



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HINSDALE FEDERATION OF TEACHERS/NEA-
NEW HAMPSHIRE, NEA

Petitioner

v.

HINSDALE SCHOOL DISTRICT
and RELATED CASES

Respondent

CASE NO'S. T-0386:1 & M-0603

DECISION NO. 89-03

APPEARANCES

Representing Hinsdale Federation of Teachers/NEA-New Hampshire, NEA:

James Allmendinger, Esq., Counsel
Waldo Cumings, UniServ Director
Theodore Wells, NEA
Dan McKillip, NEA
Mary Gaul, UniServ Director
Patricia A. Haselton, NHFT
Linda DeLong, NHFT
Penny Galbreath, NHFT

Representing Hinsdale School Board:

Bradley F. Kidder, Esq., Counsel
Richard McCarthy, Superintendent

Representing New Hampshire Federation of Teachers:

Emmanuel Krasner, Esq., Counsel
Suzann Cushman, NHFT

BACKGROUND

These cases comes before the Public Employee Labor Relations Board arising out of a common set of circumstances. For some years, the Hinsdale Federation of Teachers (HFT) has been certified as the exclusive bargaining representative of the Hinsdale Teachers. The Hinsdale Federation of Teachers was, at the time of its certification, affiliated with the New Hampshire Federation of Teachers (NHFT), which in turn is affiliated with the AFL-CIO. In the Spring of 1988, members of the HFT sought to change the affiliation of the local from the New Hampshire Federation of TEachers to the New Hampshire Education Association (NHEA) which is affiliated with the National Education Association (NEA). This effort resulted in a vote by the members of the bargaining unit to make such a change. The results of this vote in

in late May 1988, were communicated to the PELRB on June 9, 1988, requesting the Board note a change in affiliation under Board rule PUB 301.05.

The HFT, now represented by NEA, was informed that the PELRB had received the notification. However, the School Board, which under its contract had an obligation to deduct and pay dues to the Local, ceased paying dues, stating that it was unsure as to whom to pay such dues and as to the status of the situation. HFT, NEA-NH filed a petition for Declaratory Judgment, an unfair labor practice complaint against the School Board for failure to recognize the new affiliation and a motion for consolidation of these actions with the PELRB. Also, a Petition for Certification dated August 29, 1988 was filed by NFT with the PELRB, seeking an election to clarify the status of affiliation. The PELRB ordered an election and an election was held. By order dated October 4, 1988, the PELRB certified the Hinsdale Federation of Teachers/NEA-NH, NEA as the certified exclusive bargaining representative. This certification did not state an effective date. The School Board, claiming to be unsure as to the status of representation during the final year of its collective bargaining agreement which had been signed on January 30, 1986 to run from September 1, 1986 through August 31, 1989, filed a Petition for Declaratory Judgment. Among other issues raised in that petition, the School Board asked to be instructed as to whom it should pay union dues, it being a term of the contract that dues be paid to the union, but the contract language using a form for payment citing the Hinsdale Federation of Teachers as an affiliate of New Hampshire Federation of Teachers, specifically "Hinsdale Federation of Teachers Local 4255 NHFT/AFT, AFL-CIO." Also, the School Board stated that it was having problems because of pending unresolved grievances and other contract administration matters. The New Hampshire Federation of Teachers moved to intervene in the various actions before the Board, claiming it was entitled to dues which had been withheld through the certification of the new affiliation by the PELRB following the election, the date at which the New Hampshire Federation of Teachers maintains its affiliation terminated and the new affiliation became effective.

A hearing on all of the various unfair labor practice complaints, petitions for declaratory judgment and motion to intervene was held at the offices of the PELRB on November 3, 1988. The parties agreed on a stipulation of facts, the facts of the matter not being in dispute, and limited the case to issues of law. The Board granted the motion to intervene of the New Hampshire Federation of Teachers and allowed the parties until December 5, 1988 to file legal briefs.

FINDINGS OF FACT AND RULINGS OF LAW

As stated, the facts of this matter are not in dispute. The questions presented to the PELRB are as follows:

1. Under RSA 273-A, what is the certified bargaining representative, the local or the local and state (and perhaps, international) union?
2. How, if at all, can a local certified bargaining representative change affiliations under the terms of RSA 273-A and regulations PUB 301.05?

3. If a change in affiliation can be accomplished by internal local vote, under what conditions must a PELRB supervised election be held?
4. In the circumstances of this case, what party or parties should receive the dues required to be deducted, and during what periods of time?
5. With whom is the Hinsdale School Board required to deal or negotiate and during what times as to what subjects and matters?
6. Was any unfair labor practice committed in this case?

Taken in order, the Board finds the answers to these questions as follows:

1. RSA 273-A does not define what an employee organization is. However, RSA 273-A:10 requires that employers bargain with employee organizations after they are certified. In the case at hand, the name of the certified employee organization has been "Hinsdale Federation of Teachers, Local 4255, NHFT/AFT, AFL-CIO" since the initial certification and through the change in certification in 1988. There is no dispute that there are at least three components to that certification, the identification of the local which has its own officers, bylaws, procedures and members; the NHFT/AFT, a state-wide organization with which the local affiliated; and the AFL-CIO, an international organization made up of many unions in various activities. Taken from the most general to the most specific, the Board finds that an affiliation or disaffiliation from the AFL-CIO would not result in the requirement for an election, the AFL-CIO not being the entity which was selected by the employees nor certified, notwithstanding the fact that it is part of the name of the certified bargaining representative or employee organization. Looking to the state organization, the Board is caused more trouble. The Board is aware that two competing labor organizations of teachers on state and national levels are the NEA and the AFT. In New Hampshire, these two organizations have competed for the votes and have attempted to represent teachers. It cannot be denied that the characteristics of the different organizations and their capacity to lend assistance to local teacher organizations have been the reason for the selection of one or the other local employee organizations to represent teachers in various locations. It is also understandable that an employer, having an interest in its employees' selection, would view local organizations affiliated with one or the other differently, even though the employer has no say in the selection. The question before the Board, therefore, is whether the vote of a local to disaffiliate from one and affiliate with the other is a change in the employee organization or exclusive bargaining representative. As stated, this matter is not specifically covered in the statute.

The Board has adopted and established rule PUB 301.05 which says, among other things;

- "(a) In the event of the merger or affiliation of the existing exclusive representative with any other national, regional, state or local labor organization or the removal of any such exclusive representative from affiliation with any such organization, the Board shall duly note the status and identity without the requirement of a new election if the following are met:
1. The Board is satisfied that the internal rules of the exclusive representative as to approval of the affiliation have been followed;
 2. The Board is satisfied that the employees in the bargaining had a reasonable opportunity to be informed of the proposed change...
 3. The Board is satisfied that the local organization did not change materially from that selected as the exclusive representative.
- (b) If the Board finds that there has been a material change in the local organization or that either of the conditions set forth in (a) and (b) above have not been met, the Board shall require an election to determine the wishes of the members of the bargaining unit before the change shall be recognized, regardless of the status of any contract which may be in effect. The validity of any such contract shall contract affected by such inquiry or vote."

When there is no law in New Hampshire on a subject, the Board may look to federal labor law to instruct it. In this case, the Board will do so. In NLRB vs. Financial Inst. Employees, US, 121 LRRM 2741 (1986), the United State Supreme Court, in a case analogous to the one before the PELRB, found that a change in affiliation did not constitute an amendment to the certification of an exclusive bargaining representative. The Court stated, at 121 LRRM 2748,

"... Petitioners argue that affiliation differs from other organizational changes because it results in employees being represented by a different organization ... but many organizational or structural changes may operate to alter a union's identity. This would be the case where the union amends its constitution or bylaws, restructures its financial obligations and resources, or alters its jurisdiction. The fact that an affiliation is often accompanied by a formal name change does not serve to distinguish it from other organizational developments. As the Board has recognized, an affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization..."

The PELRB finds that the local is the "employee organization" in this instance for the purposes of the statute. The fact that it affiliates or disaffiliates and has the power to do so, is an indication of its separate identity. Indeed,

the way the state organizations have approached this case, recognizing the right of the local to affiliate and disaffiliate, indicates the fact of its separate existence. The NHFT has not maintained that there is no ability to affiliate or disaffiliate. Therefore, the answer to question 1 is that the local is the employee organization.

2-3. The Board now moves to consideration of how a union can change affiliation and whether an election is required to change affiliation. There is no clear answer to this question as is indicated in the terms of Board Rule PUB 301.05. That rule requires that the Board be satisfied that internal rules of the union have been followed as to approval of affiliation, the employees have a reasonable opportunity to be informed of proposed changes and to vote thereon, and that the Board be satisfied that the local organization did not change materially. If these standards are satisfied, no election is required. If these standards are not satisfied, an election is required. That question is moot in the present case because the local petitioned for an election when its status was not clear, the Board granted the petition and an election was held. In future cases, the Board will consider on a case-by-case basis individual requests for changes in affiliation. In the event of such requests, the requesting party will be required to submit an affidavit containing the facts and circumstances of the change in affiliation to demonstrate that the criteria of rule PUB 301.05 have been met. The Board will consider the affidavit and if it wishes more information, will have a hearing thereon. The organization from which affiliation is being transferred will have an opportunity to comment on the change, if it wishes. Notwithstanding any lack of protest, if the Board is not satisfied that the criteria of the rule have been met, it may order an election to ensure that the employees' wishes have been followed. The Board will propose an amendment to its rules to implement this procedure.

4-5-6. In the instant case, the union members were represented at all times by the HFT. The HFT was affiliated with the NHFT until the new certification, the HFT having sought an election and the new certification having been issued thereafter. Since the new certification, the HFT has been affiliated with and served by NHEA. The employer is required to deal with HFT under its contract, and HFT has now affiliated with NHEA, the representatives of which serve to assist HFT in negotiations, grievances and for all matters with the School Board. The PELRB recognizes that this is a case of first impression and is unable to find that the confusion in the mind of the School Board rises to an unfair labor practice, the School Board having sought to receive the instructions of this Board as to its proper role and actions. The answers to the questions posed in the School Board's Petition for Declaratory Judgment are:

- a) The HFT, affiliated with NHEA, is the certified bargaining representative for the duration of the 1986-1989 collective bargaining agreement.
- b) HFT is entitled to administer grievances under the collective bargaining agreement and it is now affiliated with NHEA, the agents of which are entitled to act for the local if the local so desires.

- c) The question of dues follows from the decisions on other issues. The NHFT does not claim that it is entitled to any dues for any period after the certification of the new affiliation. The contract, however, has a dues deduction form which references the state and national unions and the employer claims to be confused as to effect of this contractual provision. It is not unusual in contract law or in labor law for changes in affiliation, mergers, changes in names of corporations or acquisitions of parties to result in the assignment of pre-existing contracts to parties which are not named therein. This case is similar. Once the change of affiliation has taken place, those portions of the contract which reference NHFT or AFL-CIO are reformed to the appropriate NHEA form. If there is a change in substance because of that change, because of amount or system of deduction, that would be an appropriate subject for bargaining between the parties. In future cases, the date in the change of dues payment will be the date found by the Board as the effective date of the change affiliation, whether following an election, if required, or following internal local action effectively changing affiliation. Because the effective date in this case is that of certification following the election, dues prior to the certification which have not yet been paid by the School Board should be paid to the local and the local should forward them to NHFT if its internal relationship so requires since the HFT was still an affiliate of NHFT. Dues since the date of certification of affiliation change should also be paid to the local treasurer and would be shared with NHEA in accordance with the affiliation arrangement between the local and NHEA, whatever that may be. Therefore, the answer to question three in the Declaratory Judgment action of the School Board is answered. Question four, the effect of Appendix D, has been answered in that the Appendix D is hereby deemed reformed to that of the NHEA form and if that results in substantive questions as to administration, they should be the subject of negotiations between the parties.

The requests for unfair labor practice findings are hereby denied. The Declaratory Judgment actions of the parties have been answered herein and all motions filed, those to consolidate the matters and by the Federation to intervene, have been granted.

ORDER

Consistent with the decision of the Board, the PELRB issues the following orders:

- a) The Hinsdale School Board is ordered to pay all unpaid dues deductions to the treasurer of the Hinsdale Federation of Teachers. Further, in all matters after the date of PELRB certification validating the change in affiliation, the Hinsdale School Board is ordered to deal with the HFT as an affiliate of NHEA during the period of the existing contract and in negotiations for successor agreements, if any.
- b) The Hinsdale Federation of Teachers is declared to be affiliated with the New Hampshire Education Association from the date of the Board's certification of the change in affiliation. Further, the Hinsdale Federation of Teachers' treasurer is ordered to divide its dues received from the Hinsdale School board between the New Hampshire Federation of Teachers and the New Hampshire Education Association consistent with this order.
- c) The parties are ordered to interpret the Hinsdale Federation of Teachers/Hinsdale School Board contract as amended and reformed consistent with this order.

Signed this 22nd day of February, 1989.


EDWARD J. HASELTINE
Chairman

Also present members Seymour Osman, Richard W. Roulx and Daniel Toomey. Also present, Board Counsel, Bradford E. Cook, Esq. and Executive Director, Evelyn C. LeBrun.

Chairman Haseltine and Members Osman and Roulx voting in favor, Member Toomey dissenting.

See dissenting opinion, attached.



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(continued - dissenting opinion)

DISSENTING OPINION:

In my opinion, RSA 273-A:11 confers on the exclusive representative certain rights; i.e., "the right to represent the bargaining unit exclusively (emphasis added) and without challenge (emphasis added) during the term of the collective bargaining agreement.

In the instant case, the Hinsdale Federation of Teachers, Local 4255, NHFT/AFT, AFL-CIO chose to follow both routes; i.e., amendment of affiliation and petition for new election to determine if the teachers wish to retain Local 4255 as their representative or change affiliation to NEA-New Hampshire.

An election was held in Hinsdale and the teachers voted in favor of NEA-New Hampshire. This, however, does not alter the fact that the Federation of Teachers and the NEA-New Hampshire are two separate and competing unions/association.

RSA 273 enacted in 1975 clearly identified the period when a rival or competing union/association could challenge another union/association and I quote: -

RSA 273-A:11 (b) . . . "Notwithstanding the foregoing (right to represent exclusively without challenge, see above) an election may be held not more than one hundred and eighty (180) nor less than one hundred twenty (120) days prior to the budget submission date in the year and collective bargaining agreement shall expire."

In addition the Board's rules Pub 301.02, "Election of Exclusive Representative "(a) states: - . . . "A petition for certification as the exclusive representative of a bargaining unit for which a collective bargaining agreement constitutes a bar (emphasis added) to election under RSA 273-A:11, I (b) presently exists must be filed no earlier than two hundred and ten (210) days and should be filed no later than one hundred and fifty (150) days prior to the budget submission date of the affected public employer in the year that agreement expires, notwithstanding any provisions in the argument for extension or renewal..."

The statute anticipated and addressed the need for a "window" period or challenging period for competing unions.

In many cases since enactment of 273-A, the Federation of Teachers and NEA-New Hampshire were both a choice of the secret election ballots, further evidence of the difference between the two competing educational unions/associations.

In reviewing past records, I find that in 1976, Barbara Yentzer, then representative for the Hinsdale Education Association petitioned to represent all full-time teachers, guidance counselors, department chairman and elementary reading supervisors. The unit was certified after a secret ballot election conducted by PELRB on September 22, 1977.

In 1982 the Federation of Teachers challenged the Education Association and I quote from statements from William Shanahan, then President of NEA-New Hampshire;

"Hinsdale Federation of Teachers--NHFT/AFT/AFL-CIO -

If you vote for Hinsdale Federation of Teachers, it means that there will be a collective bargaining for Hinsdale teachers with affiliation with NHFT/AFT/AFL-CIO. This would place Hinsdale teachers out of the mainstream of the teacher movement in your surrounding area, in New Hampshire and the county. It would mean that Hinsdale teachers would rely on NHFT for staff and resources in building teacher and community support for bargaining success. . . In summary, with NHFT you get bargaining affiliation with an organization with limited services and programs that does not represent over 10% of New Hampshire teachers.

Hinsdale Education Association is an independent local organization started in 1975. Currently, this organization is defunct. By voting Hinsdale Education Association, you will be saying you want collective bargaining and an opportunity to compare the relative resources of NEA-New Hampshire, (something you have not had up to this time. . . .)"

An election was held on May 28, 1982 with three choices on the ballot (1) Hinsdale Federation of Teachers, Local 4255, AFT/NHFT/AFL-CIO (2) No Representative and (3) Hinsdale Education Association. Out of 45 eligible voters, 27 votes were cast for the Federation, 8 votes were cast for the Education Association and 8 votes cast for "No Representative" for a total of 43 votes cast. The Federation of Teachers, Local 4255, AFT/NHFT/AFL-CIO was certified as the exclusive representative with rights under 273-A. . .

To now say, that these organizations are not rival unions/associations is ludicrous.

The PELRB rule effective in Pub 301.05 was created in an emergency situation wherein Council 67, AFSCME, in receivership at the time, merged with Massachusetts Council 93, AFSCME. A change from one council to another within the same international union. Such is not the case in Hinsdale, two competing unions/associations should not be allowed to "raid" or merely take over a group of employees without challenge.

In final support of my opinion, I agree with the majority opinion of the Board that only a change in the actual "bargaining agent" would necessitate a new election. All the unions are structured differently, in many cases the international has only a support function and clearly isn't the "bargaining agent".

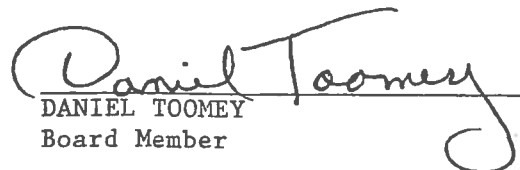
The firefighters' bargaining units are quite autonomous and are a good example of this, however to say that the AFT in this case wasn't the "bargaining agent" contradicts the N.H. Supreme Court ruling in the Manchester Principals case. In that case, the NEA, not the local, Association of Manchester Principals, was found to be the "bargaining agent", the New Hampshire Supreme Court in Appeal of Manchester Board of School Committee v. PELRB, 129 NH, 151, 523 A.2d, 114, reversed the PELRB decision wherein they approved and certified a union of school principals with affiliation with NEA-New Hampshire, same affiliation as classroom teachers. It seems to me that precedence would apply unless the AFT is found to be structured differently than the NEA and are not in fact the "bargaining agent" for the local union.

RSA 273-A:8, II explicitly prohibits "persons exercising supervisory authority from belonging to the same unit as employees they supervise"; such was not the case in the Manchester School System, principals were in a separate unit but with the same affiliation. The School Committee urged the Supreme Court to interpret 273-A:8 as prohibiting supervisors from being represented by the same union or bargaining representative.

Clearly by reversing PELRB's decision, the Court was saying that NEA-New Hampshire was the bargaining representative for the principals as well as the teachers, not the Manchester Education Association.

Therefore, if we follow through with the Court's decision, Local 4255, NHFT/AFT/AFL-CIO clearly was the bargaining representative for the Hinsdale Federation of Teachers and a change in bargaining representative, from NHFT/AFT to NEA-NH can and should be approved after a secret ballot election under the provisions of RSA 273-A:11(b).

For all of the above reasons, I feel I must dissent from the majority opinion.


DANIEL TOOMEY
Board Member

Dated this 3rd day of April, 1989.