

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES' ASSOCIATION OF  
NEW HAMPSHIRE, INC.

v.

STATE NEGOTIATING COMMITTEE  
OF THE STATE OF NEW HAMPSHIRE

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CASE NO. S-0346

DECISION NO. 79031

APPEARANCES

Representing the State Employees' Association of New Hampshire, Inc.:

Robert Clark, Esquire, Counsel  
Richard Molan, Esq., Asst. Exec. Dir.

Representing the State Negotiating Committee:

David Marshall, Esquire  
James Townsend, Esquire, Counsel

BACKGROUND

This decision is the result of a rehearing held in the above captioned matter, both parties having objected to Decision No. 79015 dated July 12, 1979. The Board granted the rehearing which was held by the Board at its offices in Concord on September 6, 1979. Following the rehearing, both parties had until September 20 to submit additional materials including requests for findings of fact and rulings of law.

The Board has received the submissions made by the parties, has re-examined the evidence presented at the earlier hearing and additional evidence, and hereby rescinds the earlier decision, No. 79015, and substitutes therefor this decision.

This case arises from an unfair labor practice complaint brought by the State Employees' Association of New Hampshire, Inc., against the State Negotiating Committee of the State of New Hampshire. During the negotiations for a contract for state employees, the SEA raised the question of certain "academic employees" who worked for the state at various schools. During negotiations through the end of the factfinding process, the State took the position that item 21.5 proposed by the SEA was non-negotiable. That proposal set equalized salaries for faculty in the Vocational Technical College and Technical Institute System to reflect equal pay for equal work. This proposal was made because of an historic anomaly which resulted in a tripartite system with each of three groups of employees receiving different pay based on when they were hired and what the school and employment year was for each. This longstanding dispute has been to the Supreme Court of the State of New Hampshire twice (Slayton v. Personnel Commission, 117 N. H. 206 (1977) and SEA et al v. Lang, decided by the New Hampshire Supreme Court decision dated August 20, 1979, released September 21, 1979). The position of the State is that

the matters presented are non-negotiable since the salary administration and equalization and the application of pay is a matter of management discretion and because pay for all state employees was negotiated uniformly resulting in an increase for all employees including the academic employees in state service for the biennium which began July 1, 1979. The position of the SEA is that this matter was negotiable as wages and that the state refused to negotiate. The factfinder in the negotiation process recommended that the matter be withdrawn from negotiation since it was before the Court. Following the factfinder's report and its acceptance, the state through the Attorney General's Office indicated that it would submit proposed legislation to the legislature which in fact was done in the form of legislation which became Chapter 434 of the Laws of 1979 (see Sections 434:35 II, III and IV and Section 434:42 II, III and IV). The pay raise for all state employees was 6.8% in the first year and 6.5% in the second year of the biennium.

The issues before the Board in this matter are (I). whether the State Negotiating Committee violated the law in refusing to negotiate with the SEA concerning the academic employees as a specific sub-group of state employees and (II). whether the State violated the law by urging the introduction and passage of the legislation in question.

FINDINGS OF FACT  
AND RULINGS OF LAW

I. There is no question raised in this matter and as stated by both sides at the hearing that wages are negotiable. RSA 273-A:3. Indeed, the Board finds that wages were negotiated and that negotiations resulted in an agreement for wage increases over the biennium as stated above. This applied as a general increase for all employees, all grades, steps and classifications. The SEA, however, requested that the state negotiate over the categories and classifications of academic employees as administered by the Personnel Department to eliminate the three part system. This had been the subject of litigation and at the time of negotiations the Supreme Court of New Hampshire had not ruled on one of those cases, SEA v. Lang, supra. Because the matter was before the courts, the factfinder recommended that the matter be withdrawn.

The SEA asks the Board to rule whether the refusal of the State to negotiate was an unfair labor practice. As stated, the State agreed to negotiate wages for the employees but refused to negotiate the classifications which the State felt were within the purview and responsibility of management through the Personnel Department. This Board holds that the State Negotiating Committee's position on this matter was correct in that the classification of employees is a function of management and non-negotiable as under managerial discretion and that the SEA was, in essence, requesting negotiations to reclassify certain employees in classifications established either by regulation or in fact by the Personnel Department. The State fulfilled its obligations by negotiating the wages for these employees.

II. Concerning the legislation proposed and passed, the parties each had an opportunity to appear and testify concerning the legislation. Indeed, the legislature recognized the problem the academic employees have by including in the legislation as passed Section 434:112 which authorizes the Legislative Budget Assistant to study the academic employee classification system and report to the legislature in the future. The legislation as passed, however, merely implements the wage increase granted to all employees including academic employees. It authorizes the state government to pay increased wages to academic employees in the pre-existing classifications. Without this authority, the Attorney General's

Office was in doubt whether the State Treasurer was authorized to grant increased pay to academic employees and, therefore, whether the increases negotiated for them as part of the entire body of state employees could be implemented. The Board cannot find that the introduction of testimony concerning or passage of this legislation is an unfair labor practice.

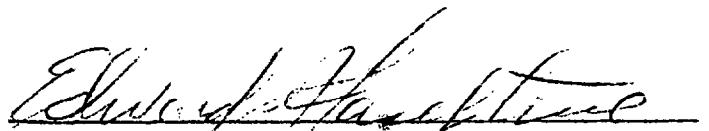
The Board would note that the Supreme Court of New Hampshire in SEA v. Lang, supra, left the door open for the SEA to appeal within the Personnel Department. Specifically, the Court said, "Rule VI, Section 5 of the Rules of the Department of Personnel provides plaintiffs with a specific administrative remedy and they must pursue it." While the Board does not interpret this language to foreclose action on this matter by the PELRB if appropriate, we assume that the administrative department authorized by state statute to act for the employer in classifying employees and administering the compensation system will do so correctly and in accordance with the law and salary levels passed by the legislature. In the event that any employee feels aggrieved by the administration of that system, the Department of Personnel has rules for appealing that system of classification and administration. However, in a matter found by this Board to be within managerial discretion such as classification and salary administration of academic employees, that route of appeal is the appropriate one, not to this Board.

The Board declines to rule on the proposed requests for findings of fact and rulings of law submitted by the parties since the discussion and decision in this matter have, in the Board's opinion, considered all determinative issues and disposed of the matter.

ORDER

The Board issues the following order:

1. Having found that the SEA has failed to substantiate its unfair labor practice complaints, the Board denies the relief requested.
2. The Board finds that the administration of 1979 wages and classification of academic employees are properly matters for management acting through the Personnel Department and any appeal of decisions made by management must be made through the appeal procedures in the Personnel Department.



EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 25th day of October, 1979

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