



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

American Association of University Professors	*	
UNH Chapter	*	
	*	
Complainant	*	Case No: U-0613-17
v.	*	
	*	Decision No. 2007-035
University System of New Hampshire	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The American Association of University Professors, (the "Association") filed an unfair labor practice complaint on February 6, 2007 alleging that the University System of New Hampshire, (the "University") violated RSA 273-A:5 I (c), (e) & (g) by refusing to negotiate wages for "unit members who were previously administrators and 'bumped down' back into the bargaining unit as UNH tenured faculty." According to the Association, the University claims that negotiation of wages for such employees is a prohibited subject of bargaining.

As remedies, the Association requests that the PELRB (1) conduct a hearing on this matter as soon as possible; (2) Find that the University has violated of RSA 273-A:5 I (e) by refusing to negotiate in good faith; (3) Order the University to cease and desist from such activity; and (4) Grant such other and further relief as may be deemed just and equitable.

The University filed its Answer on February 21, 2007. The University denies the allegations which form the basis for the Association's charge and denies any violation of the statute. The University states that the parties' most recent collective bargaining agreement expired on June 30, 2006, the parties have engaged in negotiations since February 9, 2006, and the parties declared impasse on October 2, 2006. The University adds that the Association's April 27, 2006 proposal with regard to "Salary for Former Administrators" was given a "no resolution" status by agreement of the parties. The University says the parties engaged in mediation on December 5, 2006 without success, and that the Association is precluded from introducing any information from the mediation in any event.

Accordingly, the University requests that the PELRB (1) Dismiss the instant 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 March 14, 2007 at the PELRB offices, Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the Association: Andrea K. Johnstone, Esq.

For the University: John S. Krupski, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

Based upon the representations of counsel at the pre-hearing conference, it appears that the following facts are not in dispute:

Administrators are outside the bargaining unit. The University has the authority to establish the amount of wages to be paid to new faculty hires. Historically, the University has negotiated and currently continues to negotiate a contract with faculty who are being hired to serve as full or part-time administrators. This contract typically includes a formula concerning the amount of wages the employee will receive in the event of their return to an exclusively faculty status. This case represents the first time the Association has demanded to bargain the wages of such employees upon their return to the faculty, irrespective of contractual agreements between the employee and the University. It appears that the contracts with employees returning to exclusively faculty status do not purport to permanently set or establish wages for the involved employee but instead set the level of compensation to be provided at the time such an employee returns to exclusively faculty status. It does not appear that a perceived inadequacy of the amount of wages such employees would receive under the University contract is the underlying point of friction, as the University states that such employees may earn relatively more than comparable faculty members who have never been employed as administrators.

Accordingly, it appears that the issues are:

- (1) Whether the amount of wages to be paid to an employee at the time of their return to the an exclusively faculty status, after having worked as an administrator and also after having previously been a faculty member, is a subject of mandatory bargaining?
- (2) If the board determines that the amount of such wages is a mandatory subject of collective bargaining, has the University committed a violation of RSA 273-A:5 I, (c),(e) or (g) and if so, what shall be the remedy?

WITNESSES

For the Association:

1. Dale Barkey, Association President, member negotiation team
2. Deanna Wood, member negotiation team
3. Chris Balling, member negotiation team

For the University:

1. Bruce Fraser, mediator
2. Bruce L. Mallory, negotiation team member
3. James Varn, negotiation team member
4. Candace Corvey, negotiation team member

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. Current Collective Bargaining Agreement
2. Policies and Procedures regarding Administrative Employees

For the University:

1. Collective Bargaining Agreement 2003-2006
2. AAUP Proposal 4/27/06
3. Bruce Mallory Notes
3. Negotiation Score Cards
4. Bargaining Notes Referencing Relevant Proposal
5. USNH Board of Trustees Policy re: Principal Administrator Compensation 5.21.5
6. UNH Policy for funding salary for Senior Administrators returning to Faculty

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. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

## DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before March 30, 2007 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 March 30, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts 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. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty calendar days prior to the scheduled hearing date and any responsive pleadings thereto no later than ten calendar days prior to the scheduled hearing date.
5. At the pre-hearing counsel for the Association contemplated the need to file an amendment to the complaint. Any such amendment shall be filed on or before March 23, 2007 and any responsive pleading to such filing shall be filed on or before March 30, 2007.
5. At the pre-hearing the question of whether the Association intended to introduce any evidence from the December 5, 2006 mediation was reviewed. To the extent the Association intends to offer such evidence at hearing the Association shall submit, on or before March 30, 2007, a legal memorandum on the admissibility of such evidence in this proceeding.

6. The parties shall notify the PELRB on or before March 20, 2007 if they believe a further pre-hearing will be necessary in this case.

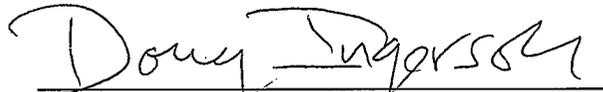
Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

**April 10, 2007 @ 9:30 AM**

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

So ordered.

Signed this 15<sup>th</sup> day of March, 2007.



Douglas L. Ingersoll  
Staff Counsel/Hearing Officer

Distribution:

John S. Krupski, Esq.

Andrea K. Johnstone, Esq.