

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OPERATING STAFF, UNIVERSITY SYSTEM OF NEW HAMPSHIRE	:	
	:	CASE NO. A-0457
	:	
and	:	DECISION NO. 79037
	:	
UNIVERSITY SYSTEM OF NEW HAMPSHIRE	:	

APPEARANCES

Representing the American Federation of State, County and Municipal Employees:

James J. Barry, Jr., Esquire, Counsel
William J. McDonough, Executive Director
Paul Barton
Jonathan Duffy

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Esquire, Counsel
Frederick E. Arnold, Personnel Officer
Gary W. Wulf, System Resources Administrator

BACKGROUND

This is a decision resulting from a rehearing in the above captioned case following the issuance of Decision No. 79022. The rehearing was requested by the American Federation of State, County and Municipal Employees after the decision which found a requested bargaining unit of employees in the operating staff at the University of New Hampshire (hereinafter UNH) in the Physical Plant Operations and Maintenance Department (hereinafter PPOM) to be inappropriate. The union petitioned for a rehearing requesting that it be able to present additional evidence regarding the structure and organization of UNH, especially the PPOM Department, requesting a reconsideration of the findings in the earlier decision and the holding of an election among the employees in the operating staff of the PPOM Department after pre-election conference and the usual procedures.

The Board granted the petition for rehearing and a rehearing was held on October 31, 1979 at the Board offices in Concord.

FINDINGS OF FACT
AND RULINGS OF LAW

Decision 79022 in this matter set forth in great detail the statutory and rule criteria for determination of an appropriate bargaining unit. The Board will not restate the rules and statute here and refers parties to that earlier decision. Nor will the Board restate its discussion of its responsibility to establish the appropriate bargaining unit.

At the rehearing, extensive evidence was presented concerning the unique nature of the PPOM Department claimed by the union to be sufficient to make appropriate an election among the operating staff employees of that department. Specifically, detailed evidence was offered to the effect that PPOM has a separate budget (see AFSCME Exhibit 1), that PPOM received separate treatment in policy and procedures, (see AFSCME Exhibits 2-7). Most importantly, the function of the PPOM Department was reviewed in detail. PPOM staff members serve the University of New Hampshire as its support staff in the areas of carpentry, maintenance, electrical, and other functions as independent contractors hired by individual departments of the University on a contract basis to make repairs, provide service, evaluate physical needs and the like. They operate out of a common area, do not have offices in all of the areas where they work but rather go to those areas when needed and contracted for, and are considered one of the major budgetary units of the University to which fund transfers are made and which are identified by the University as units. In addition, further emphasis was given to the fact that there is a departmental newsletter, entitled "The Informer" (see AFSCME Exhibits 8a-8c), departmental picnics, activities, contests, uniform, decal, and, to some degree, a departmental esprit de corps.

Evidence presented indicated that in more instances than not, the job classifications of the employees in PPOM are unique to that department and are not shared with other departments or divisions of the University. There are some employees who have job classifications which are shared with other departments, however.

The Board must, in considering this matter, give great weight to the statutory scheme of RSA 273-A. The overriding statutory purpose was stated in the statement of policy, 1975 Chapter 490:1 I, "Acknowledging the right of public employees to organize and be represented for the purpose of bargaining collectively with the state or any political subdivision thereof, and with the University System." In addition, in determining the bargaining unit, the Board must take into account the community of interest of employees and the criteria set forth in Decision 79022.

Based on the further evidence presented at the rehearing, and taken in light of the perceived community of interest in the PPOM Department at UNH along with the statutory scheme that employees be allowed to select collective bargaining agents of their choosing, the Board is reluctant to deny to any employees the opportunity to have the chance to select or reject collective bargaining in a free, fair election. Balanced against this, however, is the need for governmental operations and efficiency to be maintained. As stated in the past, it is the responsibility of the Board to determine the appropriate bargaining unit for employees. The Board has established in the past that it would be appropriate for all operating staff employees at the University of New Hampshire to be in a bargaining unit because of the similarity of their tasks, classifications, benefits, positions, pay and the structure of the public employer. The question before the Board here is whether in light of that finding it would also be appropriate for PPOM operating staff employees to have a different unit which could be the appropriate unit for them. We hold that it would. There is nothing inconsistent, given the petition of the employees for an election and the structure of the University, in having two units of different sizes which might be considered appropriate. The American Federation of State, County and Municipal Employees has demonstrated to the satisfaction of the Board that there indeed exists a community of interest among the operating staff employees in the PPOM Department.

Likewise, in a former case which resulted in an election in which no representative was selected, another labor organization demonstrated to the Board's satisfaction that all operating staff at the University of New Hampshire would be appropriate voters in a common election. The Board holds that either could be the appropriate unit, based on the desires of employees, their community of interest, the statutory requirements and the facts in this particular case.

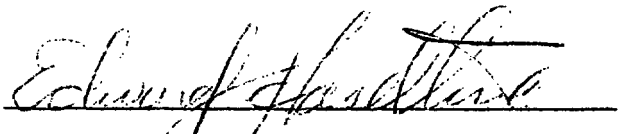
This decision is not to be read to indicate that every group of employees who perceive a community of interest or wish to have an election as a distinct group apart from a previously established larger unit may do so. It is confined to its facts and circumstances. The Board will continue to guard against fracturing units and the resulting inefficiencies which can result.

Nevertheless, in this case, the Board finds that sufficient evidence has been presented to establish the PPOM Department at the University of New Hampshire as the appropriate unit for an election among the operating staff employees. To the extent inconsistent with this decision, Board Decision No. 79022 is superceded.

ORDER

The Board issues the following order:

1. Having found that the petition for a unit is appropriate under the law and the rules, the petition for certification is accepted and there will be scheduled a pre-election conference and an election according to the Board rules.
2. To the extent inconsistent with this decision, Decision No. 79022 is superceded.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 6th day of December, 1979.

Chairman Haseltine presiding. Board Members Moriarty and Cummings also present. All concurred. Board Executive Director Evelyn LeBrun and Counsel Bradford Cook also present.