

7/11/77

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees' Association)
of New Hampshire, Inc.)
))
Complainant)
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vs)
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Plymouth State College of)
The University System)
of New Hampshire)
))
and)
))
Keene State College of)
The University System)
of New Hampshire)
))
Respondents)
)

KEENE: Case No. S-0309
PLYMOUTH: Case No. S-0312

Unfair Labor
Practice Proceeding

77-19

Appearances representing the University System of New Hampshire: Philip Moss, Esquire, Morgan, Brown, Kearns & Joy; Gary Wulf, UNH System, Personnel Office; William Jones, Chief Negotiator, Keene State College and Plymouth State College agreements.

Representing the New Hampshire State Employees' Association: Robert Clark, Esquire, Cleveland, Waters & Bass; Richard Molan, Assistant Director, SEA.

Findings. Following a hearing on June 16, 1977 at the James Hayes State Office Building in Concord, filing of post hearing briefs and a review of the evidence, the Board finds as follows:

Finding of Facts: Contracts exist between the State Employees' Association, Plymouth State College of the University System of New Hampshire and Keene State College of the University System of New Hampshire. Said contracts, significantly similar in nature, provide for the reopening of the contracts on April 1, 1976 "for the specific and sole purpose of the commencement of negotiations on wages and on agency shop proviso." (Plymouth contract provision 26.2; Keene State contract provision 28.7.) In addition, the Plymouth State agreement provides in Section 26.7(b), that it may be opened for "amendment(s) or supplement(s) by the mutual consent of the parties at any time after it has been in force and effect" There is no such provision in the Keene State contract which provides that only requirements of law or situations arising from changes in pay disproportionate from that received by state classified employees will cause the contract to be reopened (Keene contract provisions 28.5 and 28.4, respectively).

The State Employees' Association on behalf of the employees in the bargaining unit requested reopener on the matter of agency shop. At the initial meeting concerning discussions, William Jones, negotiator for the University System, responded to the agency shop request with a series of items, the discussion of which constituted,

in the words of all witnesses, a "quid pro quo" for an agency shop provision. The SEA objected to raising other issues outside the scope of the reopener provision but did not express its objection in such a manner that the University representatives could understand the nature of the objection or its basis. The SEA filed an unfair labor practice charge with the Board. By letter of 12 May, 1977 the University sought to set negotiating sessions. By letter of 25 May, 1977 the proposed negotiating sessions were cancelled on the basis that the University did not wish to negotiate again until a resolution of the scope of bargaining questions set out in the first SEA unfair labor practice charge was resolved. During the interim, Gary Wulf, System Personnel Officer, contacted the Board requesting an early determination on the unfair labor practice charge. When the negotiating session was cancelled, the SEA filed an additional unfair labor practice charge alleging the refusal of management to bargain. The other issue before the Board is an alleged unfair labor practice by the University at Keene for posting a summary of the negotiations where members of the bargaining unit could see it, said summary having been prepared by the University and allegedly violating an agreement to restrict the scope of publicity concerning negotiations.

Rulings.

1. The Board finds that there is insufficient evidence of intentional action by the negotiator for Plymouth State College and Keene State College to find an unfair labor practice. There was no evidence produced at the hearing of an effective protest by the State Employees' Association detailing the basis of its objection when subjects to which the SEA objected were raised in the first bargaining session. Had the University insisted after such protest that bargaining would be predicated on the discussion of said subjects, the SEA would have been justified in bringing an unfair labor practice charge, but in light of the failure of the SEA to so protest, the Board finds insufficient evidence for an unfair labor practice finding.

It is clear that the contract terms control what can be discussed, what provisions can be reopened and what scope the bargaining must take. Representatives of Plymouth State College and Keene State College and the representatives of the SEA drafted and executed the contract in light of the "System-wide Council" and other terms reflected in the contract. These set the framework for the agreement and the agreement controls. The SEA properly requested reopening on narrowly defined area, namely agency shop. The contract, which controls, provides that this is the only issue which could be discussed (other than wages which were not reopened) at the

time of the reopener. Unless both parties agree to discuss and raise other issues under the provisions of the Plymouth State contract, other issues cannot be opened. There is nothing in the contract which compels the parties to agree to discuss other issues, although under the Plymouth State contract they are free to do so if they agree. The University could have asked the negotiator at the Plymouth session to agree to open other issues, but they did not do so and the SEA in any event was under no compulsion to discuss them. The issues which the University sought to raise as a quid pro quo were inappropriate under the circumstances absent such an agreement to discuss other issues. In Keene, where the contract does not provide for such alternate reopener by agreement, the parties had no such option as to immediate changes. In either case, the parties could agree (although there is nothing to force either party to discuss or agree to such items) that the contract be changed in the future on certain items. The University could have requested such discussions, but again they could not have insisted on such discussions.

There is nothing in the contract or in the statute which requires parties to agree. The SEA could insist on discussing agency shop and agency shop alone and would

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be within its rights to refuse to speak about other issues raised by the Colleges. The Colleges, similarly, are not required to agree on any agency shop provision merely because it is reopened and are not violating their obligations as long as they negotiate in good faith.

In conclusion, although the Board finds insufficient facts to conclude that the Plymouth State College or Keene State College negotiators acted with enough purpose to find an unfair labor practice, the Board feels that the SEA cannot be required under the terms of the contract or the Public Employee Labor Relations Act to discuss issues not covered by the reopener, if they do not choose to do so.

2. In regard to the second unfair labor charge, specifying that the University had committed an unfair labor practice by cancelling the second negotiating session, the Board cannot find sufficient facts on which to conclude that the University knowingly did so with the intention of bargaining in bad faith or committing an unfair labor practice. There are occasions when clarification of the situation by the Board is necessary and absent which negotiations might prove meaningless. Based on the testimony of all those at the hearing, the Board cannot find that the mere cancellation is in itself

an unfair labor practice. This is not to indicate that the existence of court hearings or unfair labor practice charges before this Board can be relied upon as absolute shields protecting parties from negotiating or taking other actions required by contracts or the statute. In this case, however, the Board cannot find that an unfair labor practice was committed.

3. On the final matter, the posting of a management summary of the negotiations by a member of the management team at Keene State College, clearly visible to the members of the bargaining unit, the Board finds that although such posting was done by a lower level employee, not necessarily aware of the agreement of the parties not to publicize the negotiations, the action of posting said material was so prejudicial and inherently violative of good relations between the parties, that it constitutes a failure to negotiate in good faith and therefore an unfair labor practice.


Orders.

A. The Board orders the parties to return to the bargaining table forthwith to bargain regarding the agency shop provision and on other issues only if mutually agreeable and within the terms of the respective contracts and consistent with this decision.

B. The Board orders that College personnel cease and desist from future unilateral publicity regarding the status or topics of negotiations other than by internal

memoranda for the information of individuals who are
required to have knowledge of the situation.

July 11, 1977


EDWARD HASELTINE, Chairman