

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

American Association of University Professors
University of New Hampshire Chapter

Complainant

v.

University System of New Hampshire

Respondent

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Case No. U-0613-14

Decision No. 2003-069

PRE-HEARING DECISION AND ORDER

BACKGROUND

The American Association of University Professors, University of New Hampshire Chapter (hereinafter referred to as the "Union" filed a complaint on April 7, 2003 with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") against the University System of New Hampshire (hereinafter referred to as the "University"). In the complaint the Union alleges that despite the parties being in formal negotiations at the time and despite prohibitive "ground rules" having been executed by the parties, the University, acting through its employees and agents, has undertaken direct communication to bargaining unit members concerning health insurance that include: (1) publishing an article in the "Campus Journal", a publication of general circulation among unit members and the university community; (2) a letter from the University Provost directed to unit members; and, (3) a letter and oral presentation by the Vice Provost and Dean of the Graduate School to the faculty senate. The Union alleges that such actions violated the parties' ground rules for negotiations. It also alleges that the University's actions constitute direct dealing and a failure to negotiate in good faith with the bargaining unit's exclusive representative in violation of RSA 273-A:5, I (e), (g), (h), and (i) as well as RSA 273-A:3 and RSA 273-A:11.

As relief for these alleged actions, the Union requests the PELRB find that the University committed unfair labor practices and issue a cease and desist order against the University to prevent further such occurrences.

The Respondent, University System of New Hampshire first filed an "Assented to Motion for Extension of Time to Answer" on April 22, 2003. In conformance with its request for such leave, it then filed its Answer with the PELRB on May 5, 2003. It does not deny the occurrence of the three acts of communication alleged by the Union. However, the University denies that such conduct amounts to improper labor practices. Its denial is based in large part on its assertion that in regard to issues related to review of faculty tenure, while the process by which the reviews are to be conducted is prescribed in the parties' collective bargaining agreement (CBA), the establishment of tenure criteria is not part of the bargaining process and therefore such communications are not improper and thus violative of the statute. Also, it asserts that other communications that made a reference to health insurance issues were sufficiently broad and not specific enough to the parties' negotiations to be deemed improper thus violative of the statute. Lastly, it answers the Union's charges by asserting that the University's practice of "joint governance" with its faculty allows certain types of communication with the faculty and that communication in furtherance of that practice.

Because it asserts that none of the communications that are claimed improper by the Union subverted the collective bargaining process nor violated the parties' ground rules for negotiations, the University requests that the PELRB dismiss the Union's complaint and refrain from issuing a cease and desist order.

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esq.

For the Respondent: Mark T. Broth, Esq.

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

The Complainant has proposed the following issues for consideration by the Board and to which the Respondent agreed at the Pre-Hearing Conference:

1. Whether the University System of New Hampshire committed an unfair labor practice by failing to negotiate in good faith with the exclusive representative, American Association of University Professors, University of New Hampshire Chapter, in violation of RSA 273-A:3; RSA 273 A:5, I (e), (g) or (i); or RSA 273-A:11?
2. Whether the University System of New Hampshire refused to negotiate with the exclusive representative, American Association of University Professors, University of New Hampshire Chapter, by direct dealing with members of the

bargaining unit in violation of RSA 273-A:3; RSA 273 A:5, I (e), (g) or (i); or RSA 273-A:11?

3. Whether the University System of New Hampshire failed to bargain in good faith and failed to adhere to the ground rules negotiated between the parties in violation of RSA 273-A:3; RSA 273 A:5, I (e)?

WITNESSES

For the Complainant:

1. Stephen Fan, faculty member
2. Chris Balling, faculty member
3. Bruce Mallory, Vice Provost for Academic Affairs
4. Dale Barkey, faculty member
5. David R. Hiley, University Provost
6. Members of the Faculty Professional Standards Committee*
7. Witnesses called by the Respondent

* Individuals to be specifically named and amended Witness list to be filed with the PELRB and provided to opposing counsel at least five (5) days prior to the final hearing.

For the Respondent:

1. David R. Hiley, University Provost
2. Bruce Mallory, Vice Provost and Dean of the Graduate School
3. James Varney

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Collective Bargaining Agreement, effective 7/1/98
2. Negotiation Ground Rules, dated 3/10/2003

3. Campus Journal article, dated 3/28/03
4. Hiley letter to faculty, dated 3/24/03

For the Respondent:

1. Hiley letter to faculty, dated 3/24/03
2. Campus Journal article, dated 2/28/03
3. Campus journal article, dated 3/28/02
4. Negotiation Ground Rules, dated 3/10/2003
5. AAUP Press release
6. Foster's Daily Democrat On-line news article, dated 4/8/03
7. Mallory letter to faculty members of Professional Standards Committee

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for an evidentiary hearing on the merits of the allegations made by the Complainant is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

DECISION AND PRE-HEARING ORDER

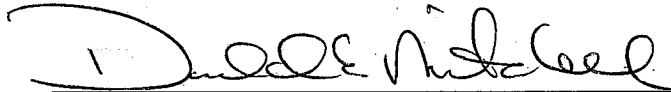
1. The parties shall exchange any outstanding documents reasonably requested by the opposing party no later than fifteen (15) days prior to the final hearing. In the event that either party has a good faith belief that he has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of his reasons for not providing the subject document to the requesting party.

2. The party representatives shall exchange their final Witness and Exhibit lists and each shall file a copy of their respective list to the PELRB no later than five (5) days prior to the date of hearing scheduled below.
3. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub.203.02.
4. Any additional preliminary, procedural or dispositive motions shall be filed by the parties within ten (10) days of the date of this order.

An evidentiary hearing shall be scheduled in due course at the offices of the Public Employee Labor Relations Board. The party representatives shall receive notice of the final hearing by separate correspondence.

So Ordered.

Signed this 17th day of June, 2003



Donald E. Mitchell, Esquire
Hearing Officer

Distribution:

John S. Krupski, Esq.
Mark T. Broth, Esq.