



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE ASSOCIATION OF PRINCIPALS AND
SUPERVISORS

Petitioner

and

KEENE SCHOOL DISTRICT
KEENE, NEW HAMPSHIRE

Respondent

DECISION NO. 82-14

HEARING OFFICER:
Russell Verney

APPEARANCES

Representing the Keene Association of Principals and Supervisors:

Jon H. Meyer, Esq., Counsel
Edward F. Boarassa, Jr.
E. Harlan King
Charles F. Burns

Representing the Keene School District:

Francis H. Ayer, Esq., Counsel
Richard L. Champagne, Superintendent
Charles Larracey, Assistant Superintendent
Carole A. Hastings, Personnel Director

Also present:

Cindy Clark
Members of the news media; radio and newspaper

BACKGROUND

A petition was received by the Public Employee Labor Relations Board (PELRB) on February 26, 1982 requesting certification of a bargaining unit for the Keene Association of Principals and Supervisors (KAPS), consisting of 18 people in the positions of Keene High School Principal; Keene Junior High School Principal; Elementary Principals (5); Administrative Assistants (8); Media Director; Student Activities Director; and, Building and Grounds Director.

On March 11, 1982, PELRB received "Exceptions to Proposed Units and That Petition be Dismissed" filed on behalf of the School Board (Board) under PELRB Rules and Regulations, Rule 1.2(e).

A hearing on the matter was originally scheduled for April 7, 1982, rescheduled to May 14, 1982 and again rescheduled and heard on June 8, 1982. At the close of the June 8, 1982 hearing, both parties were allowed to submit briefs provided they did not exceed areas which were testified to during the hearing and they were postmarked no later than two weeks from the hearing date (June 22, 1982). Briefs were received timely: Board's on June 22, 1982; KAPS' on June 23, 1982 but postmarked June 22, 1982.

OPINIONS - FINDINGS

The Board submitted "Amendment to Exceptions to Proposed Units and that Petition be Dismissed" at the hearing on June 8, 1982.

I find the portion of the Board's amendment, paragraph #2, exception to Building Grounds Director, untimely under the 15-day limitation for filing of exceptions as prescribed in Rule 1.2(e). Therefore, the Respondent's "Exception" is amended by striking paragraph #2 of the Amendment and by adding the "Amendment to Exceptions to Proposed Units and that Petition be Dismissed" to the Respondent's original "Exceptions to Proposed Units and that Petition Be Dismissed."

The motion to dismiss is denied in that a Petition for Certification under RULE 1.2(a) "May be filed at any time." The Respondent has confused "Notice of Intent to Bargain", RSA 273-A:3, II(a) with Petition for Certification Rule 1.2(a).

Next, the parties requested "with which party, the petitioner or Respondent, does the burden of proof lie?" In legal terms, I do not know. In practical terms under Rule 5, a hearing officer must insure "that a full inquiry is made into all matters in issue". In my opinion this allows the Petitioner the opportunity to show that each position petitioned for is in compliance with RSA 273-A and the Respondent the opportunity to substantiate its exceptions. With the submission of "Petition for Certification"; Exceptions to Proposed Units and that Petition Be Dismissed" as amended; more that four and one half hours of testimony and argument; sixteen exhibits; and briefs filed by both parties, a complete inquiry has been made into all matters in issue.

The first issue in dispute is incorrectly referred to as RSA 273-A:1, IXc. The correct reference is, RSA 273-A:1,X(c), "Persons whose duties imply a confidential relationship to the public employer." The N. H. Supreme Court in University System of New Hampshire v. State of New Hampshire & a., Case Nos 7579 and 7580, February 18, 1977, standardized the confidential exclusion to those "who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations." Testimony clearly shows that labor relations policies are formulated, determined and effectuated by the Board in conjunction with the Superintendent of Schools; Assistant Superintendent of Schools, the Personnel Manager of the School; Department and Professional consultants. The participation by any member of the proposed bargaining unit on a negotiations committee has been at the pleasure of the Board, not a duty of the individuals' position. Further, no confidential capacity has been demonstrated for any member of the proposed bargaining unit in formulating; determining or effectuating labor relations practices. The Administration of another groups contract; i.e., teacher or custodian, cannot be considered confidential but rather open and visible enforcement of existing labor relations policy, and proper job performance. The suggestion of items

which negotiators should attempt to change or include in agreements for groups other than KAPS is "job performance", not confidential capacity.

The next issue in dispute is whether or not certain positions exercise "Supervisory Authority involving the Significant exercise of discretion" over other positions in the same proposed bargaining unit. The significant exercise of discretion requires some demonstration of independence by the supervising authority. No such independence has been demonstrated. To the contrary, all actions of significance; i.e., hiring, firing, promoting, or demoting, must be accomplished by the Board or its agent, the Superintendent.

The final issue in dispute is community of interest among the positions in the proposed bargaining unit. The proposed bargaining unit exhibits community of interest in such areas as:

1. Employees with the same conditions of employment in that each individually receives an identical contract stating work rules and benefits.
2. Employees with a history of workable and acceptable collective negotiations in that the Leadership Group, to which all proposed bargaining unit positions now belong, has a history of more than 10 years of successful negotiations and representation to the Board.
3. Employees functioning within the same organizational unit. All positions in the proposed bargaining unit function under the Board and/or its agent, the Superintendent.
4. Self felt community of interest is demonstrated through participation in the leadership group.
5. Common salary structure:-
Of the positions in the proposed bargaining unit, all are professional in that each is predominately intellectual and varied in character. Each position involves discretion and judgment; and, each requires a formal program of advanced study

The closure of an elementary school requires the Petition for Certification to be reduced by one elementary Principal from five to four. The total number of positions for the proposed bargaining unit is seventeen.

DECISION

- A. The Motion to Dismiss is hereby denied.
- B. The Respondent's exceptions is amended, as noted.
- C. No position of the proposed bargaining unit has duties which imply a confidential relationship to the public employer.
- D. No position of the proposed bargaining unit exercises supervisory authority involving the significant exercise of discretion over

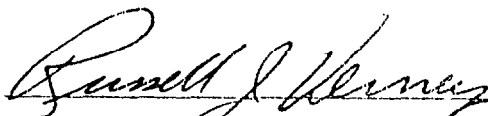
other positions proposed for the same bargaining unit.

- E. There is a community of interest among the employees.
- F. All employees are professionals.
- G. The petition for certification is amended to reflect the reduction of one elementary principal from five to four and a total bargaining unit of seventeen.

RECOMMENDATIONS

As Hearing Officer, I recommend that PELRB:

1. Uphold the findings and decision above.
2. Order an election under PELRB supervision as set forth in RSA 273-A:10 and Rule 3.



RUSSELL VERNEY, Hearing Officer
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 1st day of July, 1982