

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE STATE COLLEGE EDUCATION
ASSOCIATION, NHEA/NEA

v.

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

CASE NO. U-0601:5

DECISION NO. 79001

APPEARANCES

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esquire, Counsel

Representing the Keene State College Education Association:

David N. Smith, UniServ Director, NHEA

BACKGROUND

This is a petition for declaratory judgment filed by the University System of New Hampshire concerning the situation at Keene State College. As of the date of the filing of the petition and the date of the hearing on the petition, there was a decertification petition and decertification election pending.

The University System has raised the question of what the obligations of the employer are during the period between a decertification petition and a decertification election when there is a pre-existing exclusive bargaining representative which seeks to continue to bargain with the employer. The question is asked since the employer maintains that it does not wish to be placed in a position where it can be accused of unfair labor practices if it continues to bargain, reached agreement or otherwise engages in conversations with the exclusive bargaining representative. It is afraid it will be accused of unfair labor practices as having interfered with the election process and the free election of the representatives of their own choice by the employees, including the selection of no representative at all.

A hearing was held by the Board on January 17, 1979 at the Board's Offices in Concord. It was agreed at that time that the New Hampshire Education Association could file a brief on the matter not later than February 1, 1979, which brief has been received and considered by the Board. Following the hearing, on January 25, 1979, the decertification election was in fact held on the Keene campus. That election resulted in a defeat of the move for decertification, which results in the continued certification without any interruption or change of the Keene State College Education Association. While this election might be deemed to have rendered the question moot, it did not in fact do so since there is a need for a detailed statement by the Board on this matter and the parties were assured by the Board at the hearing that a decision would be forthcoming by the Board, notwithstanding the election.

RULINGS OF LAW

The issues presented to the Board in this case were briefly covered in the recent decision of the Board concerning the Rochester Police Officers Association Chapter No. 63, State Employees Association of New Hampshire and City of Rochester, Case No. P-0712:1, Decision No. 780043. That decision referred to this decision which would consider the various complexities presented by this issue. Basically, the issue is: "What is the effect of a petition for decertification on the obligation of the employer to bargain during the period after the decertification petition is presented and prior to the decertification election?" Added to this issue are the various contexts in which the question can be presented. Among these are the situation in which the parties have been negotiating in good faith prior to the petition for decertification, the situation in which the parties have failed to negotiate in good faith prior to the decertification election, the situation in which the parties have been ordered to take certain action by the Board as a result of alleged unfair labor practices, and the situation in which there is not only a decertification but a challenge to certification by another labor organization seeking to become the exclusive bargaining representative.

The Board is constrained to follow the statutory scheme fashioned by the Legislature in RSA 273-A. In that statute, the basic rights of an exclusive bargaining representative after its election are stated in RSA 273-A:11 "Rights Accompanying Certification" as follows:

"I. Public Employers shall extend the following rights to the exclusive representative of a bargaining unit certified under RSA 273-A:8; (a) The right to represent employees in collective bargaining negotiations and in the settlement of grievances..."

Additionally, the term of such a certification is defined in RSA 273-A:10, VI, (a) which says "Certification as exclusive representative shall remain valid until the employee organization is dissolved, voluntarily surrenders certification, loses a valid election or is decertified,"

From this, it can be seen that there is no statutory authority for the proposition that there is any change in the status of the employee organization after a petition for decertification. Balanced against this situation, however, is the concern by the employer that if it negotiates with an organization which has been the subject of a decertification petition, it may be accused by another organization or by individual employees of an unfair labor practice under RSA 273-A:5 I, (a). On the other hand, should the public employer fail to negotiate at any time, it would be subject to an unfair labor practice complaint under RSA 273-A:5 (e).

The Board has considered whether it would be in the interests of good labor relations in New Hampshire to create various obligations to bargain or not to bargain under various conditions suggested in the first paragraph of this "Rulings of Law" section. When balanced against the quandry in which the public employer claims to be placed and in the interest of not giving special treatment to any one labor organization over another or employees seeking to retain a bargaining representative over those who seek to decertify an organization, it is superficially attractive to the Board to state that the obligation to bargain is somehow suspended during the period prior to the decertification election. However, the more important factors are recognized by the statute. First, there is no differentiation or distinction for any period of time following certification


and prior to decertification during which the obligation to bargain is suspended by the statute. Second, should the employer and the certified bargaining representative, the aggrieved employees or organization could file an unfair labor practice complaint and, more importantly, the members of the bargaining unit could refuse to ratify the agreement reached. The Board would comment that it would seem to be against the best interests of an organization seeking to retain its certification to reach an agreement which would be so unpopular with the employees and such an agreement might in fact result in the decertification. Nevertheless, the fact that agreements reached must be ratified before contracts are signed plus the fact that during a decertification election campaign all parties can, within the limits of truthfulness and fair play, point out the relative merits of the different choices on the ballot, appear to be safeguards sufficient to insure that negotiations carried on during that time will be in good faith and not mere sham.

More important, perhaps, is the fact that should the Board allow suspension of negotiations under these circumstances, petitions for decertification might arise more frequently as a device to stall and suspend negotiations. While there is no evidence of any such intention in the Keene State College situation, an enunciated policy by this Board that future decertification petitions would result in suspension of bargaining might tempt public employers to encourage the filing of decertification petitions by groups of employees. This danger of stalling and frustrating the statutory scheme for bargaining appears to the Board to be more serious than any imagined problems with unfair labor practices or with unfair bargaining during the decertification election period.

Therefore, the Board issues the following decision:

ORDER

Under the scheme of RSA 273-A and after consideration of all arguments presented, the Board declares that the statutory requirements and Board decision are that a public employer must bargain with the exclusive certified bargaining representative of employees at all times prior to the decertification of the exclusive bargaining representative. The public employer will not be subject to unfair labor practice complaints solely on the basis of such negotiations and must engage in negotiations without regard to any decertification petition or elections as at all other times under the statute and at all stages of negotiations up to and including agreement.



Edward J. Haseltine, Chairman
Public Employee Labor Relations Board

Signed this 14th day of February, 1979

Members Cummings, Moriarty, Anderson and Mayhew also present. All concurred.
Board Counsel Bradford Cook and Board Clerk Evelyn LeBrun also present.