

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION
OF NEW HAMPSHIRE, INC.

Complainant:

v.

STATE NEGOTIATING COMMITTEE,
STATE OF NEW HAMPSHIRE

Respondent :

CASE NO. S-0342

DECISION NO. 79015

APPEARANCES

Representing the State Employees' Association of N. H.:

Richard E. Molan, Assistant Executive Director

Representing the State Negotiating Committee:

David Marshall, Esq., Assistant Attorney General
John Ratoff, State Negotiator

BACKGROUND

The State Employees' Association of New Hampshire, Inc. filed an unfair labor practice complaint against the State Negotiating Committee on November 15, 1978 alleging the failure to negotiate in good faith by refusing to negotiate certain contract terms involving annual and sick leaves and the administration of such leaves.

The SEA contended that these items were in fact negotiable items and proposed during the course of its negotiations to discuss these items. The State Negotiating Committee alleged that certain of these items infringed upon the managerial policy which they alleged was exclusively that of the public employer and not the subject of negotiations.

On January 17, 1979, SEA filed a motion to amend the unfair labor practice complaint specifying the sections in the current contract over which the State Negotiating Committee refused to negotiate; namely, Sections 10.2, 10.3, 11.3 and 11.4. SEA on that date also filed a motion for temporary cease and desist order and the posting of such order.

A hearing on the case was originally scheduled for April 4, 1979, however at the mutual request of the parties involved, hearing was postponed until April 18, 1979

Included in the current contract between the parties, signed October 22, 1977, were four articles dealing with the subject in question. The failure of

of the State Negotiating Committee to negotiate these articles, again covering the subject of sick and annual leaves, is the basis of the unfair labor practice complaint and is the only issue before PELRB in this case. The State Employees' Association in presenting its case in support of the charge cited several exhibits; one, the October 22, 1977 agreement between SEA and the State of New Hampshire in which the subject of annual and sick leaves and their administration were incorporated and had been negotiated; two, the N. H. Supreme Court decision on Declaratory Judgment which was handed down in September, 1978; and, three, excerpts from the brief filed by Attorney James Sargent representing the Attorney General's Office before the Supreme Court in the Declaratory Judgment case.

SEA argued that the Supreme Court had agreed that the annual and sick leaves were bargainable subjects and went on to quote in its testimony excerpts from the Supreme Court decision. SEA also pointed out that the State Negotiating Committee had somewhat reversed its position on this subject and cited the statements of Attorney Sargent before the Supreme Court in the Declaratory Judgment case in which they supported the position that annual, sick and maternity leaves were so clearly similar to wages and hours of employment and so obviously at the very nub of the phrase "terms and conditions of employment". SEA attempted by their presentation to point out a change of position by the State Negotiating Committee which appeared to have taken place for some unknown and unsupported reason. SEA cited the various decision issued by PELRB in previous cases, specifically the SEA v. Board of Trustees, N. H. State Prison, which dealt with shift differentials and changes in shifts. SEA at great length pointed out past decisions dealing with items that were negotiable in a collective bargaining agreement.

In a post hearing brief, SEA again cited several cases to substantiate their position.

The State Negotiating Committee in its testimony indicated that subsequent to the Supreme Court decision, SEA v. PELRB, 118, N. H. _____, issued December 29, 1978, reassessed its position and did in fact agree to negotiate certain of these items involving annual and sick leaves but did deny negotiations when it came to the administration of these issues in the contract. The State Negotiating Committee in its Memorandum of Law cited RSA 273-A with respect to managerial policy as a basis for their argument that they had not committed unfair labor practice in failing to negotiate as these were reserved purely and simply to managerial policy. The SNC further contended that under RSA 273-A:1, XII, they had no authority to bargain the articles contained in the agreement of October 22, 1977; namely, 10.2, 10.3, 11.3 and 11.4, and maintained their position that the administration of such leave was managerial policy within the exclusive prerogative of the public employer and, therefore, not bargainable.

The Legislature, by design, left managerial policy open to interpretation and this Board has taken it basically on a case-by-case basis and has attempted to draw a fine line between employees' rights to bargain and management's rights to manage.

The SNC attempted to rely on its argument and position on the phrase "so as to continue control of governmental functions". However, SNC was not persuasive in its argument that irreparable harm could occur to management if these items were subject of negotiations.

The SNC went on to present its interpretation of the Supreme Court decision as it applied to managerial policies. SNC presented testimony regarding the fact-finder's report in the matter and alleged that the fact-finder really had no jurisdiction over whether the articles 10.2, 10.3, 11.3 and 11.4 presently contained in the agreement were proper subjects for collective bargaining. They further contended that decisions of this nature were the responsibility of PELRB and the Supreme Court. They dealt at great length with the fact-finder's participation and position with respect to the inclusion or exclusion of the articles of the contract in question. SNC cited various court cases dealing with this subject which were considered by the Board.

FINDINGS OF FACT

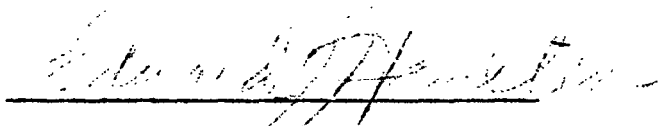
1. The Board finds that the subject matter of the unfair labor practice charge was in fact negotiated and dealt with in the collective bargaining agreement signed October 22, 1977.
2. The subject of annual leave and sick leave, vacation, holidays and maternity leave and other items of this nature are properly the subject of negotiations in that they are all related directly and specifically to the terms and conditions of employment.
3. The Supreme Court has held that these items are in fact a part of the terms and conditions of employment.
4. The Board finds that the State Negotiating Committee had been somewhat arbitrary in its approach to the line of demarcation where it will in fact negotiate a portion of these subjects but not in their entirety. This arbitrary position does not appear to be in the best interest of good labor relations.
5. Good harmonious relations are predicated upon both parties' willingness to negotiate and discuss subjects of mutual interests even though in negotiations there is no implied requirement of either party to concede to the other. There is a specific requirement for them to discuss and negotiate items affecting employment.

DECISION AND ORDER

The Board has studied the Supreme Court decision in State Employees' Association of New Hampshire, Inc. v. New Hampshire Public Employee Labor Relations Board, 118 N. H. _____, (December 29, 1978). In that decision, the Supreme Court stated and recognized that certain items covered by the Personnel Commission rules were bargainable. The Court stated that these included "overtime, legal holidays, annual and sick leave, maternity leave, and other such matters". The issues in dispute in this case are such items and the Board holds that they are bargainable in the context presented as being included under the provisions of "Terms and Conditions of Employment" as defined in RSA 273-A:1, XII. The Board will, under the Supreme Court decision stated above, examine proposals arising under Personnel Commission rules individually in the future as presented to the Board.

- A. The charge of unfair labor practice as alleged by the State Employees' Association against the State Negotiating Committee is sustained and the Board finds that the State Negotiating Committee did commit an unfair labor practice by refusing to negotiate over these proposed articles.

- B. The State Negotiating Committee is hereby ordered to Cease and Desist the commission of unfair labor practice and is further ordered to negotiate in good faith on the subjects of annual and sick leave.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 12th day of July, 1979

By unanimous vote. Chairman Edward J. Haseltine presiding. David L. Mayhew, Joseph B. Moriarty, James C. Anderson and Richard H. Cummings present and voting. Also present, Board Clerk, Evelyn LeBrun.