

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF:
NEW HAMPSHIRE, INC.

v.

NEW HAMPSHIRE STATE PRISON AND
STATE NEGOTIATING COMMITTEE
STATE OF NEW HAMPSHIRE

CASE NO. S-0317:2

DECISION NO. 80023

APPEARANCES

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

Linda Murtha, Esquire, Counsel ; R. E. Molan, Esquire, Asst. Exec. Dir.

Representing the New Hampshire State Prison and State Negotiating Committee:

James E. Townsend, Esq., counsel; John Ratoff, State Negotiator

BACKGROUND

This is an unfair labor practice complaint brought by the State Employees' Association of New Hampshire, Inc. (SEA) against the New Hampshire State Prison alleging violations of a collective bargaining agreement currently in effect (1979 through 1981) which covers employees of the State Prison as well as other state employees. The complainant alleges that the contract provisions have been violated in that Article 42.13 of the agreement which provides for "the current shift and time schedule for unit employees shall remain in effect during the term of this agreement. Any change in schedule shall be subject to consultation under the provisions of this agreement." Article 7.4 of the collective bargaining agreement states that if either party wishes to propose a modification of work schedule, a process of consultation shall be invoked. Article 4.2.1 provides that if the SEA fails to agree to proposed changes, it may request and shall receive review of its objections by the Board of the public employer. That Board is the Governor and Council.

In the summer of 1979 State Prison officials announced their desire to establish a new rotating work schedule for prison guards, motivated by various reasons including the requirements for institution of training programs. Consultation between the parties commenced and various proposals were made back and forth. On February 7, 1980, at the fourth consultation session, the SEA offered a schedule of shift changes which was accepted by management. There was no dispute between the parties or the membership after that time concerning the actual shift schedule or, according to the representatives of the employer, the proposed effective date of May 18, 1980. However, objections by the membership to safeguards in the plan and

remedies available to them for improper implementation of changes resulted in proposals for new sections 42.13.6 and 42.13.7. Additional consultations were held and counteroffers by management were proposed which were rejected by vote of the prison guards. On May 18, 1980 prison management implemented the changed schedule. On May 20, 1980 the SEA filed an unfair labor practice charge with this Board, wrote to the Governor and Council requesting a hearing and review under the consultation and review provisions of the contract of the two items (42.13.6 and 42.13.7 proposed by them and rejected by management) and filed a grievance under the grievance procedures contained in Article XIV of the contract between the parties.

The unfair Labor practice complaint filed by the SEA alleges violations of RSA 273-A 5 I (h) and (i) which make it an unfair labor practice for any public employer to breach a collective bargaining agreement or adopt any law or regulation which would invalidate an existing agreement.

A Board hearing was held on June 3, 1980.

FINDINGS OF FACT
AND RULINGS OF LAW

The Board finds that the parties are in agreement concerning the actual shift schedule changes and all matters concerning its implementation other than Sections 42.13.6 and 42.13.7. The SEA has exercised its right to request Governor and Council review of their proposals in regard to those sections.

This Board has on many occasions indicated that the requirements of RSA 273-A.4 requiring that "every agreement negotiated under the terms of this Chapter shall be reduced to writing and shall contain workable grievance procedures" are considered most important to the Board. Indeed the collective bargaining agreement between the State Employees and the State has included a grievance procedure, the purpose of which is stated in Section 14.1.1 of the agreement which says:

"The purpose of this Article is to provide a mutually acceptable procedure for adjusting grievances and disputes arising with respect to interpretation or application of any provision of this agreement."

Except in the most unusual circumstances when emergency need or irreparable harm can be shown, this Board will not consider unfair labor practice complaints arising under collective bargaining agreements alleging violations of those agreements which have not been subjected to the terms of grievance procedures negotiated and intended to resolve disputes arising under those agreements. No sufficient evidence has been provided by the SEA in this case to indicate that that policy is incorrect or that there are any such special circumstances in this case. Review by the Governor and Council and arbitration are available and have been invoked. Pending the completion of those two procedures this Board will not consider

the substance of the complaints since it is the purpose of both processes of review to resolve such disputes without resort to this Board. If at the end of the review procedures, either party considers the result to have contravened the statute, resort can be had to this Board.

ORDER

The Board issues the following order:

Having found consideration of the unfair labor practice complaints inappropriate prior to the action by Governor and Council and arbitration processes, the Board declines to consider the unfair labor practice complaints.

A handwritten signature in cursive script, reading "Edward J. Haseltine", written over a horizontal line.

Edward J. Haseltine,
Chairman

Signed this 10th day of June, 1980

Members James Anderson, Russell Williard and Robert Steele also voting. All concurred. Board Executive Director Evelyn C. LeBrun and Counsel Bradford Cook also present.