



State of New Hampshire
Public Employee Labor Relations Board

John Stark Teachers' Association, AFT-NH

and

John Stark Regional School District

and

John Stark Teachers Association, NEA-NH

Case No. E-0164-3

Decision No. 2018-079

Appearances:

Terri D. Donovan, Esq., AFT-NH, Bow, NH, for the John Stark Teachers' Association, AFT-NH

Michael S. Elwell, Esq., Soule, Leslie, Kidder, Sayward & Loughman, Salem, NH, for the John Stark Regional School District

Esther Kane Dickinson, Esq., and Lauren Snow Chadwick, Esq., NEA-NH, Concord, NH, for the John Stark Teachers Association, NEA-NH

Background:

On April 19, 2018, the John Stark Teachers' Association, AFT-NH (AFT) filed a challenge petition requesting an election to determine the exclusive representative of the existing bargaining unit comprised of certain employees of the John Stark Regional School District (District) currently represented by the John Stark Teachers Association, NEA-NH (NEA). See PELRB Decision No. 2014-245 (October 23, 2014). The petition is supported by the requisite number of authorization cards. See PELRB Report Re: Confidential Inspection of Authorization Cards (April 24, 2018).

The NEA objects to the election petition and moves to dismiss on the ground that the petition and a representation election are barred by the “contract bar” under RSA 273-A:11 and Admin. Rule Pub 301.01. The AFT objects to the NEA’s motion to dismiss. The District has not objected to the AFT’s petition or to the NEA’s motion to dismiss.

A hearing on the NEA’s objection was conducted on May 24, 2018 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties filed post-hearing briefs on June 1, 2018; and the decision is as follows.

Findings of Fact

1. The District is a public employer within the meaning of RSA 273-A:1, X.
2. The AFT is an employee organization seeking to represent the following

bargaining unit:

Unit: All teachers, curriculum coordinators, guidance counselors and librarians who are required to hold certification from the New Hampshire Department of Education for their positions and are required to work full-time or part-time for more than 40%. Also included are nurses who are required to work full-time or part-time for more than 40%.

Excluded: Principal, Assistant Principal, and Guidance Director.

See PELRB Decision No. 2014-245 (October 23, 2014).

3. The NEA is the incumbent certified exclusive representative of the subject bargaining unit. See PELRB Decision No. 2014-245 (October 23, 2014).

4. Dr. Lorraine Tacconi-Moore is the District Superintendent. She has held this position since 2010. Dr. Tacconi-Moore is also the Chief Negotiator for the District’s negotiating team. In this capacity, she negotiated several collective bargaining agreements (CBA) between the NEA and the District including the 2018-21 CBA.

5. Randy Brooker is a high school teacher and the President of the John Stark Teachers Association, NEA-NH. He has worked for the District for 11 years and has been the President for 2 years. In the past, he served as the NEA Vice President, prior to which he acted as the NEA's Chief Negotiator. As the NEA's Chief Negotiator, he negotiated the 2013-14 and 2014-17 (2014-15, 2015-16, 2016-17) CBAs.

6. Suzanne Carmichael is a high school teacher and the NEA's Chief Negotiator. She has worked for the District for 14 years and has previously served as an NEA Executive Board member, NEA Building Representative, NEA Secretary, and a member of the NEA Negotiating Team. In her capacity as the NEA Chief Negotiator, she negotiated the most recent CBA between the NEA and the District.

7. The NEA and the District have been without a CBA since the expiration of the 2014-17 CBA, as the District voters rejected the 2017-18 tentative agreement in March of 2017.

8. On December 12 and 13, 2017, the NEA and the District reached a tentative agreement on a successor CBA. Both the School Board and the NEA ratified this agreement.

9. The cost items for the 2018-21 CBA were presented to the District voters for approval in the District 2018 School Warrant. The Warrant stated in part as follows:

Article 04: Shall the John Stark School District vote to approve the cost items included in the collective bargaining agreement reached between the John Stark School Board and the John Stark Teachers' Association which calls for the following increases in salaries and benefits at the current staffing levels over those paid in the prior fiscal year:

<u>Year</u>	<u>Estimated Increase</u>
2018-2019	\$113,686 ...
2019-2020	\$76,170 ...
2020-2021	\$78,169 ...

and further raises and appropriated the sum of \$113,686... for the school year 2018-2019, such sum representing the additional costs attributable to the increase in salaries and benefits over those of the appropriation at current staffing levels?

See NEA Exhibit 12.

10. The District's fiscal year starts on July 1 of each year and ends on June 30 of the following year.

11. On March 13, 2018, the voters of the District approved the cost items for the 2018-21 CBA (2018-19, 2019-20, 2020-21). See Agreed Upon Statement of Facts, at 5.

12. The approved contract was signed on April 11, 2018. See Agreed Upon Statement of Facts, at 6.

13. The AFT filed its challenge petition for certification on April 19, 2018.

14. The 2018-21 CBA does not contain an express duration clause or a specific date on which the CBA becomes effective. The title page of the CBA simply designates the CBA as 2018/2019, 2019/2020, 2020/2021. See Agreed Upon Statement of Facts, at 7 and NEA Exhibit 1.

15. The 2018-21 CBA, Article 5.1, provides in part as follows:

Salary Schedule:

All current Bargaining Unit Members will receive the greater of their step increase in Appendix A or \$1,000 in year one, and \$700 in years two and three. By the end of the contract, all current Bargaining Unit Members will be placed on the 2018-2021, John Stark Regional High School Salary Schedule (Appendix A) based on experience...

Bargaining Unit Members hired for employment after July 1, 2018 will be placed on salary schedule (Appendix B) and must complete the requisite requirements as outlined in Appendix B for movement on the salary grid...

Bargaining Unit Members hired for employment before July 1, 2018 may select the Appendix B salary schedule in the 2019-2020 school year...

The CBA Appendix B contains a salary schedule and is titled Salary Schedule-New Hire After July 1, 2018. See NEA Exhibit 1.

16. Every year, the District issues individual Annual Professional Staff Contracts to

the bargaining unit members. The duration of an Annual Professional Staff Contract is from July 1 to the June 30 of the following year. See AFT Exhibit 2.

17. According to the District's Chief Negotiator, Dr. Tacconi-Moore, despite the absence of the duration clause in the 2018-21 CBA and the previous CBAs between the NEA and the District, the District has always understood that the CBA becomes effective on July 1 and not immediately upon approval of cost items by the District voters or upon signing of the CBA.

18. According to the NEA's Chief Negotiator, Suzanne Carmichael, and to the NEA President Randy Brooker, the NEA has always understood that the CBAs become effective on July 1, despite the absence of the duration clause in the parties' CBAs.

19. According to Dr. Tacconi-Moore, President Brooker, and NEA Chief Negotiator Carmichael, the NEA and the District understood that the duration of the 2018-21 CBA is from July 1, 2018 through June 30, 2021.

20. The NEA and the District understood that after the expiration of 2014-17 CBA on June 30, 2017 and until July 1, 2018, the effective date of the 2018-21 CBA, the NEA and the District operated under the "status quo" doctrine.

21. NEA Building Representative and Chief Negotiator Carmichael testified that in the period after the voters approved the 2018-21 CBA (March, 2018) and July 1, 2018, she did not and would not process grievances by employees trying to enforce the terms of the 2018-21 CBA because these terms would not be applicable until July 1, 2018.

Decision and Order

Decision Summary

The NEA's motion to dismiss the AFT's challenge petition for certification is denied and its objection to the petition is overruled. The RSA 273-A:11 (b) "contract bar" does not apply in

this case because the petition was filed prior to the effective date of the 2018-21 CBA (July 1, 2018) and not “during the term of the collective bargaining agreement.”

Jurisdiction

The PELRB has jurisdiction to certify the exclusive representative of an approved bargaining unit through the process of a representation election pursuant to RSA 273-A:8, 273-A:10, and Pub 300. 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). See also Pub 301.01.

Discussion

The timeliness of a 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 “[t]he right to represent the bargaining unit exclusively and without challenge *during the term of the collective bargaining agreement.*” (Emphasis added).

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.

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

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.

In *Newfound Teachers’ Union, AFT #6557, AFT-NH, AFL-CIO and Newfound Area School Board and Newfound Area Teachers’ Association Affiliated with NEA-NH*, PELRB Decision No. 2015-116 (June 5, 2015), the PELRB held that the RSA 273-A:11 (b) bar to election does not apply when a challenge election petition is filed before the term of a finalized and fully approved CBA. In *Newfound*, the CBA between the incumbent union and the employer

expired in 2014 and “the terms and conditions of employment for unit employees have been determined under the status quo doctrine” since the expiration of the CBA. *Id.* By March of 2015, the incumbent union “had negotiated and finalized a successor contract, with all requisite approvals, covering the 2015-16 and 2016-17 school years.” *Id.* The term of the successor CBA began July 1, 2015. *Id.* The rival union filed its challenge election petition in May of 2015, i.e., after the successor CBA was approved but before it became effective. The PELRB overruled the incumbent union’s objection which was based upon RSA 273-A:11, I (b), Pub 301.01 (a), and *Appeal of State Employee’s Ass’n of NH, Inc., SEIU 1984*, 158 N.H. 258 (2009), and proceeded with the conduct of election. See PELRB Decision No. 2015-116.

Furthermore, 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*, the case involving a challenge to the exclusive representative of an existing bargaining unit, the PELRB refused to allow the incumbent representative to abridge or diminish “the right of public employees to obtain representation elections to challenge an incumbent exclusive representative” through the use of contractual devices. See PELRB Decision No. 2009-216. 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.

The circumstances of this case are essentially identical to those in *Newfound*. In this case, the most recent CBA between the NEA and the District expired in 2017 and the NEA and the District have been operating under the status quo doctrine. The NEA and the District reached a successor 2018-21 CBA which was approved by the voters on March 13, 2018 and signed by the parties on April 11, 2018. Based on the evidence presented in this case, the term of the 2018-21 CBA is from July 1, 2018 to June 30, 2021. The challenge election petition was filed on April 19, 2018, i.e., after the successor CBA was approved but before it became effective. Therefore, the challenge petition in this case is not barred by RSA 273-A:11 (b) or Pub 301.01 because it was not filed “during the term of the collective bargaining agreement.”

Furthermore, the NEA’s interpretation of the “term” of the CBA is unpersuasive. To determine that the absence of a duration clause or effective dates means that the CBA has no “term” and is effective upon approval by voters, would promote deliberate omission of contract duration language in CBAs. Allowing such omission to serve as a bar to an election would abridge or diminish “the right of public employees to obtain representation elections to challenge an incumbent exclusive representative” through the use of contractual devices.

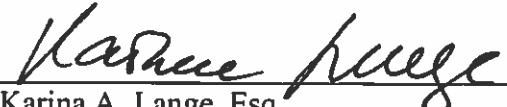
In addition, the NEA’s reliance on *Appeal of State Employee’s Ass’n of NH, Inc., SEIU 1984*, supra, 158 N.H. 258, is misplaced. In that case, the Court determined that the rival union’s challenge election petition was filed during the term of a CBA. Because in this case it has been determined that the challenge petition was filed after the expiration of 2014-17 CBA and prior to the commencement of the term of the 2018-21 CBA, the *Appeal of State* decision does not apply.

Based on the foregoing, RSA 273-A:11 (b) and/or Admin. Rule Pub 301.01 do not bar the challenge petition in this case. The NEA’s motion to dismiss is denied and its objection is overruled.

The AFT's request for a secret ballot election is granted. Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the existing bargaining unit, if any. "John Stark Teachers' Association, AFT-NH", "John Stark Teachers Association, NEA-NH", and "No Representative" will appear as choices on the ballot. An Order for Election shall issue and a pre-election conference shall be conducted in accordance with Pub 303.02.

So ordered.

Date: 6/4/2018



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