

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of
New Hampshire, Inc.

and

University System of New Hampshire,
Board of Trustees

Case No. S-0318:1

Decision No. 780010

APPEARANCES

Representing the State Employees Association of New Hampshire, Inc.:
Richard Molan, Assistant Director

Representing the University System of New Hampshire:
Nicholas DiGiovanni, Jr., Esquire, Counsel
Gary Wulf, System Personnel Director

BACKGROUND

Following a campaign by the Union and Management, an election was held among the operating staff of the University of New Hampshire in Durham on May 19 and 20, 1977. At the close of that election, the results were announced by the Board and the parties signed a form promulgated by the Board concerning the election. The representatives of the State Employees Association of New Hampshire, Inc. signed but added to the signature a provision that they were not by so signing waiving any of their rights. Rule 3.11 of the Rules of the Public Employee Labor Relations Board provides that:

"All objections to the conduct of an election by the representatives of the Board and to conduct affecting the outcome of an election not occurring at the polling area shall be filed with the Board within five days after the report of election is filed under Section 3.10."

Notwithstanding the above rule, no objection to the conduct of the election or activities concerning it was made by the SEA, which lost the election. Five and one-half months later, on November 2, 1977, an unfair labor practice complaint was filed with the Board concerning allegations of prohibited pre-election conduct by the University. To this complaint the University filed an answer and also a Motion to Dismiss the unfair labor practice complaint.

On March 1, 1978, the Board held a hearing on the complaint at its offices in Concord, New Hampshire. Both parties were represented and presented evidence on the matter of the Motion to Dismiss the unfair labor practice complaint. The Board makes the following ruling thereon:

FINDINGS OF FACT AND RULINGS OF LAW

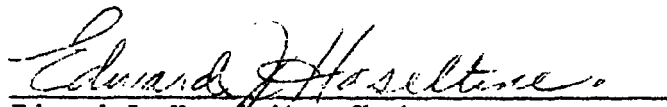
The Board has heard the parties on the question of the Motion to Dismiss. Upon questioning, representatives of the SEA stated that all of their complaints were in the nature of complaints concerning which allegedly contributed to the results of the election. The Board finds that all of the complaints made by the SEA do in fact concern the outcome of the election. While in fact the SEA reserved its right to challenge when it signed the report of election on the night of the election that in no way broadened the Board's rules. Rule 3.11 requires that objections concerning an election and conduct contributing to that election be made with the Board within five days after the election. Counsel for the SEA stated at the hearing that he was aware of that rule at the time of the election. It would have been an easy matter for a general complaint concerning the election or the activities of the University to have been made within the five day period but none was made. The rule exists for the purpose of certifying a collective bargaining agent or other results of an election within a reasonable time and having all matters concerning that election merged into such a finding. The Union was aware of this rule and had its opportunity to object. The Board rule was promulgated under statutory authority and was in the opinion of the Board, made under "authority granted to permit the Board to fill in details to effectuate the purpose of the statute" Reno v. Hopkinton, 115 N.H. 706 at 707 (1975).

This Board will not permit and the parties in this case cannot change the time period or statute of limitations for filing a complaint by characterizing such a complaint as a general unfair labor practice as opposed to a complaint concerning an election. A general unfair labor practice charge can be filed within six months of the activity but any complaint about conduct affecting an election must be filed within five days of that election as the parties were aware. Therefore, the Board is compelled to find under its rules that the filing by the SEA was untimely and the charges must be dismissed.

The Board notes that several questions and comments at the hearing addressed the time for holding a possible new election, if requested by petition of members of the bargaining unit. No such discussion or comments influenced the decision of the Board in this matter since had a timely filing been made, the Board would have considered the charges regardless of time limits for holding a new election or the date of such a hearing.

ORDER

The Motion to Dismiss unfair labor practice complaint filed by the University System of New Hampshire, Board of Trustees is granted. Charges brought by the SEA of New Hampshire, Inc. in this matter are dismissed.

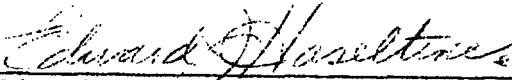

Edward J. Haseltine, Chairman

Members Allman, Cummings, and Anderson also present. All concurred. Also present Board Clerk LeBrun and Counsel Bradford Cook.

Immediately following the oral decision in this matter, counsel for the SEA orally moved for rehearing. The motion was accepted by the Board orally and upon questioning by the Chairman, the representative of the SEA indicated that he had no further evidence to present concerning this matter. The Board in executive session considered the matter and, coming out of executive session, made the following finding:

ORDER

The request for a rehearing is denied in light of the fact that there is no additional evidence to be submitted.



Edward J. Haseltine, Chairman

Members Allman, Cummings, and Anderson also present. All concurred.
Also present Board Clerk LeBrun and Counsel Bradford Cook.

Signed this 7th day of March, 1978