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In the Matter of the Arbitration between

**BELLEVILLE BOARD OF EDUCATION,**  
Employer,

and

**BELLEVILLE EDUCATION ASSOCIATION,**  
Union,

JS Case No.  
4405

**OPINION  
AND  
AWARD**

Re: Identity of Association President.  
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Before **JOHN E. SANDS, Impartial Arbitrator**

**OPINION**

On April 14, 2016 the parties agreed to submit the following  
issues to arbitration by me:

- A. Does the Board of Education have standing to challenge the method used to select the local Association's officers?
- B. If so, did the procedure utilized comport with the BEA's Constitution and By-Laws?
- C. If not, the Association shall conduct an election.

Pursuant to my authority under the parties' collective bargaining agreement, I conducted a hearing in Belleville, NJ on April 14, 2016. Both parties appeared by counsel and had full opportunity to adduce evidence, to cross examine each other's witnesses, and to make argument in support of their

respective positions. Each has submitted a post-hearing brief, and neither has raised any objection to the fairness of this proceeding.

On the entire record so produced, I find the following relevant facts. Article XXVII.B of the parties' collective bargaining agreement provides for the Association president to work a reduced schedule to be able to perform Association duties. (Union Exhibit H, p. 28.) According to the Association, Michael Mignone has been Association president since his first election to that office in May 2013; and he has been working the required reduced schedule since that time and since his re-election to that office in May 2015. Prior to the events at issue, Mignone had worked as Association president with both the District's current Superintendent, Dr. Richard Tomko, and Dr. Tomko's predecessor, Ms. Helene Feldman, whom Dr. Tomko replaced in mid-February 2015.

The first questions concerning Mignone's entitlement to the release time benefit arose in February 2016. Dr. Tomko received a complaint from a non-bargaining-unit secretary, Lisa Kistner, that she had wanted to run for Association president in 2013 but had never received notice that an election was being held. (Apparently secretaries like Ms. Kistner had been in the same bargaining unit as teachers in 2013 but, by 2015, were in a separate bargaining unit not eligible to serve as or vote for BEA officers.) Dr. Tomko testified that he had also received

complaints from several current bargaining unit members concerning the representation BEA and NJEA Uniserve personnel were providing and that, in the course of those conversations, the bargaining unit members asserted that Mignone had never been elected president. Indeed, one of them stated that he had wanted to run for BEA president in 2015 but had not even been notified that an election was being held. After referring the unhappy people back to their building representatives, Dr. Tomko directed his secretary to search the District files for a communication from the Association confirming its election results and that Mignone was in fact the Association president. That effort came up dry.

On February 24<sup>th</sup>—one year and one week after his start date in Belleville— Dr. Tomko wrote to BEA Secretary Cathy Parisi and asked her to provide the following information for District records: “1. The date of the last Association election of officers. 2. The term of office for the President. 3. The vote tally for the office of President.” Because this inquiry went beyond just seeking the written confirmation of Mignone’s status as Association president that the District lacked, BEA resisted what it saw as an effort to secure its confidential information and referred Dr. Tomko’s letter to its NJEA Uniserve Representative, Denise Policastro.

On February 25<sup>th</sup> Dr. Tomko emailed Ms. Policastro with this request:

. . . Because of the release time issue, I need documentary proof in our files as to when the President was elected and for what term. May I please have this by Monday, February 29, 2016?

Rather than simply replying that Mignone had been elected in March 2015 for a two-year term beginning in May 2015, Ms. Policastro focused on the specific requests of Dr. Tomko's February 24<sup>th</sup> letter to Ms. Parisi and asked Dr. Tomko, "Can you help me understand your overall goal for this information? I am not sure I understand the 'release time issue.'"

After further discussion and email correspondence with BEA officers, Policastro, and BEA counsel proved unavailing to confirm Mignone's status as president, on March 7<sup>th</sup> Dr. Tomko sent a letter to Mignone advising that he would terminate Mignone's reduced schedule effective March 9<sup>th</sup>. After correspondence between counsel, the parties agreed to this expedited arbitration and, in the interim, to maintain the status quo with respect to Mignone's schedule.

As noted, the hearing in this matter occurred on April 14<sup>th</sup>. In addition to the foregoing, the record addresses the 2013 and 2015 election procedures for BEA's officers, the requirements of the BEA and NJEA governing documents with respect to elections of officers, and the internal Association election dispute raised by bargaining unit member Gary Polewka on behalf of himself and others. Of particular relevance are NJEA's top executives' testimony

and written response to Polewka's complaints. This was NJEA Executive Director Ed Richardson's March 30, 2016 response to Polewka:

NJEA has reviewed the applicable documents pertaining to the 2015 Belleville Education Association (BEA) elections, including the BEA Constitution and Bylaws, and do [*sic*] not see any evidence that BEA's governing documents were violated. In addition, we believe BEA's governing documents pertaining to elections are consistent with NJEA's Standards of Affiliation; therefore we do not believe NJEA has any further jurisdiction over this matter.

In addition, Tom Falocco testified. He is Associate Director of NJEA's Executive Office and "responsible for anything and everything that is governance from local affiliate compliance to the National Education Association." He explained the basis for Executive Director Richardson's determination consistently with Ms. Policastro's testimony that, because only one person had been nominated for each of BEA's four offices, the four nominees, including Mignone for president, were properly declared elected by acclamation without the necessity for a secret ballot. Falocco responded to extensive cross examination that emphasized the apparent inconsistencies between that process and what the words of BEA's Constitution and Bylaws require on the one hand with BEA and NJEA's assertion of the distinction between contested and uncontested elections on the other.

The bottom line of this record is that the District and BEA/NJEA disagree whether Mignone was in fact properly elected Association president in either 2013 or 2015. Hence the threshold issue before me, “Does the Board of Education have standing to challenge the method used to select the local Association’s officers?”

As to that issue, the Association argues (a) that an employer, public or private, simply has no stake in how a union conducts its internal affairs and elects its officers; (b) that, for the last three years, the employer has recognized Michael Mignone as Association president and dealt appropriately with him on contractual release time in accordance with its negotiated purpose to address and resolve labor-management issues without complaint from anyone concerning his authority so to act; (c) that, after a non-bargaining unit member raised a question and throughout this dispute, Superintendent Tomko dealt with other Association officers who had been elected at the same time and in the same manner as Mignone; (d) that the only law even remotely relevant to such internal union matters involves union members’ rights and remedies, not employers’; and no union member has alleged any economic harm relating to the issues at bar, and (e) that I should accordingly find the employer lacks standing to challenge the method used to select the local Association’s officers.

The Board of Education, on the other hand, contends (a) that a party's standing to litigate a claim derives from the "substantial likelihood [it] will suffer harm in the event of an unfavorable decision;" (b) that, as a public employer, it has a public-interest-based prerogative to spend public funds wisely; (c) that the BEA president's release time benefit is such an expenditure of public funds; (d) that it accordingly has a public-interest-based prerogative to confirm that the Association in fact elected its president in accordance with its Constitution and Bylaws; (e) that the Association has a duty to furnish the employer with information relevant to its representational activities and collective bargaining, which includes verifying the identity of the person entitled to receive contractual release time; (f) that the Superintendent's need simply to confirm the Association president's identity and manner of selection gives the employer standing to raise the issue at bar, and (g) that I should accordingly proceed to determine whether the procedure used to select the Association's officers comports with the BEA's Constitution and By-Laws.

On the entire record before me I must reject the Board's standing to raise this issue. I reach that conclusion for the following reasons.

First, both BEA and NJEA have certified to the employer that Michael Mignone is BEA's president and was elected to that office at a meeting in

May 2015 in accordance with the terms of BEA's Constitution and Bylaws and with NJEA's Standards of Affiliation. The Board of Education may disagree, but whether the process by which BEA elected Michael Mignone as Association president in fact complied with its Constitution and Bylaws is a matter of internal union affairs in which only BEA's members and officers have a justiciable interest. Indeed, Dr. Tomko initially recognized that fact in two ways: (a) He directed his secretary to search the District files for a communication from the Association confirming its election results and that Mignone was in fact the Association president, and (b) when bargaining unit members complained about the election and how BEA was representing bargaining unit interests, he told them to pursue their internal union remedies. His inquiry to the union, however, sought more than just the date of Mignone's election and his term—all he needed to know to confirm Mignone's entitlement to contractual release time—and asked as well for the vote tally, which was none of the employer's business.

Second, the Board has not met its own definition of standing: "For a party to have standing, he or she 'must present a sufficient stake in the outcome of the litigation, adverseness with respect to the subject matter and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision.'" Here, the "stake" the Board claims—confirming that the Association president was



properly elected— really belongs to bargaining unit and Association members; it has absolutely none as their employer. It has no monetary stake; it has no adverse interest to the Association as its negotiating partner, and it will suffer no harm in the event of an unfavorable decision concerning the propriety of Mignone’s election.

Whether Mignone or someone else turns out to be the properly-elected Association president, the Board will still be contractually obligated to grant that person release time and to deal with him or her on labor-management issues. As a result, the Board’s claimed public-interest-based prerogative to spend public funds wisely is irrelevant to this dispute. It will spend the same amount of public funds for release time regardless of whom the Association elects as its president or, for that matter, how it does so. The Board did appropriately exercise its relevant public-interest-based prerogative to spend public funds wisely when it negotiated the release time benefit to assist it in addressing labor-management issues effectively. Now its appropriate role is to deal with the person whom BEA and NJEA have certified as BEA’s president to perform that function.

Third, the Board’s own citations of authority support this conclusion. Every judicial, statutory, and administrative citation dealing with union elections involves union members’ rights and claims, not employers’. And none of the

information Dr. Tomko sought beyond the president's identity and term of office was relevant to the Board's labor-management relations and collective bargaining obligations. No one is claiming that he or she and not Mignone had been elected Association president and should be receiving release time. No one is adverse to the Board's interests in any way. The only adversity in this case involves an internal Association dispute, and those adverse to Mignone have both administrative and judicial remedies available to pursue their claims.

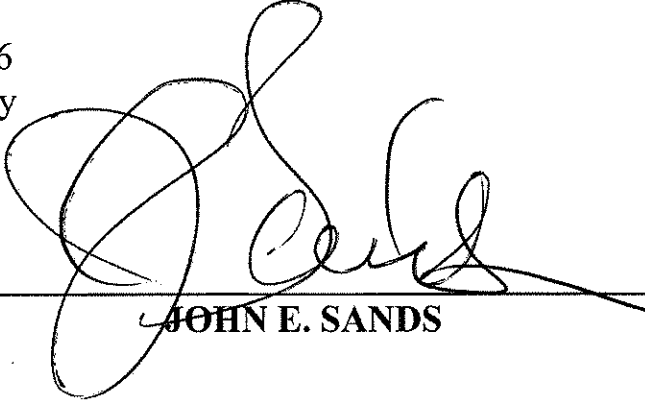
The bottom line is this. The Association and NJEA have both certified all the Board needs to know to administer the release time benefit: that Mignone was elected Association president in May 2015 for a two-year term. Whether or not that process complied with BEA's Constitution and Bylaws or with NJEA's Standards of Affiliation is simply none of the employer's business and not within my arbitral jurisdiction to decide.

By reason of the foregoing I issue the following

**AWARD**

The Board of Education lacks standing to challenge the method used to select the local Association's officers.

Dated: June 18, 2016  
Roseland, New Jersey



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**JOHN E. SANDS**

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY)

>ss.:

COUNTY OF ESSEX )

On June 18, 2016, JOHN E. SANDS, whom I know, came before me and acknowledged that he had executed the foregoing as and for his Opinion and Award in the above-captioned matter.



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Hilda M. Cortes-Rivera

A Notary Public of New Jersey

My Commission expires October 10, 2018