



State of New Hampshire
Public Employee Labor Relations Board

Keene State College Directors and Supervisors Association, NEA-NH

and

Keene State College

Case No. E-0191-1

Decision No. 2016-115

Appearances:

Damien M. DiGiovanni, Esq., Morgan, Brown & Joy, LLP, Boston, MA,
for the Keene State College

Esther Kane Dickinson, Esq., NEA-NH, Concord, NH, for the Keene State
College Directors and Supervisors Association, NEA-NH

Background:

On January 13, 2016, the Keene State College Directors and Supervisors Association, NEA-NH (Association) filed a petition for certification seeking to represent certain directors and supervisors of the Keene State College (College). After the College filed an objection, the parties reached an agreement on bargaining unit composition with the exception of the position of Director of Institutional Research and Assessment. The College argues that the current employee in this position, Catherine Turrentine, qualifies as a confidential employee within the meaning of RSA 273-A:1, IX (c) and should be excluded from the unit on that basis. The parties agreed to proceed to election without prejudice to the College's pending request for the exclusion of Ms. Turrentine from the unit. Pursuant to the results of election, conducted on April 6, 2016, the Association has been selected by a majority of the eligible voters as their representative. See Report of Election and Tally of Ballots (April 6, 2016).

A two-day hearing on the College's objection was conducted on March 2 and 11, 2016 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties filed post-hearing briefs on March 31, 2016; and the decision is as follows.

Findings of Fact

1. The College is a member institution of the University System of New Hampshire and a public employer within the meaning of RSA 273-A:1, X.
2. The Association is an employee organization seeking to represent certain Keene State College directors and supervisors.
3. Prior to the filing of the present petition for certification, the College had three bargaining units: (1) a full time faculty unit represented by the Keene State College Education Association, NEA-NH; (2) an adjunct faculty unit represented by the Keene State College Adjunct Association, NEA-NH; and (3) a campus safety personnel unit represented by the Teamsters Local 633.
4. The PELRB is also processing three certification petitions involving proposed new bargaining units: (1) Case No. E-0189-1 (administrative/operating staff employees); (2) Case No. E-0190-1 (professional and technical employees); and (3) the current petition Case No. E-0191-1 (Directors and Supervisors). The position of the Director of Institutional Research and Assessment is proposed to be included in the Directors and Supervisors bargaining unit and is designated as "Dir-Institutional Research-KSC" on the Association's petition for certification.
5. Catherine Turrentine is the Director of Institutional Research and Assessment. Her position is within the Finance and Planning Division of the College. See Agreed Statement of Uncontested Facts at 1.

6. Ms. Turrentine's duties include the following:

Provide campus-wide leadership in areas of assessment of student learning outcomes, research, analysis, planning, finance, alumni follow-up, and evidence-based decision making... Work with and through campus-wide committees, task force, and working groups ... providing data to guide and support their work as appropriate. Help grow the research and assessment capacity of the campus through policy development, managing access to survey tools, and serving as a resource and coach on research and assessment... Develop productive working relationship with faculty from all disciplines, guiding them in the development of assessment plans and activities that serve the needs of academic programs as well as the College overall... Through both institutional research and academic assessment efforts, position the College well for its next NEASC accreditation cycle...

Conduct major analyses to support the strategic needs of the College (e.g., Campus Climate Survey, retention analyses, etc.). Conduct ad hoc analyses to respond to queries from internal and external constituents and oversee staff in providing data analyses for these queries. Coordinate all surveys for the campus community...

See Joint Exhibit 1.

7. The institutional research aspect of Ms. Turrentine's responsibilities includes gathering and analysis of data and preparation of reports, both college-wide and specific to certain issues or departments. College-wide reports are widely-circulated. Some of the data reports are publically available on the College website. The President's Cabinet members typically receive these reports before they are made public. The one-time data reports on a particular issue can be requested by department heads and are never about specific College employees. These reports go directly to persons who requested them. Instructional analysis reports are distributed to department chairs and they are encouraged to distribute them within the departments.

8. Ms. Turrentine had also prepared data summaries for the accreditation reports used by the College to obtain accreditation by the regional accrediting organization. Specifically, she wrote a section regarding student success.

9. Based on the data collected by Ms. Turrentine, the College enrollment projection

models are prepared, as to both retention and graduation rates. These models and reports help the College leadership make decisions regarding staffing, housing capacity, and the like. Enrollment data helps project what kind of revenue the College will have and is important because 90% of College's budget comes from the enrollment. According to Vice President for Student Affairs Kemal Atkins, Ms. Turrentine will be preparing the data reports for the College collective bargaining team and for the unions, when requested.

10. The College administration relies on Ms. Turrentine's expertise and on the data provided by Ms. Turrentine to make decisions such as where to find alternative sources of revenue or how to reallocate resources or cut expenses.

11. In the past, Ms. Turrentine regularly created enrollment projection models but since the hiring of the Associate VP for Enrollment Management, she does not create these models anymore. She only provides data. She does not do staffing projections.

12. The assessment aspect of Ms. Turrentine's responsibilities includes design, conduct, and analysis of surveys including issue-specific surveys, such as a survey on sexual assault, the results of which are sent to the Cabinet, student evaluations of instructors, and the like. Surveys are also conducted for such purposes as to determine how well the College is doing in providing an appropriate climate for the students. The "campus climate" survey is publicly available. Surveys designed by Ms. Turrentine are questionnaires for students or faculty. Surveys are anonymous and are sometimes used for performance evaluations, which are placed in personnel files. Surveys can be department-specific, such as a financial aid department survey. The Institutional Research department sees surveys in raw form. College departments get the end product, i.e., reports. Ms. Turrentine sends "raw" comments to people who may make decisions regarding the issues, unless the comments would identify the person who wrote them. Professional ethics prevent Ms. Turrentine from reporting data if there are fewer than 10

responses to a survey to prevent identification of the respondents. A specific focus-group survey goes to a person who requested it. Learning outcome assessments are reported to the College Trustees, after which they become publicly available.

13. The surveys are anonymous and respondents can describe both negative and positive experiences. Ms. Turrentine summarizes this information, compares responses from different groups (such as racial, gender, etc.). Negative responses are summarized by theme. Ms. Turrentine makes sure that no respondent is identified. The responses may also be separated by department, in which case Ms. Turrentine gives the summary of the survey to the head of that department. Anyone can ask Ms. Turrentine to do a survey. She has a policy regarding student surveys. She has no policy regarding staff surveys.

14. Ms. Turrentine does not need to know the purpose of an information/data request to perform her job; and the performance of her duties does not change based on the purpose for which the data was requested.

15. Ms. Turrentine herself does not use the data she produces.

16. Ms. Turrentine reports directly to both the Provost of the College and Interim Vice President (VP) for Finance and Planning Daniel Petree. See Agreed Statement of Uncontested Facts at 2. Ms. Turrentine meets with each individually once or twice a month to keep them informed or to ask for support. Mr. Petree is her direct supervisor. Although she is expected to stay in contact with him, she generally works independently.

17. Mr. Petree supervises five directors and an administrative assistant. His responsibilities include overseeing the College buildings, institutional research, information technology, and business and financial matters. Mr. Petree reports to the College President and is a member of the President's Cabinet, which includes, among others, College Vice Presidents. The President's Cabinet meets weekly and its member discuss, among other things, budget

strategy, College policies, personnel issues, strategic planning, labor relations, legislative issues, and safety. Ms. Turrentine is not a member of the President's Cabinet and does not ordinarily attend Cabinet meetings, with exception of three meetings when she made presentations about key performance indicators.

18. Mr. Petree has not conducted personnel investigations himself and he never had conversations with Ms. Turrentine regarding personnel investigations or decisions. Mr. Petree does not develop or alter personnel policies.

19. Mr. Petree relies on the data provided by Ms. Turrentine in his work. Ms. Turrentine gathers data; and Mr. Petree uses this data to determine, among other things, the financial viability of College programs.

20. Mr. Petree is a member of the College bargaining team.

21. He also holds meetings once or twice a month with Divisional Directors who report to him, which Ms. Turrentine attends. No discussions of collective bargaining take place at these meetings. Personnel policies are sometimes announced, such as a policy regarding reporting leave. Mr. Petree passes on information regarding decisions made by the Cabinet.

22. Mr. Petree has one-on-one meetings with Ms. Turrentine. During these meetings, he might discuss issues such as how the College can become more efficient going forward. For example, the discussion might be regarding whether the revenue can be increased by creating summer athletic camps, such as a table tennis camp. Ms. Turrentine's role in such a discussion would be to develop a survey to determine how many people would be interested in table tennis. Anybody in the College can come up with ideas as to how the College can become more efficient.

23. Mr. Petree does not discuss collective bargaining strategies during his meetings with Ms. Turrentine or during the meetings with the Divisional Directors; and he has not asked

Ms. Turrentine for any information to assist him in collective bargaining.

24. Every year, Ms. Turrentine reports data to the Provost, College Senate Chair, and the Union President. She highlights enrollment data that would indicate that a particular program is not viable. Certain programs will never be eliminated even if they are not viable financially. Neither Mr. Petree nor Ms. Turrentine makes decisions as to which programs should be discontinued.

25. Ms. Turrentine attends the Academic Affairs Council that meets every week. Collective bargaining could be on the Council's agenda; and the attendees are invited, but not required, to leave if they do not participate in labor-related discussions. Ms. Turrentine always leaves. Recently, for the first time, she was called back to the meeting during the executive session and asked if the technological access can be changed in a course evaluation system, the system where students evaluate courses and instructors.

26. Ms. Turrentine produced a report for the Strategic Planning Committee, a committee led by faculty members. Ms. Turrentine is not a member of the leadership of the Strategic Planning Committee but she is an implementation member. She provides data to the Committee. Ms. Turrentine does not conduct strategic planning surveys. They are conducted by someone else.

27. Ms. Turrentine used to co-chair the Enrollment Management Committee. This Committee discusses student policies but not labor-related or personnel policies.

28. Ms. Turrentine has never been a member of a College bargaining team and has not participated in its negotiations with unions on campus. See Agreed Statement of Uncontested Facts at 3. She does not work on bargaining proposals and is not involved in collective bargaining. She has not been told that she will be on the College bargaining team in the future.

29. She has previously produced data requested by the union representing College faculty. Specifically, the union requested data related to the College's commitment that 2/3 of all courses be taught by the full time faculty. Some of the data she compiled came from the publically available reports.

30. The Provost of the College does not share collective bargaining-related information with Ms. Turrentine even when he requests her to provide data/information. At one time, Ms. Turrentine needed an official list of College departments contained in an approved but not yet signed collective bargaining agreement (CBA) to prepare a data report on departments. The Provost refused to disclose the information contained in the unsigned CBA to her.

31. Ms. Turrentine believes that most of her work is academic and her department should be moved from the Finance and Planning to the Provost's department.

32. Ms. Turrentine does not design institutional or personnel-related policies.

33. Ms. Turrentine does not analyze budgets and does not do budget modeling or anything else budget-related. Budgetary information is kept on a program called Banner, which also contains financial and employment records. Ms. Turrentine has access to the employee list on Banner for purposes of data reporting, but she does not have access to either financial or employment records.

34. Ms. Turrentine does not have access to documents related to significant personnel decisions concerning employees, such as hiring, promotion, demotion, or termination. She does not have access to personnel files or disciplinary records. She herself does not make, recommend or is privy to hiring, promotion, demotion, termination or other significant personnel decisions.

35. Ms. Turrentine is not privy to College management's or bargaining team members' thoughts concerning collective bargaining, grievance decisions, or labor relation issues.

Decision and Order

Decision Summary

The Director of Institutional Research and Assessment is not a confidential employee within the meaning of RSA 273-A:1, IX (c). Accordingly, this position is included in the directors and supervisors bargaining unit.

Jurisdiction

The PELRB has jurisdiction to determine the appropriate bargaining units pursuant to RSA 273-A:8 and Pub 302.

Discussion

The New Hampshire legislature has recognized the “right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof ...’ Laws 1975, 490:1.” See *Appeal of International Brotherhood of Police Officers*, 148 N.H. 194, 196 (2002). RSA 273-A:8, I vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof. In this case, the College argues that the position of Director of Institutional Research and Assessment should be excluded from the bargaining unit because this position is confidential within the meaning of RSA 273-A:1, IX (c).

RSA 273-A:1, IX (c) defines “public employee” as “any person employed by a public employer except ... [p]ersons whose duties imply a confidential relationship to the public employer.” However,

Confidential employees, in terms of a labor relations statute, are not those who merely deal with sensitive material or confidential matters, such as tax returns, ‘state secrets’, financial or personal matters which might be deemed ‘confidential’ in the sense that they should not be divulged to the general public. Indeed, most state employees (teachers, policemen, and others) have access to and are familiar with ‘confidential’ information and the drafters of the statute could not have intended that they be excluded from bargaining units.

State of New Hampshire, Department of Revenue Administration v. State Employees' Association, PELRB Decision No. 78001. Rather, confidential employees are "those employees who have access to confidential information *with respect to labor relations, negotiations, significant personnel decisions and the like.*" *Appeal of Town of Moultonborough*, 164 N.H. 257, 262 (2012) (emphasis added). Furthermore,

[T]he number of such employees in any department or other unit of government must be large enough to enable the labor relations activities of the Department and the personnel activities of the Department to be carried on, but must not be so numerous as to deny employee who are entitled to the rights and benefits of R.S.A. 273-A those rights merely on the assertion that they might somehow be connected with activities related to labor relations.

Supra, PELRB Decision No. 78001. "There is no set minimum or maximum number of employees who may be deemed confidential." *Appeal of City of Laconia*, 135 N.H. 421, 424 (1992).

In *Hooksett Police Supervisors, NEPBA Local 38 and Town of Hooksett*, the executive secretary was excluded from the proposed bargaining unit because she maintained all personnel files and performance evaluations, took and typed the minutes of the Police Commission's meetings, both public and non-public, typed the Chief's letters, including budgetary and labor related letters, and was privy to the Chief's ideas regarding collective bargaining negotiations with the exclusive representative of an existing bargaining unit. See PELRB Decision No. 2010-182. Similarly, in *Teamsters Local 633 of NH/Newmarket Public Works Employees and Town of Newmarket*, the position of secretary was excluded from the bargaining unit based upon the finding that the duties and responsibilities of the position, including the responsibilities of keeping the confidential personnel files, opening all department mail including confidential communications, and being involved in budget preparations, implied a confidential relationship to the public employer. See PELRB Decision No. 2008-127. See also *Rochester Municipal*

Employees Association and City of Rochester, PELRB Decision No. 2009-150; *Northfield Police Union, New England Police Benevolent Association and Town of Northfield*, PELRB Decision No. 2009-030. Similarly, in *Appeal of City of Laconia*, the Supreme Court concluded that the administrative secretary was a confidential employee because she “was privy to the personnel director’s personal thoughts, strategies, and notes about the collective bargaining process. Moreover, the administrative secretary opened all inter-departmental communications, including those involving labor negotiation strategies between the city manager and the personnel director.” *Appeal of City of Laconia*, supra, 135 N.H. at 423. See also *Appeal of Town of Newport*, 140 N.H. 343, 354 (1995).

In contrast, in *Appeal of Town of Moultonborough*, 164 N.H. 257, 263-64 (2012), the Supreme Court agreed with the PELRB that the executive assistant to the police chief was not a confidential employee within the meaning of RSA 273-A:1, IX. *Id.* for the following reasons:

... the executive assistant does not maintain personnel files and only the chief has a key to the locked cabinet containing personnel files. Additionally, she does not attend staff meetings or non-public meetings between the chief and board of selectmen. Moreover, although she receives all of the department mail, she does not open mail marked ‘confidential.’

The Town’s objection to the inclusion of the executive assistant position in the proposed bargaining unit rests largely upon conjecture regarding her role after the unit is certified. Whatever her potential role may be with regard to labor negotiations, the objection is premature... Accordingly, we concur with the PELRB’s conclusion that ‘the Executive Assistant is not involved with personnel or other confidential labor relations matter[s] in any meaningful way,’ and, therefore, should be included in the bargaining unit.

Appeal of Town of Moultonborough, supra, 164 N.H. at 263-64 (citations omitted). Likewise, in *Certain Classified Employees of the Public Utilities Commission v. SEA of NH, Inc., Local 1984, SEIU*, the PELRB held that the evidence was insufficient to establish a necessary link the confidential relationship must bear upon labor relations after finding that the Senior Policy Advisor position was based upon employee’s knowledge and experience in energy and electrical

markets; and that he was not involved in the development of labor or personnel policy. PELRB Decision No. 2008-096.

Similarly, in *New Hampshire Retirement System and State Employees' Association of New Hampshire, Inc., SEIU Local 1984*, the NHRS' request to exclude the positions of Process Improvement Manager, Project Manager, and Public Information Officer as confidential employees was denied because the evidence was insufficient to prove that these employees were confidential employees within the meaning of RSA 273-A:1, IX (c). See PELRB Decision No. 2013-262, rev'd on other grounds, *Appeal of New Hampshire Retirement Systems*, 167 N.H. 685 (2015). None of these employees were involved in collective bargaining, discipline, or other confidential labor relations matters or were privy to employer's personal thoughts or strategies related to the collective bargaining. In that case, the NHRS requested the exclusion of the Public Information Officer on the ground that he was privy to the information as to how press releases were created and had access to the press releases before they were issued to the public. This request was denied based in part on the finding that the press releases were publicly posted on the NHRS website and that none of the 100 press releases dating back to 2005 concerned contract negotiations. See PELRB Decision No. 2013-262.

Likewise, in *State Employees' Association of New Hampshire, SEIU Local 1984 v. Plymouth State University*, Department Chairs were included in the bargaining unit over the objection that they were confidential employees despite the finding that they had access to personnel files and played a role in personnel matters like hiring, promotions, tenure, because the Department Chairs' responsibilities were not linked to labor relations matters in any meaningful way. PELRB Decision No. 2013-133. In *University System of New Hampshire v. State of New Hampshire, et al.*, 117 N.H. 96, 101 (1977), the Supreme Court agreed with the PELRB that department chairs were not confidential employees stating as follows:

The evidence showed that access to personnel files is not limited to department chairmen, but extends to members of the department's promotion and tenure committee. Such access would not alone require a finding that the department chairmen are confidential employees... Recommendations to the administration by department chairmen regarding promotions and tenure are made after discussions with other members of the department. This does not constitute confidential interaction between department chairmen and the administration on labor relations matters. The PELRB's determination that department chairmen are not confidential employees is neither unreasonable nor unlawful.

Id. at 101-102. See also *NEPBA, Inc. Local 40 (NH Fish & Game Conservation Officers)* and *SEA/SEIU Local 1984 and NEPBA, Inc. Local 45 (NH Fish & Game Supervisory Officers)* and *SEA/SEIU Local 1984*, PELRB Decision No. 2006-174 (finding that evidence was insufficient to prove that Conservation Officer Colonel was confidential employee), *aff'd*, *Appeal of State Employees' Association of New Hampshire, Inc.*, 156 N.H. 507 (2007).

In this case, the record shows that the Director of Institutional Research and Assessment is not a confidential employee within the meaning of RSA 273-A:1, IX (c). Like in *Public Utilities Commission, Moultonborough*, and *University System of New Hampshire*, the evidence here is insufficient to prove that Ms. Turrentine has been, or will be in the future, involved with personnel or other confidential labor relations matter in any meaningful way. Like the Senior Policy Advisor's interactions with the employer in *Public Utilities Commission*, Ms. Turrentine's interactions with the College management are based on her specialized expertise in collecting data, producing statistical reports, and conducting and analyzing surveys, and does not involve significant personnel decisions or collective bargaining. Unlike employees in *Laconia*, *Newport*, *Newmarket*, and *Hooksett*, Ms. Turrentine has no access to personnel files or disciplinary and other employee-related documentation. She is not privy to the College management's thoughts concerning negotiations, labor relations or significant personnel decisions. Most of the data reports she produces are either widely disseminated within the College or available to the public. Although the reports and surveys produced by Ms. Turrentine might be utilized by the College

management in making personnel decisions or in collective bargaining, Ms. Turrentine does not participate in personnel or labor-related decision-making and is not made aware of the personnel or labor-related decisions or strategies. The fact that the administration relies on her expertise in making personnel, budgetary or labor-related decisions is insufficient to deprive Ms. Turrentine of the statutory right "to organize and to be represented for the purpose of bargaining collectively." If an employee's expertise were a sufficient ground for exclusion from a bargaining unit, many professional employees would be deprived of their right to organize and bargaining collectively, thereby defeating the purpose of RSA 273-A.

Based on the foregoing, Ms. Turrentine is not involved in confidential personnel or labor-related matters in any meaningful way and, therefore, she is not a person whose duties imply a confidential relationship to the public employer within the meaning of RSA 273-A:1, IX (c). Accordingly, the College's objection to the inclusion of the Director of Institutional Research and Assessment position is overruled and this position is included in the directors and supervisors bargaining unit. The description of the bargaining unit is set forth in Tables One and Two appended to this decision. See Appendix.

So ordered.

Date: 6/6/2016



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Appendix to PELRB Decision No. 2016-115, Case No. E-0191-1

Table One Bargaining Unit - All full-time and regular part-time directors and supervisors, including but not limited to the following positions:
Alumni Director-KSC
Art Museum Director
Assoc Dir of Admissions-KSC
Assoc Dir of Residential Life/Student Services
Associate Registrar
Asst Dir of Physical Plant-Grounds
Asst Dir-Physical Plant-Trades
Campus Dir of Sponsored Research
Campus Mgr-Envir Health & Safety
Campus Sustainability Officer
College Bursar-KSC
Dir Educator Preparation Office-KSC
Dir of Child Development Ctr
Dir of Cont Ed & Ext Studies
Dir of Health & Wellness-KSC
Dir of Nat'L & Int'Lnat Exchg
Dir of Student Financial Services
Dir of Student Involvement-KSC
Dir-Academic & Career Advising
Director of Admissions-KSC
Director of Advancement
Director of Athletics-KSC
Director of Counseling Center
Director of Disability Service
Director of Institutional Research & Assessment-KSC
Director of Nursing-KSC
Director of Recreation
Director of Redfern Arts Center
Director of Trio Programs-KSC
Dir-Print, Mail & Bookstore Operations-KSC
Financial Aid Officer II
Function Coordinator
Housing Coordinator

Appendix to PELRB Decision No. 2016-115, Case No. E-0191-1

Table One, Continued Bargaining Unit - All full-time and regular part-time directors and supervisors, including but not limited to the following positions:
Information Technologist II
Information Technologist III
Information Technologist IV
Information Technology Mgr
Interim Asst Dir Res Life
Judicial Officer
Library Associate
Project Director II
Project Director III
Registrar-KSC
Senior Proj Graphic Designer
Skills Application Teacher
Sr Information Technology Mgr
Staff Writer/Editor-II
Supervisor-Plumbing/Heat Plant

Appendix to PELRB Decision No. 2016-115, Case No. E-0191-1

Table Two Bargaining Unit Exclusions:
Assoc Vp For Academic Affairs
Assoc Vp For Student Affairs
Div Dean-Arts And Humanities
Assoc Vp For Business Services-KSC
Divisional Dean-Sciences-KSC
Div Dean-Professional Studies
Asst Vp of Academic Affairs
Assoc Vp Devlp & Const Relations
Asst Vp For Student Affairs
Assoc Vp For Student Affairs
Campus Administrative Officer
Spec Asst To The President-HR
Dir-Markt&Communications-KSC
Director of Safety/Security-KSC
Associate Dean
Director of Physical Plant-KSC
Associate Dean
Chief Information Officer-KSC
Assc Dean Studnts/Dir Res Life
Director of College Library
Associate Dean For Professional And Graduate Studies
Chief Information Officer-KSC
Personnel Officer II (Asst. Dir. of HR)