



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

**National Correctional Employees Union, Inc.**

**and**

**County of Merrimack**

**and**

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

**Case No. G-0192-2**

**Decision No. 2012-100**

**ORDER**

On April 16, 2012 the National Correctional Employees Union (NCEU) filed a challenge election petition for certification with confidential petition cards signed by certain employees of the Merrimack County Department of Corrections (County) requesting a secret ballot election to resolve a question of representation of an existing bargaining unit currently represented by the State Employees Association of New Hampshire, Inc., SEIU Local 1984 (SEA). See PELRB Certification of Representative and Order to Negotiate, Case No. S-0327 (April 26, 1990). The petition is supported by the requisite number of confidential petition authorization cards as required by 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 (May 1, 2012).

Both the SEA and the County object to the election petition. The SEA argues that the petition and a representation election are barred by the provisions of RSA 273-A:11 (b). According to the SEA, the PELRB should disregard the stated contract expiration date of

December 31, 2012 and instead rely on contract extension or continuation language<sup>1</sup> to find that a representation election cannot be held. The SEA also contends that the election petition is not proper under RSA 273-A:10, I (a). The County claims that the composition of the existing bargaining unit is not appropriate. For the following reasons, these objections are insufficient to require dismissal of the representation election petition or prevent the conduct of a secret ballot election to resolve a question of representation of the existing and duly certified bargaining unit.

The PELRB's authority to conduct elections involving a challenge to an incumbent exclusive representative is set forth in RSA 273-A:10, VI (c), Pub 301.01 and 301.03. 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).

Based upon the CBA's stated expiration date of December 31, 2012 and the County's budget submission date of December 1, 2012<sup>2</sup>, the filing period for a challenge election petition under Pub 301.01 (a) is between April 5, 2012 and June 4, 2012. The election period to resolve

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<sup>1</sup> "This CBA expires December 31, 2012, 'or until it is replaced by a successor agreement, whichever is later.'" SEA's Exceptions to Petition, paragraph 3.

<sup>2</sup> See NCEU Petition for Certification. See also RSA 24-21-a.

the question of representation, set forth in RSA 273 A:11 (b), is between June 4, 2012 and August 3, 2012. At this point in the proceedings, the petition, filed on April 16, 2012, is timely and an election can be held within the time period set forth in RSA 273 A:11 (b).

The existence of an extension clause does not mean that the PELRB cannot, as argued by the SEA, conduct a secret ballot election to resolve a question of representation of the existing bargaining unit. The SEA concedes that the PELRB rejected the very same argument made by incumbent exclusive representatives, including the SEA, in other cases. 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, appeal withdrawn, Supreme Court Case No. 2010-0103. See also *National Correctional Employees Union and County of Merrimack and State Employees Association of New Hampshire, Inc. SEIU Local 1984*, PELRB Decision No. 2010-208; *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 *NEPBA, Inc., Local 270*, supra, PELRB Decision No. 2009-216, the case involving a challenge to the exclusive representative of an existing bargaining unit, the PELRB concluded that 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 determined. The expiration date will not be known until the execution of a successor contract, an anticipated but still a future event.

*Id.* Therefore, based on these authorities, the SEA is not entitled to rely on the extension clause to defeat this election petition and its objections based on RSA 273 A:11 (b) are overruled.

The SEA's objections based upon RSA 273-A:10, I (a) are also without merit.<sup>3</sup> The PELRB's authority to conduct elections involving a challenge to an incumbent exclusive representative is derived from RSA 273-A:10, VI (c) and Pub 301.01 and 301.03. See *NEPBA, Inc., Local 270*, supra, PELRB Decision No. 2009-216. RSA 273-A:10, VI (c) provides as follows:

Any challenge to a certified exclusive bargaining representative, whether in a decertification election or a *challenge by another labor organization*, shall result in decertification or *change in bargaining representation if decertification or the challenging organization is approved by a majority vote of members of the bargaining unit voting.*

(Emphasis added.) As noted above, the petition in this case includes the requisite confidential employee petition authorization cards, which satisfy the requirements of RSA 273-A:10, I (a) and Pub 301.01 (f), (h), (i), and (k). Accordingly, the filings in this case meet the requirements imposed by the statute and applicable administrative rules and the SEA's objections based on RSA RSA 273-A:10, I (a) are overruled.

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<sup>3</sup> RSA 273-A:10 provides in relevant part:

I. If a petition is filed by:

(a) At least 30 percent of the employees in the bargaining unit seeking recognition, alleging that they wish to be represented in collective bargaining by an employee organization as their exclusive representative or asserting that the employee organization which has been certified by the board is no longer the representative of the majority of employees in the bargaining unit; or

(b) . . . the board shall investigate such petition and may hold hearings for the purpose of determining whether or not grounds exist for conducting an election. Upon so finding, the board shall order an election to be held under its supervision and in accordance with rules prescribed by the board. Otherwise, it shall dismiss the petition.

II. The petition shall consist of separate forms for each employee, whose names shall not be disclosed.

The County's objections based upon the composition of the existing, and duly certified, bargaining unit might be relevant if this petition proposed the creation of a new bargaining unit or requested the modification of an existing bargaining unit. This petition does not request either the creation of a new unit or the modification of an existing unit. Instead, it is a challenge petition requesting a secret ballot election to resolve a question of representation of the existing bargaining unit. Challenge election petitions do not involve or require the determination of the appropriateness of an existing unit's composition. See *National Correctional Employees Union*, supra, PELRB Decisions Nos. 2010-208, 2012-197. See also *New England Police Benevolent Association and Town of North Hampton and Teamsters Local 633 of New Hampshire*, PELRB Decision No. 2011-007. Accordingly, the County's objections based on the composition of the existing bargaining unit are not relevant and are overruled.

Based on the foregoing and on the parties' submissions in this case, there are no issues of material and relevant fact in dispute which would require a hearing. See Pub 201.06 (a). The filings and the applicable law require the PELRB to proceed with the conduct of a secret ballot election to resolve a question of representation of the existing bargaining unit. Accordingly, an Order for Election shall issue forthwith and a pre-election conference shall be scheduled in accordance with Pub 303.02.

So ordered.

May 11, 2012

  
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