



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

THE STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, INC.

Complainant

V.

UNIVERSITY SYSTEM OF NEW HAMPSHIRE,
KEENE STATE COLLEGE

Respondent

Case No. S-0309:7

Decision No. 82-55

APPEARANCES

REPRESENTING THE STATE EMPLOYEES
ASSOCIATION OF NEW HAMPSHIRE, INC.

Robert Clark, Esq., Counsel
Richard Molan, Esq., Assistant Executive Director
Peter Hildreth, Staff Member

REPRESENTING THE UNIVERSITY SYSTEM OF
NEW HAMPSHIRE, KEENE STATE COLLEGE

Nicholas DiGiovanni, Jr., Esq., Counsel
Robert Mallat, Director of Resource Administration
Gary W. Wulf, Vice Chancellor

BACKGROUND

This is an unfair labor practice complaint brought by the State Employees Association of New Hampshire, Inc. vs. the Board of Trustees of the University System of New Hampshire in connection with Keene State College. The State Employees Association (hereinafter "SEA") is the certified bargaining representative of a unit comprising operating staff employees at Keene State College. The parties to this dispute are parties to a collective bargaining agreement in effect with respect to that unit, which agreement was effective July 1, 1981, and expires, according to its terms, on June 30, 1983.

The collective bargaining agreement contains the following language in Article XXI:

21.5 Effective July 1, 1982, continuing union employees (as defined in Article I Section 1), hourly compensation will be increased by nine (9.0) percent as set forth in Appendix B which is attached hereto and made a part hereof...

21.8 All of the above sections of this Article and all other cost provisions of this collective bargaining agreement, are subject to appropriations necessary to fully fund the amounts contained herein. These funds must be enacted by the general court of the state of New Hampshire and have been allocated by the Governor to the University System of New Hampshire for the specific purpose of honoring this agreement.

21.9 In the event that the conditions specified in Section 21.8 have not been met and, therefore, the above cost items cannot be effected, the parties shall return to the negotiating process for the renegotiation of cost items contained in this Article and Article XIII, Section 13.2.

During the 1982 Special Legislative Session, the University System of New Hampshire sought funds for salary increases for employees. The Legislature passed a supplemental budget at the end of a long and arduous budget process which granted to the University certain funds under laws of New Hampshire 1982, Chapter 42 Section 47 which provides as follows:

47 University of New Hampshire. The sum of \$2,600,000 is hereby appropriated to the Trustees of the University System of New Hampshire for the fiscal year ending July 30, 1983, to provide salary increases and fringe benefits. Said appropriation is in addition to all other sums appropriated to the University System. The Governor is authorized to draw his warrant for said sum out of any money in the Treasury not otherwise appropriated.

It is the position of the State Employees Association in its unfair labor practice complaint that the amount appropriated was more than the required amount for funding the increase called for by the collective bargaining agreement and that while no specific language was included in the legislation referencing the collective bargaining agreement, it was the failure of the University System to request such language which resulted in that failure. Because the amount appropriated was greater than

that required (estimated to be approximately \$225,000), the SEA states that a failure to provide full additional funding is an unfair labor practice under RSA 273-A:5(I)(A)(e)(g) and (h).

Evidence at hearing established that the University System, anticipating a failure to fully fund the agreement, requested negotiations and corresponded with the union on several occasions prior to the legislative enactment and, after the legislative enactment, informed the SEA that the amount appropriated was not sufficient to fully fund the pay increases sought by the Trustees of the University System (its legislative body) for all employees of the University System. Nevertheless, the System offered to continue the nine percent pay increase notwithstanding insufficient funding if the union would accept other personnel policies of the System. Union members, given an opportunity to vote on this continuation and condition, rejected the nine percent continuation.

The University System stated at hearing that \$5.4 million was required to continue the nine percent pay increase for all of its employees at all of its campuses and only \$3.9 million was appropriated, so there was insufficient money to fund the increase and, further, that the University System could not require the Legislature to include certain language in legislation and that the SEA had had an opportunity to present testimony to the Legislature and had failed to request specific language in the legislation which it could have requested as well. Therefore, the University System denies any unfair labor practice complaint arising out of the failure of the Legislature to fully fund its salary requests.

FINDINGS OF FACT AND RULINGS OF LAW

The provisions of the existing contract are specific. They require, in Article XXI Section 21.8 that the provisions be fully funded and that the general court allocate the funds specifically to the collective bargaining agreement. This was not done. The Board cannot find that the failure of the Legislature to include specific language in the legislation was the responsibility of the University System since the Legislature alone has the power to include language in its legislation. In addition, Peter Hildreth, Legislative Director of the SEA appeared at the Legislature and testified. There is no evidence that any one at any time requested the inclusion of the language or urged that it not be included. Therefore, the complaint that the University System committed an unfair labor practice by failing to have the Legislature

include certain language must be rejected.

The more substantive issue, however, is whether the Legislature in passing the additional appropriations for University pay in an amount greater than that required to fully fund the collective bargaining agreement satisfied the terms of the collective bargaining agreement. The University System Board of Trustees is the legislative body of the System. It has taken the position that all employees should get the same increase or not and the failure of the Legislature to specifically reference the collective bargaining agreement in making its additional appropriation leaves it to the Board of Trustees of the University to allocate the funds. The Board cannot find that the Trustees of the University System acted unfairly in seeking to allocate the pay to all of its employees. Because of the specific terminology and required inclusion of language or reference to the contract in any appropriation and the failure of such a reference, the Board finds that it is within the rights of the University System to allocate these funds to all of its employees. Since insufficient funds were appropriated to provide the total funding to all employees, and because the Legislature did not require funding of the contract as the contract anticipates, the Board must deny the request for finding an unfair labor practice.

ORDER

1. Because of the findings of the Board, the request for unfair labor practice finding is denied. Nothing herein shall be deemed to prohibit the parties from meeting and conferring concerning the insufficient funding, consistent with the contract.



JOHN M. BUCKLEY, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 9th day of August, 1982

By unanimous vote. Alternate Chairman Buckley presiding. Present and voting, members Osman, Mayhew and Verney present and voting. Also present, Board member Robert E. Steele, Executive Director Evelyn C. LeBrun and Counsel, Bradford E. Cook.