mark Broth, Esq., Devine, Millimet & Branch, P.A., Manchester, New Hampshire for the Town of Hudson

Karen E. Clemens, Esq., AFSCME, Associate General Counsel, Boston, Massachusetts for AFSCME Council 93

**Background:**

On August 12, 2010 the Hudson Police Employee Association (HPEA) filed a petition for certification requesting an election to determine an exclusive representative of an existing bargaining unit currently represented by the AFSCME Council 93 (AFSCME). The AFSCME objects to the petition and moves to dismiss contending that it is untimely under Pub 301.01 and it is too late to hold an election pursuant to RSA 273-A:11, I (b).

The undersigned hearing officer conducted a hearing on October 7, 2010 at the Public Employee Labor Relations Board (PELRB) offices in Concord. During the hearing, the HPEA's

petition was amended by agreement to conform the unit description in the petition to the bargaining unit description contained in the most recent Certification and Order to Negotiate issued by the PELRB. See Decision No. 2005-071. The parties agreed to present the matter on joint exhibits, oral arguments, and post-hearing briefs, which were filed on October 18, 2010. The Town takes no position on the request for election.

### **Findings of Fact**

1. The Town of Hudson is a public employer within the meaning of RSA 273-A:1, IX.
2. The AFSCME is the certified exclusive representative of a bargaining unit consisting of the following positions within the Hudson Police Department: Patrol Officer, Detective, School Resource Officer, Master Patrol Officer, Sergeants (including Court Liaison Officer), Detective Sergeants, Telecommunications Technician, Telecommunications Technician/Clerk, Records Clerk, Assistant Animal Control Officer, Receptionist/Telecommunications Technician, and Victims Advocate. The following positions are excluded: Chief, Captain, Lieutenants, Prosecutor, Secretary, Animal Control Officer, Supervisor, and Support Services Manager. See PELRB Decision No. 2005-071. The latest Amended Certification of this bargaining unit was issued by the PELRB on July 9, 2005.
3. The HPEA is an employee organization seeking to be certified as an exclusive representative of the Hudson Police Department bargaining unit through a representation election pursuant to the provisions of RSA 273-A:10 and Pub 301.01.
4. The HPEA filed its petition for certification on August 12, 2010. The petition was supported by authorization cards from at least 30% of the employees in the bargaining unit.
5. The most recent collective bargaining agreement (CBA) between the Town and the AFSCME expired on June 30, 2010.

6. Article XXXII of the parties' CBA, entitled Duration of Agreement, provides that the "agreement shall be in full force and effect from and after July 1, 2007 and shall expire on June 30, 2010." Joint Exhibit 1.

## **Decision and Order**

### **Decision Summary**

The AFSCME's motion to dismiss the HPEA's petition for election on the ground that the petition is barred by RSA 273-A:11 (b) and Pub 301.01 is denied because the petition was filed after the expiration of the most recent collective bargaining agreement between the AFSCME and the Town. An Order for Election shall issue.

### **Jurisdiction**

The PELRB has jurisdiction over all petitions to certify an exclusive representative of an approved bargaining unit through the process of representation election pursuant to RSA 273-A:8, 273-A:10, and Pub 301.01.

### **Discussion**

The AFSCME moves to dismiss the HPEA's petition for certification on the ground that the petition is untimely. The AFSCME argues that because the petition was filed 153 days prior to the Town of Hudson budget submission date it failed to satisfy the Pub 301.01 requirement that the petitions be filed no less than 180 days prior to the budget submission date. The AFSCME also argues that the petition should be dismissed because the time period to conduct an election set forth in RSA 273 A:11 (b) has passed. The HPEA counters that the "contract bar" set forth in RSA 273 A:11 (b) and Pub 301.01 does not apply in this case because the petition for election was filed after the expiration of the most recent CBA between the AFSCME and the Town.

RSA 273-A:11, I provides in relevant part:

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.

(Emphasis added.)

In addition, Pub 301.01 further sets forth the time limits for filing challenge petitions for certification involving the bargaining unit for which a CBA constituting a bar to election “presently exists”:

(a) . . . 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.

(b) Any petition filed less than 180 days prior to the budget submission date of the affected public employer shall be accompanied by an explanation of why the petition could not have been filed sooner. The board shall refuse to entertain any petition filed so close to the budget submission date of the affected employer that the board cannot reasonably conduct the election called for in the petition within 120 days of the budget submission date.

(Emphasis added.)

The language of RSA 273-A:11, I (b) (“during the term of the collective bargaining agreement”) and Pub 301.01 (a) (“for which a collective bargaining agreement constituting a bar to election under RSA 273-A:11, I (b) presently exists”) is clear and unambiguous and indicates that an incumbent representative is protected from challenge only “during the term of the collective bargaining agreement.”<sup>1</sup> Under RSA 273-A:11 (b) and Pub 301.01, an incumbent representative is not entitled to any protection from challenges like the current election petition after the expiration of the term of the collective bargaining agreement even though the incumbent

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<sup>1</sup> While always subject to court review, the PELRB’s “interpretation of its regulations is to be accorded great deference.” *In re Land Acquisition, L.L.C.*, 145 N.H. 492, 495-96 (2000).

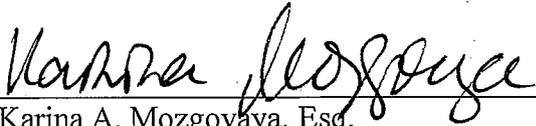
representative retains its status as exclusive representative and may be in the process of negotiating a successor contract. See *NEPBA, Inc., Local 270 et al and State of New Hampshire, Department of Corrections and State Employees Association of NH, Inc., SEIU Local 1984*, PELRB Decision No. 2009-216, now on appeal, Supreme Court Case No. 2010-0103. See also *Maintenance and Custodial Employees of Concord School District v. American Federation of State, County and Municipal Employees, Local 1580*, PELRB Decision No. 84-82.

In the present case, the record reflects that the most recent collective bargaining agreement between the AFSCME and the Town expired on June 30, 2010. The current petition for election was filed on August 12, 2010, after the expiration of the most recent collective bargaining agreement, and was supported by authorization cards from at least 30% of the employees in the bargaining unit. Therefore, the filing window specified in Pub 301.01 and the election window set forth in RSA 273-A:11 (b) do not apply in this case and the HPEA's election petition was timely and properly filed.

Accordingly, the AFSCME's motion to dismiss is denied. The HPEA's request for a secret ballot election to resolve the question of representation is granted. An Order for Election shall issue and a pre-election conference shall be scheduled forthwith.

So ordered.

November 23, 2010

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

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