



**State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

American Association of University Professors – UNH Chapter

and

University System of New Hampshire

**Case No. E-0082-5
Decision No. 2014-148**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 12, 2014

Appearances: Glenn R. Milner, Esq. for Petitioner AAUP-UNH

Joseph P. McConnell, Esq., for the University System of New
Hampshire

James F. Allmendinger, Esq., for the Petitioner Marcus Hurn

Background:

On April 18, 2014 the AAUP-UNH filed an agreed upon modification petition requesting the modification of the existing bargaining unit comprised of University of New Hampshire Durham and Manchester full-time academic faculty bargaining unit all as more fully described in the August 8, 1991 unit description in Case No. U-0613. The modification petition seeks to add tenured and tenure track full-time academic faculty at the UNH School of Law (Concord) to the existing bargaining unit and exclude the following UNH School of Law positions:

Deans, Associate Deans, Adjunct Faculty, Part-time Faculty, Lecturers, Contract Faculty, Clinical Faculty, Alternative Security and Alternative-Security Track Faculty, Legal Skills Professors, Director of Legal Residencies, Director of Patent Practice and Procedure, Distinguished Jurist-in-Residence, Director- Daniel Webster Scholar Honors Program, Director- ITTI, Director Intellectual Property and Transaction, Daniel Webster Distinguished Professor of Law, Executive Director Franklin Pierce Center for Intellectual Property, Director of JD Legal Writing, Director of the Law Library and Librarians who do not hold faculty rank.

On May 6, 2014 four UNH School of Law professors (professors Hurn, Scherr, Greabe, and McCann) filed a petition to intervene in the modification proceedings. The petitioners maintain that in effect an unofficial law school bargaining unit known as the Voting Faculty of the UNH School of Law already exists. They also complain that the petitioners were not involved in any meaningful discussion of unionization or unit composition, that the proposed modification excludes some UNH School of Law positions/employees to their detriment, and that a more broadly based unit or a unit of UNH School of Law Voting Faculty is appropriate. The petitioners also maintain that the USNH is bound by their existing tenure contracts which cannot be altered as contemplated and proposed by the modification petition. The petitioners request that the PELRB: 1) grant the petition to intervene; 2) provide additional time in which others can join the petition to intervene or file independently; and 3) delay the proceedings for 60 days to provide affected law school employees with time to act.

Both the USNH and the AAUP-UNH filed their response/objection to the petition to intervene on May 21, 2014. The USNH has no objection to the petition to the extent it relates to community of interest matters. However, the USNH disputes some of the petition's assertions and conclusions about the law school faculty's current status as a pseudo bargaining unit and further states that the modification petition is otherwise a proper bargaining unit modification request.

The AAUP-UNH challenges the petitioners' standing to intervene and notes that the public employer and unit exclusive representative have agreed to the change in unit composition, that the existing unit covers approximately 600 UNH Durham/Manchester faculty, and that the modification petition is seeking to add 12 additional employees, only four of whom have petitioned to intervene. The AAUP-UNH requests that the PELRB deny the petition to intervene.

On May 28, 2014 the PELRB issued a notice of this pre-hearing conference and of a hearing date of June 25, 2014. At the pre-hearing conference attorney Allmendinger reported that a certification petition will be filed on or before June 18, 2014 requesting PELRB approval of a bargaining unit comprised of UNH School of Law tenure track and tenured faculty and additional law school positions omitted by the pending modification. All parties agree that the pending modification petition and the anticipated certification petition should be consolidated for hearing to be held on July 30 or 31, 2014, a date when all counsel is available.

Issues for Decision

1. Whether the Petition to Intervene should be granted.
2. Whether the bargaining unit status of certain UNH School of Law faculty should be determined through the pending modification petition, through the anticipated certification petition, or through some other process.

Witnesses and Exhibits:

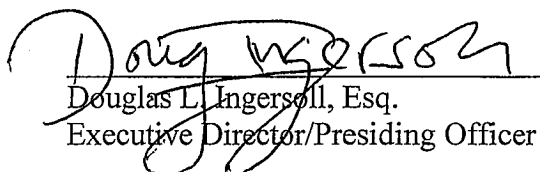
To be filed and exchanged in accordance with applicable N.H. Admin. Rules Pub 100-300. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory

hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing.

Additionally, each party shall notify the PELRB on or before June 18, 2014 of any issue or problem with the conduct of a hearing on July 30 or 31, 2014. Any such notification shall also identify at least two alternate dates when all parties are available for hearing. Upon review of the anticipated certification petition and any related answers and objections that are filed the undersigned will issue a final order on consolidation, hearing and other matters as appropriate and necessary,

Date: _____

6/12/14


Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

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