

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD**

IN THE MATTER OF :
STATE OF RHODE ISLAND - :
DEPARTMENT OF PUBLIC SAFETY :
DIVISION OF SHERIFFS :
-AND- :
RI COUNCIL 94, AFSCME, AFL-CIO : CASE NO. EE – 3418A
LOCAL 2409 (INCUMBENT) :
-AND- :
NEW ENGLAND POLICE :
BENEVOENT ASSOCIATION :
(INTERVENER) :

DECISION AND ORDER OF ELECTION

TRAVEL OF THE CASE

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter “Board”) as a Petition for Decertification of a Certified Bargaining Representative, filed by the New England Police Benevolent Association (hereinafter “Intervenor”) seeking an election to determine whether RI Council 94, AFSCME, AFL-CIO, Local 2409 (hereinafter “Incumbent”) or the New England Police Benevolent Association (Intervener) should represent the current positions in the bargaining unit, or not be represented by a labor organization, described in the Intervenor’s Petition as:

All Sheriff’s, Deputy to the Sheriff, Deputy Sheriff, Deputy Sheriff and Clerk, Clerk Deputy (Female), Clerk, Clerical, Clerk Typist, Matron employed by the State of Rhode Island as currently defined in Case No. EE-3418A.

The petition was filed on July 21, 2020. Cards of interest were submitted and were sufficient in number to initially support a showing of interest. On February 3, 2021, the

cards of interest were verified by the Agent of the Board and were found to demonstrate a sufficient showing of interest to allow the petition to move forward. An informal conference was scheduled for March 4, 2021. At that time, all the parties, the Intervenor, the Incumbent and the Employer, the State of Rhode Island – Department of Public Safety – Division of Sheriffs (hereinafter “Employer”), were represented by counsel. During the informal conference, the Incumbent challenged the status of the filed petition, claiming a contract bar existed to block the petition. The informal conference was immediately converted to an informal hearing and all the parties were given an opportunity to present any arguments or information they thought relevant to the challenge. On March 30, 2021, the matter came before the Board. In arriving at its Decision and Direction of Election, the Board considered all the arguments raised and case law references brought forth at the informal hearing.

FACTUAL BACKGROUND

As noted, this case involves the filing of what is commonly referred to as a Decertification Petition. The Incumbent Union, RI Council 94, AFSCME, AFL-CIO, Local 2409, and the Employer, the State Department of Public Safety – Division of Sheriffs, were parties to a Collective Bargaining Agreement dated July 1, 2017 through June 30, 2020. Sometime in early 2020, the Incumbent Union notified the Employer of its desire to commence negotiations for a new Collective Bargaining Agreement. An initial meeting was scheduled for late March or early April 2020, but due to the COVID-19 pandemic the scheduled meeting was postponed. As of the date of the informal hearing, the parties had not, as yet, exchanged contract proposals.

The parties Collective Bargaining Agreement expired on June 30, 2020. However, the CBA contains language (sometimes referred to as a “Rollover” or an “Evergreen” clause) that appears to extend the provisions of the CBA beyond the expiration date under certain conditions. The language, specifically set forth in Article 48.2 of the CBA, states as follows:

48.2 This agreement shall be automatically renewed from year to year thereafter, unless either party shall notify the other in writing ninety days prior to the anniversary date that it desires to modify this agreement. In

the event that such notice is given, negotiations shall begin no later than sixty days prior to the termination date. This agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this agreement to the other party. In the event that either party desires to terminate this agreement, written notice must be given to the other party not less than ten days prior to the designated termination date.

As the Board understands the facts before it, after June 30, 2020 the parties continued to operate under the provisions of the expired CBA. No new document was prepared or signed by the parties.

On July 21, 2020, approximately three (3) weeks after the expiration of the Collective Bargaining Agreement between the Incumbent and the Employer, the Intervenor, New England Police Benevolent Association, filed a Petition for Representation.¹ The Intervenor's Petition seeks an election to determine who should represent the current defined bargaining unit, the Intervenor or the Incumbent Union (or no Union).

DISCUSSION

The initial question raised by the Intervenor's filing of a so-called Decertification Petition after the expiration of the CBA is the appropriateness of the filing outside the established statutory and regulatory time frame. It also raises questions as to whether the contract clause noted above (i.e. the rollover, evergreen or termination clause) would, if implemented, act to block the filing of the decertification petition.

The question here revolves around whether the filing of the decertification petition outside the Board's timelines is legitimate. Stated differently, the question is whether a decertification petition can be legitimately filed at a time other than the thirty (30) days

¹ The Board notes that RIGL 28-7-9(b)(2) and Board Rule 1.15B3 both provide that a third party wishing to challenge the representative status of an incumbent Union may do so by filing a petition in the thirty (30) days immediately preceding sixty (60) days before the expiration of the CBA. In the present case, the Intervenor did not file its petition in accordance with the above stated statutory provision and Board Rule but, instead, waited until the CBA had expired to file its petition. It is the timing of the filing of the petition by the Intervenor that has prompted the challenge by the Incumbent Union.

immediately preceding sixty (60) days before the expiration of the CBA as set forth in Rhode Island statute and the Board's Rules. The Board's Rules do not appear to address this specific question. The Rules do, however, address several so-called "contract bars" to the filing of a petition which are a relevant starting point for this discussion.

Initially, a Union is prevented from filing a Decertification Petition in a unit where there has been an election within the previous twelve (12) months (Board Rule 1.15B2). Also, an intervening Union is prevented from filing a petition if there is a contract bar in existence. A contract bar to the filing of a Decertification Petition exists where the contract covering the bargaining unit in question is in writing and signed by the parties, addresses "substantial terms and conditions of employment" and is for "a definite duration." (Board Rule 1.15B4a – c). This latter term means that a CBA is in existence sufficient to block or prevent the filing of a decertification petition.

The National Labor Relations Board (NLRB) has addressed and explained how a contract bar applies and, for purposes of this Decision, when it would not apply.² As defined by NLRB case law, a contract will be a bar to an election petition if the document "relied on as manifesting the parties' agreement ... clearly set out or refers to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." See *Seton Medical Center*, 317 NLRB 87 (1995). A number of different concerns have been addressed as part of this definition, many of which the Board has identified in its Contract Bar Rule at 1.15B4. Thus, the NLRB looks to the adequacy of the contract, whether the contract is a "collective" agreement and to the following factors: the contract must (1) be reduced to writing; (2) be signed by all the parties before the rival petition has been filed; (3) contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship (see *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Aircraft Displays*, 262 NLRB 1233 (1982)); (4) clearly by its terms encompass the employees involved in the petition; (5) cover an appropriate unit; and (6) not contravene

² This Board and the courts of this State have, with respect to labor law issues, consistently looked to federal labor law for guidance. (See *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304 (R.I. 2015); and *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 120 (R.I. 2007)).

the policy of “assuring employees a free choice of representatives at reasonable intervals” (see *General Cable Corp.*, 139 NLRB 1123 (1962) in which the NLRB established the basic 3-year rule for contract duration). It is this last item that is of crucial importance to the instant matter. Specifically, if a contract is of an indefinite duration does it still fit within the definition of a contract so as to bar a decertification petition. In short, the NLRB has consistently stated no in answer to this question.

Generally, the 3-year rule for the duration of a CBA acts as a bar to an election petition. Contracts that run for longer than a 3-year period operate as a bar only for as much of its term as does not exceed 3 years. This is consistent with RI statutory law. (See RIGL 28-9.1-6; 28-9.2-6; 28-9.3-4; 28-9.4-5; 28-9.5-6; 28-9.6-6; and 28-9.7-6; see also *Providence Teachers’ Union v. Providence School Board*, 689 A.2d 399 (R.I. 1997) and *City of Cranston v. Teamsters Local 251*, PM09-1518, (July 22, 2009). As the NLRB has succinctly stated, a contract which has no fixed term does not bar an election for any period. See *Pacific Coast Assn. of Pulp & Paper Mfgs.*, 121 NLRB 990 (1958); *McLean County Roofing*, 290 NLRB 685 (1988). The phrase “no fixed term” includes contracts of an indefinite duration (a contract without any stated provision for termination or which terminates on the occurrence of some event the date of which cannot be established), contracts terminable at will, temporary agreements and extensions of expired agreements (contracts extended pending the negotiation of a new agreement or the modification of an old agreement).

In the instant case, while the Board was not presented with the status of the current contract, the information presented at the time of the informal hearing confirmed that early in 2020 the Incumbent Union notified the Employer of its desire to renegotiate the terms of the then existing CBA. The parties then scheduled an initial meeting, but due to the pandemic the meeting was cancelled and to the best of the Board’s knowledge has not, as yet, been rescheduled. Under the provisions of Article 48.2, when one party notifies the other at least ninety (90) days prior to the contract expiration that it intends to modify the CBA, the Agreement “shall remain in full force and be effective during the period of negotiations and until notice of termination of this agreement to the other party.” In the

present case before the Board this is precisely what occurred.³ Since the Incumbent Union notified the Employer of its intent to modify the CBA, the so-called “Evergreen” clause has been invoked, meaning that the contract’s provisions remain in place until a new agreement is negotiated or the contract is terminated. This situation is similar to when a contract is terminated and the terms remain in place by law, but the contract is no longer effective. See *Rhode Island Council 94 v. State of Rhode Island*, 705 F. Supp. 2d 165 (D.R.I. 2010). In either case the contract has expired, but the provisions of the contract remain in place indefinitely. In the instant matter, there is no evidence before the Board that there is a specific term or duration for the current expired CBA. Instead, the CBA has been extended for an indefinite time, i.e. until the parties reach a new agreement or the expired agreement is terminated. In such a case, as noted above, the CBA does not act as a bar to the filing of a decertification petition such as in the instant matter, because there is no definite end date to the contract.

CONCLUSION

1. The Board hereby adopts the findings and information contained in the Board Administrator’s report of the Informal Hearing held on March 4, 2021.
2. For the reasons discussed in more detail above and after review of all the information submitted by the parties, it is the Board’s decision that the petition filed by the Intervenor in this matter is valid and an election is hereby directed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby:

DIRECTED that an election by secret ballot shall be conducted within sixty (60) days hereafter, under the supervision of the Board or its Agents, at a time, place or in a manner to be fixed by the Board among all Sheriff’s, Deputy to the Sheriff, Deputy Sheriff,

³ Under Article 48.2 there is also a so-called rollover provision that states: “This agreement shall be automatically renewed from year to year thereafter, unless either party shall notify the other in writing ninety (90) days prior to the anniversary date that it desires to modify this agreement.” (Emphasis supplied) As noted, because the Incumbent Union did notify the Employer more than ninety (90) days prior to the expiration of the CBA of its intent to modify the contract, in the Board’s view the rollover provision does not apply in the instant case.

Deputy Sheriff and Clerk, Clerk Deputy (Female), Clerk, Clerical, Clerk Typist, Matron employed by the State of Rhode Island as currently defined in Case No. EE-3418A employed on July 21, 2020 to determine whether they wish to be represented for purposes of collective bargaining, as provided for in the Act, by RI Council 94, AFSCME, AFL-CIO, Local 2409, by no labor organization, or by the New England Police Benevolent Association.

RHODE ISLAND STATE LABOR RELATIONS BOARD

/s/ Walter J. Lanni

Walter J. Lanni, Chairman

/s/ Scott G. Duhamel

Scott G. Duhamel, Member (Dissent)

/s/ Aronda R. Kirby

Aronda R. Kirby, Member

/s/ Derek M. Silva

Derek M. Silva, Member (Dissent)

/s/ Harry F. Winthrop

Harry F. Winthrop, Member

/s/ Stan Israel

Stan Israel, Member (Dissent)

BOARD MEMBER, KENNETH CHIAVARINI, WAS NOT PRESENT TO SIGN AS WRITTEN.

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: April 21, 2021

By: /s/ Robyn H. Golden
Robyn H. Golden, Administrator

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF :
STATE OF RHODE ISLAND - :
DEPARTMENT OF PUBLIC SAFETY :
DIVISION OF SHERIFFS :
: :
-AND- :
: CASE NO. EE – 3418A
RI COUNCIL 94, AFSCME, AFL-CIO :
LOCAL 2409 (INCUMBENT) :
-AND- :
: :
NEW ENGLAND POLICE :
BENEVOENT ASSOCIATION :
(INTERVENER) :

**NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. EE- 3418A, dated April 21, 2021, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **April 21, 2021**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: April 21, 2021

By: */S/ Robyn H. Golden*
Robyn H. Golden, Administrator