



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Faculty of Wheelock Laboratory
School of Keene State College

Complainant

v.

Keene State College, University System
of New Hampshire

Respondent

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Case No.U-0615

Decision No. 2003-030

APPEARANCES

Representing the Faculty of Wheelock Laboratory
School of Keene State College

Robert J. Lupien

Representing Keene State College, University System
of New Hampshire

Ronald F. Rodgers, Esq.

BACKGROUND

The Faculty of Wheelock Laboratory School of Keene State College (complainant) filed unfair labor practice (ULP) charges against Keene State College, (respondent) University System of New Hampshire on July 9, 2002 alleging a violation of RSA 273-A: 5 I (i) resulting from the employer's failure to provide employment, or continued employment, to certain employees at the Wheelock School in violation of an agreement, sometimes referred to in there proceedings as an Additional Retirement Contribution ("ARC") agreement, which, complainant asserts, provided the assurance of continued employment to age 62.

The University System of New Hampshire (USNH) filed an answer and motion to dismiss on behalf of Keene State College on July 24, 2002. The motion to dismiss was predicated on (1) the complainant's failure to state a claim as to any agreement entered into by the public employer which had been invalidated by its adopting a law, rule or regulation to the contrary, (2) the complainant's failure to assert and prove that the ARC's were an "agreement" within the definition and contemplation of RSA 273-A: 5 I (i), (3) the ULP being prematurely filed because no employment actions had been taken or were scheduled to be taken until June 30, 2003, (4) the complainant's lack of standing to pursue this action because of its lack of certification as an exclusive representative for the bargaining unit as referenced in RSA 273-A:11, (5) the complainant's failure to exhaust "internal grievance procedures" and (6) the actions complained of being protected by RSA 273-A:1 XI.

Subsequent to the exchange of pleadings, the parties jointly sought and were granted a request to hold the hearing for this matter in abeyance to allow for further discussions between them which might obviate the need for further proceedings, Decision No. 2002-103 (September 11, 2002). Thereafter, they sought and were granted a further continuance until February 10, 2003 "at which time these proceedings shall be administratively dismissed under either party has filed a written request to schedule a preliminary hearing on the respondent's pending Motion to Dismiss." Decision No. 2003-003 (January 8, 2003) By letter of January 28, 2003, Robert J. Lupien requested such a hearing on behalf of the complainant. The Motion to Dismiss was heard by the PELRB on March 20, 2003.

FINDINGS OF FACT

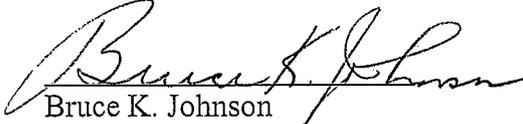
1. In furtherance of a Supreme Court remand in University System of New Hampshire, 117 N.H. 96 (1977), this Board conducted supplemental unit determination hearing and found that there was no community of interest between the faculty of the "Wheelock School" and the faculty members of Keene State College. (Case No. U-0601 dated March 15, 1977) Thus, there is no bargaining unit of record for the employees about whom the instant ULP has been filed.
2. There is no bargaining agent of record for the Faculty of the Wheelock Laboratory School of Keene State College. Thus, neither the named representative nor the named organization has standing to be advocating on behalf of the complaining employees as their sole and exclusive bargaining agent within the meaning of RSA 273-A: 11.
3. We find no collective bargaining agreement (CBA) of record between the complainant herein and the respondent herein as is required by RSA 273-A: 16.

DECISION AND ORDER

Based on the foregoing findings of fact we find that the complainant lacks standing to pursue this ULP. Respondent's Motion to Dismiss is GRANTED.

So ordered.

Signed this 1st day of April, 2003.


Bruce K. Johnson
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members E. Vincent Hall and Richard W. Roulx present and voting.

Distribution: Robert J. Lupien
Ronald F. Rogers, Esq.