

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES, AFL-CIO :

v. :

UNIVERSITY SYSTEM OF NEW HAMPSHIRE, :
UNIVERSITY OF NEW HAMPSHIRE :

CASE NO. A-0457

DECISION NO. 80022

APPEARANCES

Representing AFSCME:

James J. Barry, Jr., Esquire

Representing University System of New Hampshire

Nicholas DiGiovanni, Jr., Esquire

Also in attendance:

William J. McDonough, Executive Director
Joyce Anderson, Asst. Executive Director
Paul W. Barton
Jonathan R. Duffy
Wayne Hoitt
Elizabeth Mann

UNIVERSITY SYSTEM:

Gary W. Wulf, System Resources Administrator
Frederick E. Arnold, Personnel Officer
Nickolas Plebani, Dir. PPO&M

BACKGROUND

This case arises out of a motion to suspend bargaining order filed by the University System of New Hampshire on behalf of the University of New Hampshire (U.N.H.). The proceedings prior to this decision were discussed by this Board in Decision No. 79022 and 79037 concerning the appropriate unit for an election among operating staff employees of U.N.H. working in the Physical Plant Operations and Maintenance Department (PPO&M). An election was held on February 22, 1980 and by a vote of 115-94, AFSCME was elected as the representative of employees in the PPO&M department of U.N.H. The Public Employee Labor Relations Board issued a certification and order to bargain, dated February 22, 1980, which document is the result of the election of the union and orders the parties to proceed to bargain collectively in accordance with RSA 273-A.

U.N.H. appealed the question of the appropriate unit following the results of the election, citing Department of Revenue v. PELRB, 117 N.H. 976, 380 A.2d 1085 (1977) as indicating the proper time for an appeal of the unit question. On March 10, 1980, the University filed a motion to suspend the bargaining order issued by the PELRB due to the fact that U.N.H. had taken an appeal to the New Hampshire Supreme Court on the unit issue. AFSCME filed an objection to the motion and a hearing was held before Chairman Edward Haseltine and member David Mayhew sitting as hearing officers under Board Rule 5.3 on April 10, 1980. The Board allowed both parties to file briefs, U.N.H. electing to file and AFSCME exercising its option not to file a brief.

FINDINGS OF FACT AND RULINGS OF LAW

The Board is faced with a choice in this case which is clear. The Board has determined the proper unit, held an election, certified the winner, and ordered bargaining. One of the parties disagrees with the unit determination and has exercised its right to appeal under the law. That same party has asked that the order to bargain be suspended for several reasons. First, U.N.H. argues that should it win the appeal on the bargaining unit question, the whole election process will be invalidated and bargaining would be futile. Further, it argues that should bargaining be allowed, expectations of employees would be heightened and disappointment also inflated should a reversal come on the appeal. As a practical consideration, U.N.H. argues that a substantial commitment in time, money and effort will be undertaken, perhaps uselessly. Should bargaining take place, U.N.H. argues, and the original decision of the Board be reversed, U.N.H. will be prejudiced since it will have played some of its cards at the bargaining table to its own detriment, which will be disadvantageous to it and cause labor strife. Finally, U.N.H. argues that if the bargaining order is suspended, the union will suffer only a temporary delay if it is successful in appeal and the scheme intended by the statute and the Supreme Court in the Department of Revenue v. PELRB, supra, case will be perfected since, it is argued, requiring no appeal of a unit question until after an election is intended to establish a proper order for activities and certainly is not intended to prejudice the party losing the election by requiring negotiations while an appeal is ongoing. In support of its position, U.N.H. cites the practice under the National Labor Relations Act and under many state acts. In summing up its position, U.N.H. argues that a suspension of the Board order will preserve the status quo pending appeal, whereas allowing negotiations to go forward will change the status quo.

Against these arguments, the union argues that the entire appeal process and the motion to stay are additional evidences of an intent to delay and frustrate the statutory purposes of RSA 273-A. The union argues that it has won an election in a free and fair process and is entitled to seek bargaining as the representative of the workers in the unit.

The Board has never ruled on the question before it in this case. RSA 273-A is premised, as stated in its statement of policy, on "acknowledging the right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof, and with the University System." In RSA 273-A:3 I, the law requires that "it is the obligation of the public employer and the employee organization certified by the Board as the exclusive representative of the bargaining unit to negotiate in good faith."

RSA 273-A:5 I (e) makes it an unfair labor practice for an employer "to refuse to negotiate in good faith with the exclusive representative of a bargaining unit..."

Nowhere in the law is there any provision for staying an order or treating a union certified as the exclusive bargaining representative differently because the losing party disagrees with the unit determination and seeks to appeal that determination after the election. As stated above, the Board is faced with a clear choice in this case. Either the Board delays the rights of the employees to be represented by a bargaining representative of their choice in negotiations during an appeal, or it requires a party who has appealed the entire election process and the basis for it to engage in negotiations which it deems improper. Given this choice and the absence of guidance in the statute, the Board hereby rules that the rights of the employees must take precedence. The Board recognizes the practical problems in which it has placed the parties but notes from analogous situations that bargaining for a first contract is so difficult that the preliminary steps and processes can take place despite appeals, requests for clarification, unfair labor practice charges and the like. The Board is confident that negotiations can commence between the parties in this case even though an appeal is pending.

The Board issues the following order:

ORDER

1. The Board denies the motion to stay requested by the University System of New Hampshire on behalf of the University of New Hampshire.
2. The Board reaffirms its bargaining order issued February 22, 1980 and directs the parties to proceed to bargain in accordance with the statutory provisions.


EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 12th day of May, 1980

Members David L. Mayhew and Richard H. Cummings also voting. All concurred. Board Executive Director, Evelyn LeBrun, and Board Counsel, Bradford Cook, also present.