



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Keene State College Education Association,		*	
NEA-New Hampshire		*	
		*	
	Petitioner	*	
	v.	*	Case No. U-0611-13
		*	
Keene State College		*	Decision No. 2002-095
		*	
	Respondent	*	
<hr/>		*	<u>MOTION TO DISMISS</u>

APPEARANCES

Representing Keene State College Education Association, NEA-New Hampshire

Steven Sacks, Esq.

Representing Keene State College:

Nicholas Digiovanni, Esq.

BACKGROUND

The Keene State College Education Association, NEA-NH, ("Association") filed unfair labor practice (ULP) charges against Keene State College ("College") on June 14, 2002 alleging violations of RSA 273-A: 5 I (a), (g) and (h) resulting from breach of contract when an arbitration award was issued such that it was inconsistent with the collective bargaining agreement (CBA) and with the review and tenure provisions contained therein. The College filed an answer and Motion to Dismiss on June 26, 2002 based on, *inter alia*, the PELRB's not having jurisdiction to hear the ULP because the College had not refused to implement the arbitrator's award dated May 6, 2002 (appended as Exhibit A to the ULP) and because the Association had failed to assert its appeal rights within the requisite 30 day limitation period referenced in contract Article VI, (g) (4)(d)). The Association filed a brief in opposition to the Motion to Dismiss on August 1, 2002.

The PELRB heard oral arguments from the parties, both represented by counsel, on August 1, 2002, on the issues raised in the Motion to Dismiss pursued by the College.

Findings of Fact

1. Keene State College, part of the University System of the State of New Hampshire, is a "public employer" within the meaning of RSA 273-A:1X.
2. The Keene State College Education Association, NEA-New Hampshire, is the duly certified bargaining agent for professional staff and faculty employed at Keene State College.
3. The Association and the College are parties to a CBA for the period July 1, 1999 to June 30, 2003. Article VI of the CBA involves "Grievance and Arbitration Procedures." Article VI, (g) (4) (d) specifically provides:

Both parties agree to abide by the decisions of the Arbitrator or Board of Arbitration but shall retain whatever rights they have under the law to challenge the decisions of the arbitrator or Board of Arbitration. Any appeal shall be filed within thirty (30) days of notice of the arbitration decision.

4. Pursuant to Article VI, the Association filed a grievance on behalf of Jane Percival, Ed. D., after she was denied promotion and/or tenure in March of 2000. The grievance was processed through the American Arbitration Association (Case No. 1139-000248-01) which administered arbitrator selection procedures. The selected arbitrator held hearings on October 17 and December 12, 2000, and on January 23, February 16, and 22, April 25, May 21, June 4, and November 5, 2001 and issued an 86 page decision on May 6, 2002 which found no contract violations and denied the grievance. Before commencing the arbitration, the parties stipulated the issues, as reflected in Exhibit A to the ULP, as follows:

Did the College violate Articles IV, V and/or VIII of the collective bargaining agreement when it denied promotion and/or tenure to Jane Percival in March 2000? If so, what should the remedy be?

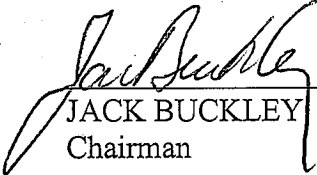
5. The Association filed the instant ULP objecting to the foregoing arbitration award on June 14, 2002, more than thirty (30) days after notice of the arbitration decision as controlled by Article VI (G) (4)(d).

DECISION AND ORDER

While the language of Article VI (G) (4) (d) is unclear and masked in its intent where it both promises that the parties will "abide" by the decisions of the arbitrator yet permits them to retain "rights...under the law" to challenge arbitral decisions, it is clear and concise on one provision. It provides that any appeal, apparently in whatever forum the appealing party selects, "shall be filed within thirty days of the notice of the arbitration decision." (Emphasis added.) Such was not the case here. We are unpersuaded that there is any reason why we should ignore, modify or negate this mutually negotiated contract provision. The College's motion to dismiss is GRANTED.

So ordered.

Signed this 29th day of August, 2002.



JACK BUCKLEY
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.