

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION
OF NEW HAMPSHIRE, INC.

Complainant:

CASE NO. S-0309:2 & S-0312:2

and

DECISION NO. 780038

KEENE STATE COLLEGE AND PLYMOUTH
STATE COLLEGE, UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

Respondent :

APPEARANCES

Representing the State Employees' Association:

Richard Molan, Assistant Executive Director
Robert Clark, Esquire, Counsel

Representing the University System of New Hampshire:

Gary Wulf, Director of System Personnel
Nicholas DiGiovanni, Esquire, Counsel

BACKGROUND

The SEA brought identical complaints against the University System of New Hampshire, Keene State College and Plymouth State College, alleging violations of RSA 273-A:5 I(a), (e) and (h) in that the System refused mediation after impasse was reached in negotiations concerning agency shop and other matters reopened according to the provisions of contracts between the SEA and Keene State College and the SEA and Plymouth State College (contract section 28.7 and 26.2 respectively). It is stipulated by the parties that there is a contract in force at each College and that impasse was reached. The SEA claims that the System violated the contracts (Sections 26.5 (Plymouth) and 28.3 (Keene)) since it refused mediation after impasse despite the following language:

"In the event that the parties bargain to impasse or fail to reach agreement sixty days prior to the budget submission date, one or both parties shall petition the American Arbitration Association for the appointment of a mediator under the rules of AAA then prevailing."

Finally, the SEA local presidents filed grievances under the grievance procedures of the contracts alleging violations of the contracts because of refusal of mediation.

The parties presented evidence and legal argument before the Board August 24, 1978.

FINDINGS OF FACT

The Board is faced with the following questions:

1. Do the contracts require mediation over impasse under the reopener provisions?
2. Does RSA 273-A:12 require mediation in this situation regardless of the contracts?
3. Is the refusal of mediation a proper subject for a grievance under the contracts?

First, the Board finds that the quoted sections of the contracts, 26.5 (Plymouth) and 28.3 (Keene) require mediation if impasse is reached on any issue open between the parties whether under reopener or otherwise. Had the parties wished to restrict the scope or applicability of mediation, they could have done so. However, they did not and did in fact recognize and adopt mediation as a tool to help resolve impasses. Impasse has been reached over agency shop and other subjects discussed by the parties. The SEA was justified in asking for mediation. As this Board has previously recognized and instructed these parties concerning these matters, there is no requirement that the parties agree, only that they bargain in good faith (see SEA v. Plymouth and Keene, decision dated 7/11/77, Case No. S-0309 and S-0312). Likewise there is no requirement or guarantee that mediation results in agreement. However, the contracts between the parties recognize the need to try and this Board will not read these agreements to mean that the parties only agreed to try to resolve some impasses through mediation and not others.

Second, the Board is not required to rule on whether RSA 273-A:12 requires mediation about a reopener provision in a contract since it has held that the contract so requires.

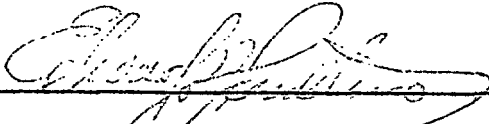
Third, the Board finds that since the contracts between the parties provide a mechanism for resolution of impasses, the filing of a grievance is inappropriate while the exclusive remedy is available. Therefore, the Board cannot find that it was appropriate to file grievances over the refusal of mediation or inappropriate of the System to accept the grievances. Grievances are designed for specific, individual problems or violations of a contract which are not subject to separate provisions or mechanisms for resolution in the contract.

In specific reference to the charges brought, the Board finds violations of RSA 273-A:5 I(h) in that the mechanism provided for by contract was refused by the employer.

Alleged violations of RSA 273-A:5 I(a), (e) and (h) (insofar as it is alleged, the grievance procedure was violated and thus (h) was violated twice) are denied.

ORDER

The parties are ordered to cease and desist refusal to invoke mediation over issues at impasse and to comply with contract sections regarding mediation forthwith.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 30th day of August, 1978.

Members Allman and Cummings also present, all concurred.

Board Clerk Evelyn LeBrun and Counsel Bradford Cook also present.