



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

ADJUNCT ASSOCIATION OF KEENE STATE  
COLLEGE

Petitioner

v.

TRUSTEES OF THE UNIVERSITY SYSTEM/  
KEENE STATE COLLEGE

Respondent

CASE NO. U-0614

DECISION NO. 1999-106

APPEARANCES

Representing Adjunct Association of Keene State College/  
NEA-New Hampshire:

James Allmendinger, Esq., Counsel

Representing Trustees of the University System/  
Keene State College:

Nicholas DiGiovanni, Esq., Counsel

Also appearing:

Ann Britt Waling, USNH, Keene State College  
Robert Golden, USNH, Keene State College  
Gordon Leversee, USNH, Keene State College  
Joan Tambling, USNH, Durham  
Bonnie Insull, KSC Adjunct Association  
Michael W. French, KSC Adjunct Association  
Raynor R. Smith, Sr., KSC Adjunct Association  
Ellen Moynihan, KSC Adjunct Association  
Mary E. Gaul, NEA-New Hampshire

BACKGROUND

On June 2, 1999, the Adjunct Faculty Association of Keene State College, NEA-NH, filed a petition requesting the certification of a

bargaining unit to consist of 147 adjunct faculty positions at Keene State College. On July 15, 1999, the University System filed its response and objections. A pre-hearing conference was held on July 21, 1999, at which the parties stipulated to the following hearing issues:

1. Whether the doctrine of *res judicata* bars consideration of the petition for certification of adjunct faculty where a decision dealing with adjunct faculty was issued in 1977, PELRB Decision 1977-047 (July 11, 1997) then upheld by the Supreme Court, Keene State College Education Association v. State of New Hampshire, 119 NH 1 (1979).
2. Whether circumstances at Keene State College have changed in the interim since the last decision requiring consideration of the petition for a bargaining unit composed of adjunct faculty.
3. Whether adjunct faculty, also known as lecturers, are "public" employees who may organize, RSA 273-A:1 IX, or "temporary" employees who may not organize to bargain, RSA 273-A:IX (d).

A hearing was held before the undersigned hearing officer on September 10, 1999. Briefs were submitted on September 28, 1999.

#### FINDINGS OF FACT

1. Keene State College of the University of New Hampshire employs full-time faculty and others to operate its institution of higher education and so is a "public employer" within the meaning of RSA 271-A:1 X.
2. In 1976, Keene State College Education Association, affiliated with NEA-NH, was certified as the exclusive bargaining agent for full-time faculty at Keene. The PELRB ruled that adjunct faculty were excluded from the bargaining unit as "temporary" employees not covered by RSA Chapter 273-A. The Supreme Court upheld the PELRB's decision. Keene State College Education Association v. PELRB, 119 NH 1 (1979)
3. In 1999, the Adjunct Association for Keene State College, affiliated with NEA-NH, petitioned for certification to represent a bargaining unit of approximately 147 adjunct faculty, also known as lecturers, at Keene State College. Prior to the

hearing, the parties stipulated that the proposed bargaining unit does not include:

- a. employees who teach non-credit courses;
  - b. employees who teach courses for which no compensation is paid;
  - c. employees known as PATs and FIRS.
4. Adjunct faculty taught approximately one third of all classes at Keene State College during the 1998-1999 academic year. The use of adjunct faculty has increased over the years. The College's Faculty Profile shows no adjuncts employed in 1972, fifty-one (51) part-time employees employed in 1977 and seventy-one (71) employed in 1979. Association Exhibit No. 1. According to Robert Golden, Vice President for Academic Affairs, there were one hundred and sixty-five (165) full-time faculty and one hundred and seventy (170) adjunct faculty employed last year, sixty-seven (77) of which were new adjuncts under contract for the first time.
5. Adjunct faculty members' main duties are to teach classes and to be available to their students to discuss the content of the classes. Gordon Leversee, Dean of Sciences, testified that adjuncts are employed to teach biology to sections of non-majors. Generally, adjuncts are employed to teach lower level and specialty classes.
6. Students choose their fall semester classes before the end of classes in the spring. The course catalogue, from which students choose their classes, is published in March. It includes the names of lecturers and the classes they are to teach the next year. That was not so during the first years lecturers were employed.
7. Adjunct faculty members sign contracts of one semester duration shortly before classes begin. Contracts are not signed earlier so that adjustments can be made to the number of sections of a course to be taught depending on the demand of the student body. Robert Golden further testified that the contract signed by a lecturer represents a one semester commitment only and each signing represents a new hiring event. The contract for adjuncts, College Exhibit #2, references general duties: teaching classes, administering examinations, attending orientations and providing time to students for out of class conferences.

8. The median span of employment for adjuncts is two years or four semesters and one average length of employment is approximately six and half years. College Exhibit No. 4. Some lecturers have been employed for twenty years and began as lecturers when the use of adjunct faculty was initiated. Longevity records, maintained for lecturers for about ten years, show sixteen (16) lecturers have taught in excess of nineteen semesters and more than forty (40) adjunct faculty members have taught for ten semesters or more. College Exhibit #4.
9. Bonnie Insull testified that she was employed teaching flute and music classes at Keene from 1972 to 1995. In 1996, she began teaching English as a Second Language to international students. When she took one year off, she helped choose a replacement to teach her classes. A year later she then returned to her original job. She expects to continue teaching as long as she desires.
10. Adjunct faculty members are expected to have masters degrees. Faculty on the tenure track to become full-time faculty are expected to have a terminal degrees in their fields, according to Golden. Ann Britt Waling, Dean of Professional and Graduate Studies, testified that few adjunct professors have achieved full-time tenure track status because they lack the requirement of having a doctorate. Many lecturers hold full-time positions elsewhere.
12. Michael French has an engineering background and he is recently retired. He teaches entry level physics at Keene. He signs a one semester contract but stated that he is committed for the full year because the course he teaches extends over two semesters. This year, he negotiated for a new text and some changes in laboratory activities. He was able to increase the number of sections he teaches to improve his pay after communicating his concerns to Dean Leverage the prior December. French expects to return to teach so long as he chooses.
13. Last year, the administration at Keene adopted a pay schedule for adjunct faculty. The schedule recognizes longevity by increasing the amount paid per course in relation to past semesters taught. New lecturers were paid \$450 per course credit hour while those who had taught for nineteen or more semesters received \$700. This year, the

corresponding pay is \$500 per course credit hour for new lecturers while those who have taught for nineteen semesters are paid \$750 per credit. Association Exhibit No. 5.

14. Ellen Moynihan has been a lecturer at Keene for more than twenty years. She is the president of the Adjunct Faculty Association and has acted as the organization's spokesperson in discussions with the administration. She and Robert Golden have communicated in regards to the pay schedule, access to computers, e-mail, assessment and evaluation. Association Exhibits No. 8-10.
15. RSA 273-A 1 IX (d) excludes from the definition of "public employee":

Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who have an individual contract with this employer, nor shall any employee be determined to be in a temporary status solely be reason of the source of funding of the position in which he is employed.

#### DECISION AND ORDER

Effective October 20, 1977, the PELRB certified a bargaining unit of all full-time academic faculty, librarians and department chairmen at Keene State College. In the process, the Board was asked to determine whether lecturers, also referred to as "adjunct faculty" herein, were appropriate for membership in the bargaining unit for full-time faculty. The Board found they were not eligible for bargaining unit inclusion because they were "temporary" employees. See Finding No. 15.

This year, the Board was asked to answer a similar, but not identical question, on the occasion of a certification petition submitted by the Adjunct Association of Keene State College, an organization not a party to the first petition. The doctrine of *res judicata* provides a barrier to consideration when an identical matter has been litigated between identical parties and final determination has been made. The doctrine of *res judicata* does not apply in the present case because the subject matter adjudicated was not precisely the same in 1979 as in 1999, Johnson v. Coe 142 N.H. 182 (1997) and the parties are not identical, Hallisey v. Deca Corporation, 140 N.H. 443 (1995).

Reviewing the 1979 decision, the petitioning organization consisted of full-time faculty members at Keene State College. This Board found, and the Supreme Court upheld, that lecturers could not be included in the bargaining unit of tenure track permanent employees because they were "temporary" employees based largely on an absence of a reasonable expectation of continued employment where an expectation of continued employment characterizes the permanent faculty. Keene State College Education Association v. State, 119 NH 1 (1979). Two major changes have occurred since the 1979 decision in Keene State College.

In 1976, the PELRB and the lecturer method of staffing at Keene State College were new. In the early Keene decision, the Court acknowledged that the PELRB has the authority to initially define terms of the statute, RSA Chapter 273-A. Keene State College 119 N.H. 1,3. Over the years, in the process of exercising its jurisdiction in determining bargaining units, RSA 273-A:8, the several exclusions of RSA 273-A:1 IX (d) have been further defined. See Rollinsford Police Association v. Town of Rollinsford, Decision No. 1988-052 (1988), Rollinsford Police Association v. Town of Rollinsford, Decision No. 1989-042 (1989) and Plaistow Police Association v. Town of Plaistow, Decision No. 1989-061 (1989). More recently, in Teamsters Local 633 v. Town of Rindge Decision No. 1996-066 (1996) Teamsters Local 633 of New Hampshire v. Kearsarge Regional School District, 1998-057 (1998), the RSA 273-A:1 IX (d) exclusions were considered.

In each case, to distinguish a "public employee" from an excludable employee, certain questions were raised around attachment of the position to the employer's organization. If the position is necessary to the day to day operations of the employer and the group of employees in question who fill out the schedule expect to and do work and receive remuneration day after day, week after week or year after year, developing a regularity that depends on the employer's scheduling cycle, then the position is eligible for inclusion in a bargaining unit that contains other part-time "public" employees.

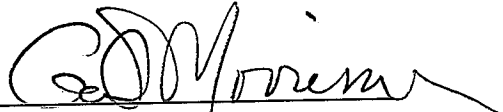
The passage of time has allowed a fleshing out of definitions. Also, time has brought changes in the conditions of employment of adjunct faculty. In the present case, it is clear that Bonnie Insull and Michael French, representative of the adjuncts, expect and are expected to teach semester after semester, year after year contrary to the implication of the time frame stated in the contract they sign. A past practice has been established that represents a reasonable expectation of continuing employment. The expectation operates to the mutual advantage of the college and the lecturer. The administration expects to be notified if a lecturer will not be meeting the obligation suggested by the catalogue printed in March from which students choose the classes before the end of the prior academic year. The inclusion of lecturers names in the course catalogue is a change

that occurred when the use of lecturers became more usual. The college would be hard put to operate without its established cadre of adjunct lecturers.

Adjunct faculty members presently employed at Keene State College are not "temporary" by category and therefore are not excludable employees. Adjuncts are eligible to form a bargaining unit. In contemplation of such a bargaining unit, a distinction is made based on the length of service and the degree of involvement in the adjunct faculty. A bargaining unit of lecturers at Keene State College is appropriate for certification at this time and it shall be composed of lecturers who are currently employed and who have taught at least two of the last three semesters.

So ordered.

Signed this 20th day of October, 1999.



Gail C. Morrison  
Hearing Officer