

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE STATE COLLEGE EDUCATION ASSOCIATION,
NHLEA/NEA

Complainant

and

UNIVERSITY SYSTEM OF NEW HAMPSHIRE,
Keene State College

Respondent

CASE NO. U-0601:1

DECISION NO. 780048

DECISION ON MOTION FOR REHEARING

APPEARANCES

Keene State College Education Association:

Jack B. Middleton, Esquire, Counsel
David W. Smith, UniSery Director
Sylvia Donahue, Field Coordinator

University System of New Hampshire:

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

BACKGROUND

This case arises from a motion for rehearing filed by the New Hampshire Education Association on behalf of Keene State College Education Association following a decision of this Board dated June 28, 1978 being Decision #780028 in which certain findings and rulings were made. Keene State College Education Association challenged those rulings in substantial part as being contrary to law and evidence. The motion for rehearing also alleged the composition of the Board hearing the earlier case, being the Chairman, Edward Haseltine and members Edward Allman and Richard Cummings who are management representatives as the term is defined in RSA 273-A:2 (I), was unlawful.

A hearing was held on September 21, 1978 on the motion for rehearing. The parties agreed to rely on the record and written submissions made by the New Hampshire Education Association, the University System of New Hampshire being satisfied that its previous submissions to the Board were adequate to cover the issues involved. Argument was taken at the hearing concerning the alleged illegality of the earlier hearing because of the members who acted upon it.

At the hearing on September 21, 1978, the parties agreed to proceed with a Board consisting of only two members which was less than a quorum and waived objections thereto.

The Board has considered the issues contained in the motion for rehearing, the brief submitted by the Keene State College Education Association and the previous submissions of the parties and has reviewed its decisions in light thereof and makes the following findings.

FINDINGS OF FACT AND RULINGS OF LAW

The Board finds no reason to change its order dated June 28, 1978 and therefore reaffirms said order.

On the issue of the legality of the Board's hearing the matter, the Board points to the relevant statutory authority which is found in RSA 273-A:2 which reads in pertinent part as follows:

"I. There is hereby created a Public Employee Labor Relations Board consisting of five members appointed by the Governor and Council. Two members shall be appointed who shall have extensive experience representing organized labor. Two members shall be appointed who shall have extensive experience in representing management interests. One member who shall be the chairman shall be appointed to represent the public at large, and shall not hold elective or appointive public office or elective or appointive office, or membership in, organized labor at the time of his appointment or during his term. Members of the Board may be removed by the Governor and Council for cause...

III. Three members of the Board shall constitute a quorum. In the chairman's absence, the senior member present shall act as temporary chairman."

The Board finds the language quoted to be clear and unambiguous. The Board appointed is to have two members from organized labor, two members from management and one public member. In the very same statute, the legislature stated that a majority of the members present constitute a quorum. Had the legislature intended that a quorum could only be present if it contained one member from management, one member from labor and the chairman, it would have so stated and had the legislature intended that for a valid quorum to be present at least one member be present from each group, management and labor, it would also have so stated. The Board notes that three members are required for a quorum, three members were present, the Board was properly constituted to do business and validly conducted its business at the previous hearing.

Note should be made that the Legislature has on occasion specified that certain members from certain categories of membership must be present for an agency of the State to do business. RSA 309-A:2 concerning the Board of Accountancy provides for a Board consisting of five members, three of whom shall be certified public accountants and two of whom shall be non-certified public accountants. RSA 309-A:2 IV provides, in pertinent part, as follows:

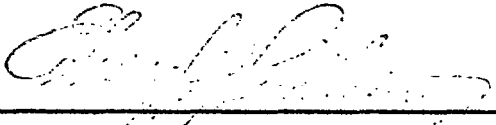
"...all matters pertaining to certified public accountants including but not limited to the examination and certification of certified public accountants and to the practice of accounting by certified public accountants shall be within the exclusive jurisdiction of the certified public accountant members of the Board, and when such matters are before the Board, a majority of the certified public accountant members shall constitute a quorum."

From that provision, it can be noted that had the legislature sought to have put conditions on what members of a board were to constitute a quorum for hearing certain matters, it would have done so. It did not do so in RSA 273-A and no meaning can be read into the law with such a requirement.

ORDER

The Board issues the following order.

1. The Board reaffirms its decision #780028.
2. The Board denies the relief requested in the motion for rehearing, having granted a rehearing and accepted written memoranda concerning the issues involved in the motion for rehearing.
3. The Board finds that the Board was legally and validly constituted and operating with the proper quorum at the hearing held previously.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of November, 1978

Board members Richard Cummings and James Anderson also present. All concurred. Member Joseph Moriarty took no part in the consideration or decision of this matter. Board Counsel Bradford Cook also present.