



State of New Hampshire
Public Employee Labor Relations Board

Rochester Association of Licensed Professionals

and

Rochester School District

and

Rochester Federation of Teachers, AFT #3607, AFT-NH, AFL-CIO

Case No. E-0264-1

Decision No. 2022-006

Order

Background:

On December 20, 2021,¹ the Rochester Association of Licensed Professionals (RALP) filed a Petition for Certification – Challenge to Existing Representative seeking to represent certain employees of the Rochester School District (District). Specifically, as indicated in the December 22, 2021 PELRB Notice of Filing, the RALP seeks to represent the following proposed bargaining unit: Occupational Therapists, Physical Therapists, Speech-Language Pathologists, Speech Assistant, and Psychologist. All of these positions, with the exception of the Speech Assistant position, are currently in the following bargaining unit represented by the Rochester Federation of Teachers, AFT #3607, AFT-NH, AFL-CIO (RFT):

¹The petition form was submitted on December 13, 2021 but it was not accompanied by the required authorization cards. Admin. R. Pub 301.01 (h) provides that "[i]ndividual petition cards ... evidencing that the requisite number of employees in the proposed bargaining unit desire an election to be held, *shall accompany the petition...*" (Emphasis added.) Also, RSA 273-A:10, I (a) requires that the petition be supported by "at least 30 percent of the employees in the bargaining unit seeking recognition." Because the authorization cards, evidencing that the employees support the petition, were filed on December 20, 2021, the filing date, as noted in the PELRB Notice of Filing, is December 20, 2021.

The following full-time and part-time professional employees: Teachers – certified or waived, Department Chairpersons, School Counselors, Specialists (Reading Consultant; Physical Education; Art; Music; Speech Therapist; Psychologist; Physical Therapist; Special Education Teachers; Occupational Therapist; and other specialists who hold positions in the School Department which require state teacher certification under the rules of the New Hampshire Department of Education or certification or licensure through the appropriate state agency or board), Library Media Specialists, and Nurses.

See PELRB Decision No. 2019-166 (July 11, 2019).² The petition is supported by the requisite number of authorization cards. See PELRB Report Re: Confidential Inspection of Authorization Cards (December 27, 2021).

The AFT objects to the challenge petition on the following grounds: (1) the petition is untimely under Admin. R. Pub 301.01; (2) "there is not an adequate explanation or significant change in circumstances to justify the late filing"; and (3) there is a community of interest among all members of the RFT unit and "to carve out of the professional educational team would be disruptive to the cohesiveness of the bargaining unit and efficiency of negotiation and enforcement of a common master agreement of all those with a community of interest." The AFT requests that the PELRB deny the challenge petition.

The District objects to the petition on the following grounds: (1) under Admin. R. Pub 301.01 (a), the petition is untimely as it was not filed within 240-180 days prior to the District's budget submission date; (2) the budget submission date "is the third Tuesday in April, per custom and practice," and per the City Charter, Section 40, "The City Manager shall submit the proposed budget to the City Council at least sixty days before the start of the fiscal year of the budget"; (3) the RALP failed to provide an explanation for late filing; (4) the existing certification is appropriate and not incorrect to a degree warranting modification of the unit under

²The RALP simultaneously filed a modification petition seeking to remove certain employees from the existing bargaining unit represented by the RFT in order to create a separate bargaining unit it seeks to represent. See PELRB Case No. E-0034-3.

Admin. R. Pub 302.05 (a); (5) the RALP seeks to combine supervisors and subordinate employees (Speech Assistant) in the same unit bargaining unit in violation of RSA 273-A:8, II; and (6) the granting of this petition will adversely affect the efficiency of government operations. The District requests that the PELRB deny the petition.

Decision Summary:

For the following reasons, this petition is dismissed as untimely under Admin. R. Pub 301.01.³

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 Admin. R. 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 Admin. R. Pub 301.01.

Discussion:

The timeliness of a challenge petition for representation is determined under the standards set forth in RSA 273-A:11 (b) and Admin R. 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." It further provides that:

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. In addition, Admin. R. Pub 301.01 provides in relevant part as follows:

³ Based on the parties' submissions in the case, as to the timeliness of the petition, there are no issues of material and relevant fact in dispute that require a hearing. See Pub 201.06 (a).

(a) A petition for certification as the exclusive representative of a bargaining unit having no certified representative may be filed at any time. 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.

The second sentence of Admin. R. Pub 301.01 (a) "sets a time frame for the filing of petitions where the bargaining unit has a certified representative in order to implement the contract bar rule." *Appeal of City of Manchester*, 149 N.H. 283, 286-87 (2003). In addition, "pursuant to the final part of Rule 301.01(b), in accordance with RSA 273-A:11, I(b), the PELRB is precluded from entertaining those petitions where a certified representative exists that would violate the contract bar rule by resulting in an election being held within 120 days of the budget submission date." *Id.*

In this case, the RFT and the District are parties to a collective bargaining agreement (CBA)⁴ effective from August 26, 2019 to August 26, 2022, which constitutes a "contract bar" under RSA 273-A:11 (b) and triggers the election deadlines (180 to 120 days prior to the budget submission date) and filing deadlines (240 to 180 days prior to the budget submission date) set forth in the statute and Admin. R. Pub 301.01, respectively. As the CBA expires on August 26, 2022, the relevant budget submission date is the District's 2022 budget submission date. The RALP listed June 7 as the budget submission date on its petition. However, the RFT claims in its objection that the District's budget submission date is June 1. Furthermore, the District claims

⁴ The 2019-2022 CBA is on file with the PELRB in accordance with RSA 273-A:16.

that, by custom and practice, the budget submission date is the third Tuesday in April and that, under the Rochester City Charter, Section 40, the budget submission date cannot be later than 60 days before the start of the fiscal year.

RSA 273-A:1, III provides:

"Budget submission date" means the date by which, under law or practice, the public employer's proposed budget is to be submitted to the legislative or other similar body of the government, or to the city council in the case of a city, for final action. In the case of a town, school district or supervisory union it means February 1 of each year, except in the case of a city school district or city school administrative unit which has a separate budget submission date applied to it by the city.

RSA 273-A:3, IV requires each public employer to "record its budget submission date with the board." The PELRB lists budget submission dates, reported by employers, in a PDF document accessible on its website via the Frequently Asked Questions tab. This document lists the first Tuesday in June, which falls on June 7 in 2022, for Rochester.⁵ However, this PDF document has the following heading advising the parties to research and verify the current accuracy of the dates:

**Budget Submission Dates reported to PELRB per RSA 273-A:3, IV.
Users should research and independently verify current accuracy of listed dates.**

The Rochester City Charter, posted on the City of Rochester website⁶, provides as follows:

At such time as the City Manager requests, or the Administrative Code specifies, each officer or director of a department shall submit an itemized estimate of the expenditures for the next fiscal year for the departments or activities under his control. The City Manager shall submit the proposed budget to the City Council at least 60 days before the start of the fiscal year of the budget.

Section 40, Budget Procedure. The start of the fiscal year for the City of Rochester is July 1st, per

⁵ https://www.nh.gov/pelrb/faqs/documents/budget_submission5.pdf

⁶ <https://www.rochesternh.net/>

the City Charter, Section 38.⁷ Therefore, per the City Charter, the budget submission date, at the latest, is May 2, 2022. The District further asserts that, "per custom and practice," its budget submission date is the third Tuesday in April, which falls this year on April 19. These dates, and not outdated information shown on the PELRB website, will be used to assess the timeliness of petition under Admin. R. Pub 303.01 and compliance with the election period specified in RSA 273-A:11 (b). The corresponding filing and election periods for the April 19 and May 2 dates are as follows:

Budget Submission Date	Pub 301.01 Filing Window	RSA 273-A:11 (b) Election Window
April 19, 2022	Aug. 22 to Oct. 21, 2021	Oct. 21 to Dec. 20, 2021
May 2, 2022	Sep. 4 to Nov. 3, 2021	Nov. 3, 2021 to Jan. 3, 2022

Regardless of which of these dates is used, RALP's petition was filed too late. Moreover, the election window has already closed and an election cannot be held within the time limits set forth in RSA 273-A:11 (b).

Furthermore, the petition is also untimely based on a June 7, 2022 budget submission date listed in the petition. Under the June 7 date, the filing period was October 11, 2021 to December 9, 2021. The petition was filed on December 20, 2021 (11 days late), and the RALP has failed to provide any "explanation of why the petition could not have been filed sooner" as

⁷The Charter also provides that:

The City of Rochester shall constitute a single municipal corporation with powers for municipal and school purposes, including all the powers of a school district conferred by law. The School Department of the City of Rochester shall continue to constitute the school district for the City, organized as herein described.

Section 28, School District. The Rochester City Council has an "exclusive right to determine and appropriate the total amount of money to be spent by the School Department." See Rochester City Charter, Section 29, General Powers of School Board.

required under Admin. R. Pub 301.01 (b).⁸ The election window for a June 7 date closes on February 7, 2022 and the PELRB cannot reasonably conduct a hearing on the remaining objections raised by the AFT and the District, issue a decision, and schedule and complete an election by February 7 deadline, as required under RSA 273-A:11 (b).

For the foregoing reasons, the RALP's Petition for Certification - Challenge to Exclusive Representative is dismissed. Because the petition is dismissed pursuant to RSA 273-A:11 (b) and Admin. R. Pub 301.01, it is unnecessary to address the other objections raised by the RFT and the District.

So ordered.

Date: 1/14/2022


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⁸An administrative agency "must follow its own rules and regulations ..." See *Appeal of State Employees' Ass'n of N.H., Inc.*, 156 N.H. 426, 428 (2007).