STATE OF MAINE

MAINE LABOR RELATIONS BOARD
Case No. 05-E-01
Issued: November 5, 2004

In Re:	
REVOCATION OF CERTIFICATION, KENNEBEC COUNTY SUPERVISORY BARGAINING UNIT	EXECUTIVE DIRECTOR'S DECISION

PROCEDURAL AND FACTUAL HISTORY

By letter dated September 29, 2004, Alan R. Churchill, Business Agent for Teamsters Local Union No. 340 ("Union" or "Teamsters"), advised the Maine Labor Relations Board ("Board") that the Kennebec County Supervisory Bargaining Unit had been inactive since 1990 and that no collective bargaining agreement was in effect for the unit. Mr. Churchill further advised that the Union had no outstanding financial obligations relating to election costs, grievance/arbitration or impasse resolution proceedings. The Union sought to either disclaim representing the unit pursuant to Chap. 11, § 81 of the Board Rules or to have their certification as bargaining agent revoked pursuant to Chap. 11, § 82 of the Board Rules.

A review of Board records revealed the following information about this unit. The bargaining unit was created by Agreement on Appropriate Bargaining Unit signed on October 15, 1981. At that time, the unit consisted of the following positions: Deputy Registrar of Probate, Deputy Register of Deeds, Deputy Treasurer, and Assistant Jail Administrator/Classification Officer. The Teamsters were certified as the bargaining agent for this unit following election, on November 16, 1981. Mediation Status Reports filed with the Board indicated that the parties participated in mediation at various times from 1982 through

1990. However, no collective bargaining agreements negotiated by the parties for this unit were filed with the Board. The last Board record was a Mediation Status Report dated June 23, 1990. The report indicated that issues had been resolved in all four Kennebec County units (including this unit), with tentative agreements for two-year contracts subject to ratification.

Since Board records indicated that there had been no collective bargaining activity in the unit in the past five years, the Board elected to process the request as a revocation of certification in accordance with the requirements of Chap. 11, § 82 of the Board Rules. The attorney examiner (acting as designee of the executive director) requested that the Kennebec County Commissioners ("County") and the Union review their records and supply to the Board any documents that demonstrated the most recent existence of a collective bargaining relationship for this unit. Both parties supplied to the Board a collective bargaining agreement for the unit, signed on September 15, 1987, and effective from January 1, 1987, to December 31, 1989. The County also supplied a three-page document which appeared to be an amendment to the collective bargaining agreement signed on July 26, 1990, for the County and on July 30, 1990, for the Union.

The Board issued a Notice of Revocation of Certification on October 8, 2004, that proposed to revoke the certification of the Union as bargaining agent for the unit, in the absence of any collective bargaining activity regarding the unit for five or more years. The Notice also stated that any party (including any affected employee) wishing to object to the proposed revocation of certification should contact the Board on or before October 25, 2004, and provide evidence in support of the objection. The Board received one objection to the revocation of certification from Jane Cook. Her written objection was received on October 19, 2004. A copy of this objection is attached to this decision.

The present decision is being issued to address this objection, and to make a determination whether the certification of the Union as bargaining agent should be revoked.

JURISDICTION

The jurisdiction of the executive director or his designee to resolve issues related to the determination of the bargaining agent and the revocation of bargaining agent certification lies in 26 M.R.S.A. § 967 and Chap. 11, § 81 and § 82 of the Board Rules. All subsequent statutory references are to 26 Maine Revised Statutes Annotated.

DISCUSSION

Section 967(2) of the Municipal Public Employees Labor Relations Law ("MPELRL") provides, in part, that:

> The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit, unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit.

This provision contemplates that in an active bargaining unit with on-going collective bargaining activity, the certified bargaining agent will continue to function as the unit's agent unless and until they are decertified. In some circumstances, and for a variety of reasons, a bargaining unit ceases to exist as originally created and/or collective bargaining activity comes to an end. Due to this, the Board Rules designate two ways in which the status of a bargaining agent and a bargaining unit may be clarified. Under Chap. 11, § 81 of the Board Rules, the bargaining agent may disclaim interest in representing a bargaining unit if there is no collective bargaining agreement in

effect and the bargaining agent has no outstanding financial obligations related to election costs, grievance/arbitration or impasse resolution proceedings. The Rules make clear that only the bargaining agent (not the employer, or an employee) may seek to disclaim interest in representing the unit. Under Chap. 11, § 82 of the Board Rules, the executive director may revoke the certification of a bargaining agent that has been inactive for five or more years if there is no evidence of any activity in the Board's records and no evidence of activity is received by the Board following notice. The Rules do not limit who may petition for a revocation of certification, but contemplate that the Board may act on its own motion.

In the present matter, the Union sought to either disclaim representing the bargaining unit or to have the certification revoked by the Board. Either disclaimer or revocation would be an appropriate option here. However, the disclaimer option does not depend on any period of time of collective bargaining inactivity. The Rules require only that a collective bargaining agreement not be in effect before a disclaimer in granted.[1] Because there has been no discernible collective bargaining activity in the Kennebec County supervisory unit in such a significant period of time, the revocation of certification is the most logical choice to address the Union's request. Chap. 11, § 82 provides in relevant part:

> **1. Inactive Bargaining Unit.** If the Board's records indicate that a certified or recognized bargaining agent has been inactive for a period of five or more years, the Board may solicit information from the

[1]Indeed, in recent years, the Board has handled requests for disclaimer from bargaining agents prior to the expiration of the collective bargaining agreement. The parties and the employees have been placed on notice at the time of the request, although a disclaimer has never been granted until after the expiration of the agreement.

parties on the continued existence of a collective bargaining relationship in that bargaining unit. The Board may request a copy of any document demonstrating that a collective bargaining relationship exists or existed during the previous five years or that the bargaining agent submitted a written request to meet and negotiate during that same time period. *If any evidence is presented that indicates that the bargaining agent has been active during the previous five years, the Board may not revoke certification under this section. Evidence should be liberally viewed in favor of continued certification.*

2. **Posting of Notice.** If the Board is not able to find any evidence that the bargaining agent has been active in the past five years by contacting the employer, the bargaining agent of record, or any likely successors, the Board must issue a Notice to Employees concerning the potential revocation of bargaining agent certification before any action may be taken. The notice must state the name of the certified or recognized bargaining agent, the nature and date of the most recent collective bargaining activity known to the Board, and the time period during which objections to the Board revocation of certification must be filed. This posting period must be at least 15 calendar days and, for school units, may not include school vacation periods.

3. **Objections.** *Any party objecting to the Board revocation of certification must contact the Board within the time period specified in the notice and provide evidence in support of its position within a reasonable time thereafter. The collective bargaining activity serving as the basis of the objection must have occurred prior to the date of the Notice issued by the Board.*

(emphasis supplied)

The Rules provide that a revocation may be granted when there is no evidence of collective bargaining activity for five or more years prior to the request for revocation. Any objecting party must provide "evidence in support of its position" and the "collective bargaining activity serving as the basis of the objection" must have occurred prior to the notice advising

employees of the request for revocation. The Rules clearly contemplate, therefore, that an objecting party supply evidence of collective bargaining activity that occurred within the previous five years.

A review of the Board records and the evidence supplied by the parties establish that there was a collective bargaining agreement in effect for this unit from January 1, 1987, to December 31, 1989. A Mediation Status Report from 1990 stated that a tentative agreement for a successor two-year agreement was reached. The parties supplied another document signed in 1990 which appeared to amend the previous collective bargaining agreement on articles pertaining to health insurance, employee benefits, vacations, sick leave and wages. This amending document was likely the successor two-year agreement as described by the mediator. The amending document does not indicate effective dates. However, § 965(1)(D) provides that "collective bargaining" means the mutual obligation of the public employer and the bargaining agent to

> Execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed three years.

Therefore, any successor agreement to the 1987-1989 agreement could have been effective no longer than three years or, at the longest, through December 31, 1992. There is no evidence of collective bargaining activity since the signing of the amending document in 1990. Ms. Cook, as the objecting party, has produced no evidence of collective bargaining activity since that time.

In her objection, Ms. Cook does not claim that there has been any recent collective bargaining activity. Her objection seems to relate in large part to her attempts to adjust her own salary with the employer and, as she identified, "pending issues" surrounding the collective bargaining agreement, such as salary adjustment and health insurance upon retirement. For there to be

"pending issues" about the agreement, there must be some valid argument that the agreement is still effective. The executive director knows of no circumstances under which a collective bargaining agreement with a last effective date of more than 12 years ago, and with no intervening collective bargaining activity, could still be in effect and enforceable. It is true that the obligation of parties to bargain in good faith includes the obligation to maintain the status quo following the expiration of a collective bargaining agreement. Lane v. Board of Directors SAD No. 8, 447 A.2d 806, 809-810 (Me. 1982). Arising as this duty does from the duty to bargain in good faith, the obligation to maintain the status quo contemplates an on-going collective bargaining relationship--the parties actively negotiating a successor agreement. While the Board has not been called upon to determine how long the status quo must be maintained in the face of a complete absence of collective bargaining activity, the MPELRL gives some guidance. Section 965(1)(E) provides that whenever wages or other matters requiring appropriation of money by a county are included as a matter of collective bargaining, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget. When this bargaining unit's agreement expired and no notice was sent requesting further collective bargaining within the 120-day period, this was a significant indication that a successor agreement was not being negotiated. In addition, § 965(1)(D) provides that collective bargaining agreements shall not exceed three years. As there was no evidence of any collective bargaining activity following the final collective bargaining agreement, the status quo could only continue for a reasonable period of time--a period that certainly could not be the 12-year hiatus found here.

While Ms. Cook's objection seems to relate only to whether the last collective bargaining agreement remains in effect and enforceable, other concerns also arise when such a length of time occurs with no collective bargaining activity. In Council No. 74, AFSCME and City of Augusta, No. 81-A-03 (MLRB Sept. 25, 1981), aff'd, No. CV-81-477 (Kennebec Sup. Ct., March 30, 1982), for instance, the Board found that when there was no collective bargaining activity for ten years following the certification of the bargaining agent, the City had a good faith doubt as to the continuing majority status of the union and was not obligated to bargain with the union. In that case, the Board ordered that a new bargaining unit be determined and that an election be held for the unit after the employer petitioned for the election. While the Council No. 74, AFSCME case does not address the issue of revocation of certification per se,[2] it does show that when such a significant period of time has passed, it is often difficult to determine the parameters of the bargaining unit and whether a majority of employees in the unit continue to wish to be represented by the bargaining agent. These concerns further support the decision to revoke certification here.

In conclusion, even construing the evidence liberally as directed by the Board Rules, the last collective bargaining agreement for this unit was in effect no later than December 31, 1992. Even if the employer were required to maintain the status quo after the expiration of this agreement, this period would only be for a reasonable period of time as part of on-going negotiations for a successor contract. As 12 years have passed since the last possible effective date of the agreement, with no evidence of further collective bargaining activity, this is an appropriate matter in which to revoke the certification of the bargaining agent for this unit.

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[2]Chap. 11, § 82 was newly added to the Board Rules effective January, 2001.

CONCLUSION

In accordance with Board Rule Chap. 11, § 82, the November 16, 1981, certification of Teamsters Local No. 340 is revoked for the Kennebec County Supervisory Bargaining Unit. The Union will not be permitted to file, or to intervene in, a petition to represent the employees in this unit for a period of one year from the date of issuance of this revocation.

Dated at Augusta, Maine, this 5th day of November, 2004.

MAINE LABOR RELATIONS BOARD

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Dyan M. Dyttmer
Designee of the Executive Director

The parties are hereby advised of their right, pursuant to 26 M.R.S.A. § 968(4), to appeal this report to the Maine Labor Relations Board. To initiate such an appeal, the party seeking appellate review must file a notice of appeal with the Board within fifteen (15) days of the date of issuance of this report. See Chapter 10 and Chap. 11 § 30 of the Board Rules.