



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

American Association of University Professors	*	
UNH Chapter	*	
	*	
Complainant	*	Case No: U-0613-16
v.	*	
	*	Decision No. 2006-221
University System of New Hampshire	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The American Association of University Professors, UNH Chapter (“Association”) filed an unfair labor practice complaint on October 6, 2006 alleging that the University System of New Hampshire (“University”) committed unfair labor practices in violation of RSA 273-A:5, I (e) by publishing an October 3, 2006 to the UNH community, including members of the bargaining unit. The email (which was sent by J. Bonnie Newman, Interim President and Bruce L. Mallory, Provost and Executive Vice President) was sent after the parties reached impasse on Friday, September 29, 2006. Among other things the email contains information concerning the parties’ respective positions on unresolved matters. After the Association filed this complaint the University issued a second email on October 10, 2006 in which a specific issue raised in the complaint is addressed and explained. The second email contains other statements as well. On October 18, 2006 the Association filed a motion to amend petition based on the content of the second email. The Association asserts that as a result of these two emails the University has engaged in direct dealing and violated the provisions of RSA 273-A:5, I (e).

The Association requests that the PELRB order the University to (1) Find that the University has committed an Unfair Labor Practice in violation of RSA 273-A:5 I (e); (2) Order the University to post the Decision of the Board in all work areas of the Bargaining Unit; and (3) Grant such other and further relief as may be deemed just.

The University denies that it has engaged in direct dealing and states that direct communications with employees do not constitute a per se unfair labor practice. The University infers that the communications at issue in this case were permissible.

The University requests that the PELRB (1) Dismiss the Unfair Labor Practice Charge; (2) Deny the Association's request for a cease and desist order; and (3) Order such other and further relief as justice may require.

The undersigned Hearing Officer conducted a pre-hearing conference on December 12, 2006 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Association: Andrea K. Johnstone, Esq.

For the University: John S. Krupski, Esq.

ISSUE PRESENTED FOR BOARD REVIEW

Did the University's two email communications constitute improper direct dealing by attempting to negotiate directly with members of the bargaining unit in violation of RSA 273-A:5 I (e)?

WITNESSES

For the Association:

1. Professor Dale Barkey, member Association negotiation team

For the University:

1. J. Bonnie Newman, University Interim President
2. Bruce L. Mallory, University Provost and Executive Vice President
3. James Varn, member University negotiation team

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 with 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 Association:

1. E-mail dated 10/3/06
2. E-mail dated 10/10/06

For the University:

1. Collective Bargaining Agreement 2003-2006
2. E-mail dated 10/2/06
3. E-mail dated 10/10/06
4. Provost letter to community dated 2/06
5. Provost letter to community dated 5/31/06
6. Provost letter to community dated 9/15/06

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day.

DECISION

1. The Petitioner's motion to amend is granted.
2. The parties' representatives shall meet, or otherwise confer, on or before December 22, 2006, and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
2. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before December 22, 2006 in order to compose a mutual statement of agreed facts and a list of stipulated exhibits. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file that document with the PELRB at the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing

representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.

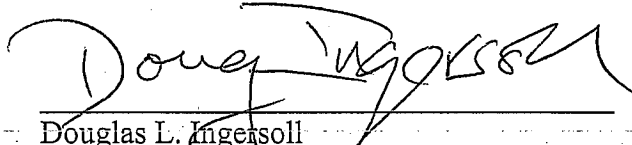
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

January 4, 2007 @ 9:00 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

December 12, 2006.



Douglas L. Ingersoll
Hearing Officer

Distribution:
John S. Krupski, Esq.
Andrea K. Johnstone, Esq.