

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES' ASSOCIATION	:	
OF NEW HAMPSHIRE, INC.	:	
Complainant	:	
	:	CASE NO. <u>U-0606:2</u>
v.	:	
	:	
PLYMOUTH STATE COLLEGE OF	:	DECISION NO. <u>79025</u>
THE UNIVERSITY SYSTEM OF	:	
NEW HAMPSHIRE	:	
Respondent	:	

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APPEARANCES

Representing the State Employees' Association:

Linda Murtha, Esquire, Counsel  
Robert T. Clark, Esquire, Counsel  
Richard E. Molan, Assistant Executive Director

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esquire, Counsel  
Joan Tambling, Personnel Officer; Plymouth State College.

BACKGROUND

This case arises out of a petition for decertification and an election held at Plymouth State College on August 14, 1979. The State Employees' Association of New Hampshire, Inc. (hereinafter SEA) has been the representative of operating staff employees at Plymouth State College since the late 1960's and the operating staff unit was grandfathered with the SEA as its representative when RSA 273-A was enacted. In late April, 1979, a petition for decertification of the SEA was filed with this Board by Elizabeth W. Cheney, a member of the operating staff at Plymouth State College. This petition for decertification was the subject of two decisions by this Board, No. 79009 and 79010 and two hearings by the Supreme Court of New Hampshire on June 5, 1979 and July 10, 1979. After the Supreme Court hearings, the Board was directed to proceed with an election within 47 days of July 11, 1979. The election was scheduled for and held on August 14, 1979. The result of that election was that the operating staff at Plymouth State College voted to decertify the SEA by a vote of 62 to 37. Some ballots were subject to challenge but the number of challenges was not sufficient to change the result even if all challenges were sustained.

The SEA filed objections to the conduct of the election and a complaint of unfair labor practice against Plymouth State College of the University System of New Hampshire (hereinafter PSC or System) under RSA 273-A:6 and Board rules 4.1 and 3.11. All filings were made in a timely fashion. The SEA charged that the results of the election should be set aside based on certain actions of the

System and PSC. There were few specifics in the complaint filed and the System objected to the complaint and denied the charges. A hearing was held by the PELRB on Thursday, August 30, 1979 at which time a continuance was sought by the SEA which the Board granted, delaying the hearing to Monday, September 10, 1979. A full hearing was held on the latter date.

At the hearing evidence provided by the SEA and its argument indicated that the specifics of its charges are that the election should be set aside because of certain actions taken by the employer, specifically that the history and conduct of bargaining between the SEA and the System at Plymouth was such that it somehow was determinative of the outcome of the election and that its character should result in the overturning of the election results. Also the intimation was made at the hearing that the decertification process, although introduced and formally conducted by members of the operating staff was somehow controlled and inspired by management. The third charge was that the actions of the System through its publications and publicity about a 7% wage increase given to other employees, and its indication that the increase would not be given to operating staff employees subject to collective bargaining was the reason for the result and was an improper promise of a wage increase as a reward for voting for "no representative." Certain other actions of System personnel, specifically a letter by Trustee James P. Weldon, published in the Manchester Union Leader on August 14, 1979, claimed to have mistated facts and the appearance by the Personnel Committee of the Board of Trustees of the System at the Plymouth campus were alleged to have improperly influenced the outcome of the election.

The SEA charged that these actions were violations of RSA 273-A:5 I (a), (b), (c), (d), (e), (g) and (h). The SEA sought a cease and desist order enjoining said practices, an order setting aside the results of the decertification election, an order that the System immediately engage in good faith negotiations and other relief.

At the end of the SEA's case, the System moved to dismiss the charges on the basis that there was insufficient proof to establish a case. The Board took the motion under advisement subject to hearing the System's evidence.

**FINDINGS OF FACT  
AND RULINGS OF LAW**

The election petition, conduct of election campaign and all actions taken in connection with it on behalf of the employees seeking to decertify the SEA were, on the surface, conducted by an ad-hoc group of employees who were members of the bargaining unit. Elizabeth Cheney was their spokesman and it was she who corresponded with the Board. The charge in this case is against the System and PSC and not against that group of employees. This Board is reluctant, absent clear evidence of nexus between the administration and the petition for decertification and the results of the election, to overturn results of an election sought by employees.

Having considered all of the specifics of the charges as presented at hearing and the evidence, the Board cannot find that the SEA has sustained any of its charges and, therefore, denies its requested relief for the following reasons.

Regarding the charge that the history of bargaining and the conduct of management are a basis on which to overturn the election, the evidence was that bargaining has been complex concerning reopener provisions in existing contracts and for a new contract. The Board is familiar with these matters having had them considered in previous decisions. All alleged unfair labor practice charges against management have been decided by this Board and their results made known to management and the SEA. SEA has had an opportunity to publicize the results of these decisions and has had an opportunity to inform its membership concerning its allegations of impropriety on the part of management. The SEA was unable to show at hearing that a single vote was changed because of any such conduct. While the Board can infer that frustration with the length of bargaining processes or the results or lack of results of bargaining might affect some votes, no evidence was presented to establish that this in fact had occurred. The Board considers that its actions in other cases concerning bargaining at PSC are adequate relief on these charges and cannot find any connection with the vote.

The SEA attempted to establish some connection between the actions of Elizabeth Cheney and other operating staff members, and management. No evidence was presented that management had induced Mrs. Cheney to seek decertification, had guided her in the decertification process or had done anything other than answer her questions and provide her information when requested to do so. There was no evidence that any of the sheets distributed by the petitioning group were prepared by anyone other than that group. Therefore, no connection between management and the petitioners was established and there is no basis for substantiation of that charge.

The SEA presented evidence concerning certain actions of the System, specifically charging that publications of the System which publicized the general 7% wage increase granted to System employees for fiscal year 1980 (July 1, 1979 - June 30, 1980, see PELRB Decision No. 79023) and the fact that these raises were not being granted to employees covered by collective bargaining was somehow an inducement to vote against the union. The evidence indicated that no statement was made by the System that 7% would not be eventually granted to these employees. Several SEA members and/or officers testified that they read this as a threat or inducement to vote against unionization. One such witness, however, characterized the publications by the System as "an insult to her intelligence." The Board cannot determine that the publications were anything but an accurate statement of actions taken by the Board of Trustees of the University System. While this matter has been dealt with by the Board as a matter of contract interpretation in Decision No. 79023, the SEA was unable to point to any single employee whose vote was changed by this action of the System. Indeed, the SEA was unable to point to any single employee whose vote was changed by any System action. The SEA had every opportunity to refute these statements in publicity of its own during the election process in an attempt to influence the voters' decision.

The SEA likewise complained that meetings held on the Plymouth State campus by the Personnel Committee of the Board of Trustees in June and August were improper. The evidence revealed that these meetings were scheduled by Mrs. Cheney or other operating staff employees and not by management, that both the SEA and management were invited to all meetings, and that the SEA declined to attend. Again, there was no evidence that any vote was changed because of these meetings and the SEA had every opportunity to refute the information presented and participate in the meetings.

There was an allegation that a letter sent by Trustee James P. Weldon to the Manchester Union Leader which was published in the State Edition on August 14, 1979, the date of the election, improperly influenced the election and ~~mis~~stated facts. There was no evidence that Mr. Weldon sent the letter for publication, that he scheduled the date of publication, that the letter was printed as written, that anyone other than SEA Assistant Executive Director Richard Molan saw the letter, or that it affected any vote.

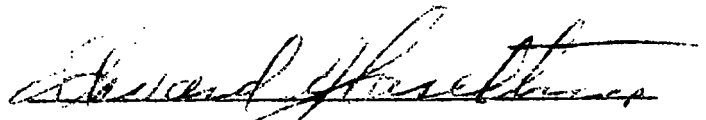
Finally, the SEA alleged that the general statement of policy adopted by the System Board of Trustees on April 17, 1976 as a "Statement on Collective Bargaining" should be viewed as a general guideline for anti-union activity which demonstrates "anti-union animus". The System does not deny that the statement was adopted. The Board finds that the statement itself is not illegal and that the System has a right to take a position on the desirability of unionization on its campuses. The SEA failed to establish that the statement was illegally applied or intended for illegal reasons and also failed to show any connection between it and any activity alleged concerning the decertification election.

For all the reasons listed, the Board finds that the SEA failed to sustain its burden to prove its charges against the System. Critically, the SEA failed to show any connection between actions of the System and the petition for decertification and failed to show that any actions alleged changed any votes which would have affected the outcome of the election. The SEA had every opportunity to campaign, appear before this Board, and participate in the election. At some point these matters must come to an end and the Board finds that the SEA has been decertified in a valid, free, fair election process.

ORDER

The Board issues the following order:

1. Having failed to sustain its charges, the charges filed by the State Employees' Association of New Hampshire, Inc. are dismissed.
2. The Board certifies the results of the election held August 14, 1979 and finds that the SEA has been decertified as representative of the operating staff at Plymouth State College who have elected not to be represented for collective bargaining.



Edward J. Haseltine, Chairman  
Public Employee Labor Relations Board

Signed this 27th day of September, 1979

Chairman Edward Haseltine presiding. Members Cummings and Moriarty also present and voting. All concurred. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.