



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of NH, Inc., SEIU Local 1984

and

Plymouth State University

Case No. E-0249-1
Decision No. 2020-107

Appearances:

Gary Snyder, Esq., SEA General Counsel, Concord, NH for the State Employees' Association of New Hampshire, Inc., SEIU Local 1984

Karyl Roberts Martin, Esq., University System of New Hampshire, Concord, NH, for the Plymouth State University

Background:

On January 23, 2020, the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (SEA) filed a petition for certification seeking to represent non-tenure track full time faculty of the Plymouth State University (PSU). The petition is supported by the requisite number of confidential authorization cards. See January 28, 2020 PELRB Report re: Inspection of Confidential Authorization Cards. The PSU objects to the inclusion of the research faculty in the proposed bargaining unit on the ground that the research faculty members allegedly lack a community of interest with the rest of the employees in the unit as required under RSA 273-A:8.

A hearing was held on March 10, 2020 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer

documentary evidence, and to examine and cross-examine witnesses. The parties' Statement of Uncontested Facts is incorporated into the Findings of Fact below and the decision is as follows.

Findings of Fact

1. The PSU is a public employer within the meaning of RSA 273-A:I, X.
2. The SEA is an employee organization seeking to represent the following proposed PSU bargaining unit: Non-tenure track full time faculty.
3. At the time the petition was filed, the proposed bargaining unit contained 48 employees, including 9 probationary employees.
4. Prior to the filing of this petition, the PSU had two bargaining units: (1) tenure-track faculty unit represented by the AAUP and (2) adjunct faculty unit represented by the SEA.
5. The PSU non-tenure full time faculty currently includes Lecturers/Contract Faculty, Senior Lectures/Contract Faculty, Clinical Associate Professors, Clinical Assistant Professors, and Research Associate Professors. The PSU objects only to the inclusion of research faculty in the proposed bargaining unit. It does not dispute the existence of a community of interest among the other members of the non-tenure track full time faculty.
6. There are currently four research faculty members in the proposed bargaining unit: Mary Earick, June Hammond Rowan, Eric Kelsey, and Nancy Puglisi.
7. All PSU faculty members are public employees as defined by RSA 273-A:1. See Statement of Uncontested Facts at A.
8. All PSU faculty work in the same geographic location, i.e. the PSU campus in Plymouth, New Hampshire. See Statement of Uncontested Facts at B.
9. All employees in the proposed bargaining unit are full time employees. See Statement of Uncontested Facts at C.

10. All positions in the proposed bargaining unit are eligible for the benefits set forth in the Faculty Handbook. See Statement of Uncontested Facts at D.

11. All employees in the proposed bargaining unit are governed by the same disciplinary and grievance procedures. See Statement of Uncontested Facts at E.

12. All employees in the proposed bargaining unit are members of the voting faculty, i.e. "they may vote on issues at faculty meetings, and are eligible to vote in faculty elections and to be elected to faculty offices and committees." See Joint Exhibit 1.

13. All employees in the proposed bargaining unit go through the same hiring process. After the initial appointment, they are reappointed annually based upon their supervisors' evaluations and recommendations.

14. All employees in the proposed bargaining unit have similar educational background, i.e. most of them are required to possess at least a Master's degree in order to apply for a faculty position. See Joint Exhibit 1.

15. All employees in the proposed bargaining unit are members of the same profession: they are all members of the academia/university faculty whose ultimate goal is to provide post-secondary education to students.

16. All employees in the proposed bargaining unit work within the same organizational structure and function within the same organizational unit, i.e. the non-tenure track faculty of the PSU.

17. All employees in the proposed bargaining unit, including the research faculty, are subject to the same PSU policies and procedures as set forth in the Faculty Handbook and the USNH Personnel Policies Manual. The Handbook and the Manual cover, among other things, such terms and conditions of employment as compensation, appointments, performance evaluations, holidays, sick, military, FMLA and other leaves, health insurance, lay-offs,

retirement, performance-related employment actions, terminations, short and long term disability and life insurance, child care, travel reimbursement, and grievance policy.

18. All employees in the proposed bargaining unit prepare work plans and conduct self-assessment annually. In their work plans, the faculty members articulate and prioritize their goals for the three components of their workload: teaching, scholarship¹, and service². These work plans are relied upon during the annual evaluations by supervisors/discipline coordinators who conduct the evaluations and recommend reappointments.

19. The responsibilities of non-tenure track faculty are described in the Faculty Handbook as follows:

Clinical Faculty: Teaching (including advising) Clinical Responsibilities, and Service

Research Faculty: Scholarship and Service (including teaching and advising when research faculty have teaching/advising responsibilities as outlined in a letter of appointment)

Contract Faculty including Teaching Faculty: Teaching (including advising) and Service

See Joint Exhibit 1, at p. 28 (emphasis in original).

20. While the typical distribution of workload for non-tenure track full-time faculty is 70/15/15% between teaching, scholarship, and service, respectively (see SEA Exhibit 1), it is by no means uniform and the workload distribution varies among faculty members. For example, the workload distribution for Rebecca Grant and Kristin Stelmok, both members of the non-tenure track teaching faculty, is 80% teaching and 20% service. They rarely engage in scholarship, except for the purpose of keeping abreast of developments in their area of expertise.

¹ The scholarship component typically includes, among other things, academic research and publishing (e.g. article or a book).

² The service component typically includes, among other things, advising students and serving on various committees and task force initiatives.

Conversely, the workload distribution for Rachelle Lyons, a contract faculty member, is 60% teaching and 40% service.

21. While most members of the non-tenure track teaching faculty are required to teach a minimum of 15 credits per semester, Research Association Professor June Hammond Rowan is required to teach 12 credits per semester (24 credits per year), which constitutes the majority of her workload. Of the 12 teaching credits per semester, Professor Hammond Rowan teaches one 4-credit course with the rest of the teaching credits assigned to her work for the Center for Research and Innovation and the Center for the Environment. Because she has a 24 teaching credits requirement, some of which is assigned to the administrative work, she, similarly to other non-tenured faculty, has very little time left for research/scholarship and service. Like other faculty members, she mentors and advises students. As part of the service component of her workload, she participates in department meetings and program meetings, like other faculty members. She also conducts open houses for new students and serves as graduate coordinator for the Master's program in environmental sciences and policy. As part of the scholarship component of her workload, she is working on the project assessing the land conservation around the State.

22. The duties of at least two other research faculty members include teaching.

23. Research Associate Professor Puglisi's teaching workload is 60% of her total workload. She primarily teaches graduate courses. Like other faculty members in the proposed bargaining unit, she is subject to the same PSU policies, including appointment, reappointment, evaluations, discipline, and is eligible for the same benefits, as described in Findings of Fact at 17.

24. Mary Earick is the Associate Research Professor in the College of Education, Health, and Human Services and the Director of the Holmes Center for School Partnership and

Educator Preparation. Her responsibilities are mostly administrative. She is a full time employee and is appointed and reappointed in the same manner as other employees in the proposed bargaining unit. She is eligible for the benefits as described in the USNH online Policy Manual. Her position is subject to the PSU Faculty Handbook and Faculty Bylaws. See Joint Exhibit 5.

25. Eric Kelsey is the Research Associate Professor. His position is a joint appointment position partially funded by the Mount Washington observatory, but it is not a grant-funded position. He is a full time PSU employee, is subject to the same policies, and is eligible for the same benefits as other employees in the proposed bargaining unit.

26. Based on the evidence presented, it does not appear than any of the research faculty positions at issue are grant-funded positions.

27. The PSU has a small campus and faculty members in the proposed bargaining unit interact with each other and other types of faculty on daily basis. They also frequently work together on, attend, and/or participate in campus-wide events, such as University Days, professional development days, January Jamboree, art gallery openings, and music recitals. They serve together on various faculty committees, meetings, and initiatives, such as the academic technology institute and the USNH initiative.

28. Employees in the proposed bargaining unit have a strong "self-felt" community of interest. Non-tenure track faculty members who testified believe that they have a community of interest because they all work in the same profession, do similar work, are governed by the same policies, and have the same terms and conditions of employment.

29. All employees in the proposed bargaining unit, including the research faculty members, work toward the advancement of the following PSU mission:

As a public regional university, Plymouth State University serves the State of New Hampshire and New England by providing well-educated graduates; by offering ongoing opportunities for graduate education and professional development; and by

extending to communities partnership opportunities for cultural enrichment and economic development...

See Joint Exhibit 1.

Decision and Order

Decision Summary

The research faculty has a sufficient community of interest with the rest of the non-tenure track faculty in the proposed bargaining unit such that it is reasonable for them to negotiate jointly. The bargaining unit proposed by the SEA is approved.

Jurisdiction

The PELRB has jurisdiction to determine the appropriate bargaining unit and to certify the exclusive representative thereof. See RSA 273-A:8, RSA 273-A:10, and Admin. R. Pub 302.

Discussion

The New Hampshire legislature has recognized the “right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof . . .” Laws 1975, 490:1.” See *Appeal of International Brotherhood of Police Officers*, 148 N.H. 194, 196 (2002). RSA 273-A:8, I vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof.

RSA 273-A:1, IX defines a public employee as “any person employed by a public employer except...(d) [p]ersons in a probationary or temporary status, or employed seasonally, irregularly, or on call.”³ Here, all employees in the proposed bargaining unit, including all research faculty members, are public employees within the meaning of RSA 273-A:1, IX.

The PSU argues that research faculty should be excluded from the proposed bargaining unit because they do not have a community of interest with the other “non-tenure track full time

³ Under RSA 273-A:8, probationary employees cannot vote in any representation election but they are “counted to satisfy the employee minimum number [10] requirement.”

faculty." Specifically, the PSU claims that "the primary responsibility of research faculty is to conduct research and engage in scholarship, usually funded by external resources such as government or private-sector grants." The PSU also notes that research faculty are excluded from existing bargaining units of teaching faculty at the PSU and other institutions within the University System.

"The principal consideration in determining an appropriate bargaining unit is whether there exists a community of interest in working conditions such that it is reasonable for the employees to negotiate jointly." *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995). RSA 273-A:8, I provides as follows:

The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the board *should* take into consideration the principle of community of interest. The community of interest may be exhibited by *one or more* of the following criteria, although it is not limited to such:

- (a) Employees with the same conditions of employment;
- (b) Employees with a history of workable and acceptable collective negotiations;
- (c) Employees in the same historic craft or profession;
- (d) Employees functioning within the same organizational unit.

(Emphasis added).

The PELRB rules provide additional criteria for determining whether a community of interest exists:

- (1) A common geographic location of the proposed unit;
- (2) The presence of:
 - a. Common work rules and personnel practices; and
 - b. Common salary and fringe benefit structures; and

(3) The self-felt community of interest among employees.

Admin. R. Pub 302.02 (b). "[T]he statutory framework which guides PELRB decisions is flexible, and gives much discretion to the PELRB's expertise. The statute and regulation require only that certain factors *may* be considered in determining whether a community of interest exists." *Appeal of University System of New Hampshire*, 131 N.H. 368, 374 (1988) (emphasis in original). Under the statute, "the PELRB need not find each criterion satisfied in order to find that a community of interest exists." *Appeal of Town of Newport*, supra, 140 N.H. at 352. In addition, the clear and unambiguous statutory language indicates that satisfaction of just one of the criteria listed in RSA 273-A:8, I may be sufficient to establish a requisite community of interest.

The community of interest criteria reflect that "determination of appropriate bargaining units is not a search for uniformity in job descriptions ... [and] accommodate a fair degree of position diversity..." *UNH Law Faculty Union & University System of New Hampshire*, PELRB Decision No. 2015-027 (February 18, 2015), affirmed, *Appeal of University System of New Hampshire*, New Hampshire Supreme Court, non-precedential order, Case Nos. 2015-0434 and 2015-0516 (June 22, 2016). When evaluating community of interest issues, the focus must necessarily be on similarities, not the differences, between the positions in a proposed bargaining unit. See RSA 273-A:8, I and Pub 302.02 (b). See *State Employees' Association of New Hampshire, Inc., SEIU Local 1984 & Rockingham County*, PELRB Decision No. 2019-171 (July, 26, 2019). The fact that there may be differences in bargaining unit positions' specific job duties does not necessarily preclude the formation of a cohesive bargaining unit that is otherwise appropriate under RSA 273-A:8, I and Pub 302.02 (b). See e.g. *State Employees' Association of New Hampshire, Inc., SEIU & State of New Hampshire*, PELRB Case No. S-0349 (March 31, 1997)(certifying bargaining unit of supervisory employees in various state departments,

including employment security, fish and game, retirement system, and education); *Keene State College Administrative Staff Assn., NEA-NH & Keene State College*, PELRB Decision No. 2016-132 (June 14, 2016)(certifying bargaining unit containing, among other positions, library services supervisor, divisional administrative support coordinator, laboratory tech, editorial associate, and mail clerk); *Keene State College Staff Assn, NEA-NH & Keene State College*, PELRB Decision No. 2016-092 (April 29, 2016)(certifying bargaining unit containing, among others, athletic coach, finance & budget analyst, institutional research assistant, early childhood teacher, educational program coordinator, and associate director of campus safety/security); *State Employees' Association of New Hampshire, Inc., SEIU Local 1984 & Community College System of New Hampshire*, PELRB Decision No. 2010-210 (November 18, 2010)(certifying bargaining unit containing, among numerous others, positions of administrator, carpenter, director of learning resources, cook, financial aid officer, educational consultant, and plumber); and *City of Concord & United Autoworkers, Local 2322*, PELRB Decision No. 2020-101 (May 12, 2020)(certifying bargaining unit contains, among other positions, administrative victim/witness advocate, utility electrician, fiscal supervisor, legal secretary, housing inspector, and library technician).

Here, the PSU's argument that the research faculty members lack a community of interest with the rest of the unit because their teaching load differs is without merit. Nothing in RSA 273-A: 8 or PELRB rules requires that the employees in the bargaining unit have the same duties/responsibilities or the same workload.⁴ In *UNH Law Faculty Union & University System of New*

⁴ On the contrary, RSA 283-A:8 clearly and unambiguously allows the certification of bargaining units "composed of professional and non-professional employees," if both groups of employees, voting separately, vote to join the proposed bargaining unit. It is logical to assume that the differences in work duties/responsibilities of professional and non-professional employees are far greater than those of faculty members focused on teaching and faculty members focused on the research or administration. However, the legislature specifically authorized the PELRB to include the professional and non-professional employees in the same bargaining unit as long as they vote to join the same unit and other statutory requirements are satisfied.

Hampshire, supra, PELRB Decision No. 2015-027, the USNH argued that Professors of Legal Research and Librarians, among others, should not be included in the law school faculty bargaining unit because the positions at issue (1) had different job responsibilities than other positions in the unit; (2) were largely administrative; and (3) did not have a full teaching load. See *id.* at p. 7. The PELRB disagreed. The PELRB hearing officer found that these positions had a sufficient community of interest with the rest of the law school faculty because, among other things, all of the positions, including those at issue, (1) had the same educational background; (2) worked in the same "general profession" and the same geographic location; (3) were members of the same law school faculty; (4) were subject to the same faculty agreement and participated in faculty meetings; (5) had voting rights; and (6) were working in the furtherance of the same goal—students' legal training. See *id.* at p. 9. Although, unlike other positions, the positions at issue had limited classroom teaching responsibilities, the areas of their specific expertise were "an important aspect and component of the legal education students receive[d] at the Law School." See *id.* The PELRB found that the community of interest requirements were met as the positions at issue, "albeit with different job responsibilities ... are nevertheless closely connected to the other faculty and play an integral role in the overall academic and teaching mission of the Law School." See *id.*, at p. 10.

In the present case, like in *UNH Law Faculty*, all employees in the proposed bargaining unit are member of the same profession: they are all members of the academia/university faculty whose ultimate goal is to provide higher education to students. They work in the same geographic location, on the PSU campus in Plymouth. They function within the same organizational unit, the non-tenure track faculty of the PSU. All employees in the proposed bargaining unit are subject to the same PSU policies and procedures. Many of their terms and conditions of employment are set forth in the Faculty Handbook and the USNH Personnel

Policies Manual which apply to all employees in the proposed unit and which cover, among other things, compensation, appointments, performance evaluations, holidays, sick, military, FMLA and other leaves, health insurance, lay-offs, retirement, performance-related employment actions, terminations, short and long term disability and life insurance, child care, travel reimbursement, and grievance policy. These terms and conditions of employment are subjects of collective bargaining. This factor alone indicates that it is reasonable for these employees to negotiate jointly. In addition, the employees in the proposed bargaining unit regularly interact with each other at work and have a strong "self-felt" community of interest. Furthermore, like faculty members in *UNH Law Faculty* case, all employees in the proposed unit have similar educational background, have faculty voting right and, most importantly, are "closely connected to the other faculty and play an integral role in the overall academic and teaching mission" of the PSU.

The PSU's assertion that the research faculty lacks a community of interest with other employees in the unit because one of the research faculty positions has a different source of funding is also not persuasive as none of the statutory community of interest factors focus on sources of position funding. See RSA 273-A:8. On the contrary, interpreting RSA 273-A:8 in conjunction with other RSA 273-A provisions,⁵ specifically RSA 273-A:1, IX (d) which proscribes a determination of a position status based solely on the source of funding,⁶ indicates that the source of funding should not be used as a determinative factor in a community of interest inquiry.

⁵ The New Hampshire Supreme Court has stated as follows on numerous occasions: "We interpret statutes in the context of the overall statutory scheme and not in isolation." *Appeal of Town of Deerfield*, 162 N.H. 601, 603 (2011).

⁶ RSA 273-A:1, IX (d) provides in relevant part: "No employee shall be determined to be in a probationary status who shall have been employed for more than 12 months ... nor shall any employee be determined to be in a temporary status *solely by reason of the source of funding of the position* in which he is employed." (Emphasis added.)

Here, both parties agree that all employees in the proposed bargaining unit are public employees and are full time employees of the PSU subject to its policies. Therefore, the fact that one of the research faculty positions is a joint appointment position partially funded by the Mount Washington observatory does not change the conclusion that this position has a community of interest with the other employee in the proposed bargaining unit as discussed above.

Finally, the PSU's reliance on its assertion that other PSU and UNH bargaining units don't contain research faculty is misplaced. Firstly, the relevant PSU existing faculty unit is a tenure-track faculty unit while research faculty at issue here, just like contract and clinical faculty, are non-tenure track faculty. Secondly, the union (AAUP) in the tenure-track faculty case did not petition the PELRB for inclusion of the research faculty in that unit but instead proposed to exclude the research faculty, along with clinical and contract faculty from the tenure-track faculty unit.⁷ Therefore, in the tenure-track faculty case, no determination was made whether the research faculty has a community of interest with other types of university faculty. Similarly, in cases involving UNH lecturers and UNH non-law faculty, no proposal was made to include research faculty in the bargaining unit and no determination was made as to whether the research faculty had a community of interest with other faculty.


Based on the foregoing, the research faculty members have a sufficient community of interest with other faculty members in the proposed bargaining unit such that it is reasonable for them to negotiate jointly. Accordingly, the following bargaining unit is approved: Non-tenure track full time faculty.

⁷ All types of faculty that the tenure-track faculty petitioner (AAUP) wanted to exclude from that unit the SEA proposes to include in one non-tenure track unit in this case.

The bargaining unit contains more than 10 employees with the same community of interest as required under RSA 273-A:8, I. Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the approved unit, if any. "State Employees' Association of New Hampshire, Inc., SEIU Local 1984" and "No Representative" will appear as choices on the ballot. An Order for Election shall issue in due course and a pre-election conference shall be conducted pursuant to Pub 303.02.

So ordered.

Date: May 21, 2020



Karina A. Lange, Esq.
Staff Counsel/Hearing Officer

Distribution: Gary Snyder, Esq.
Karyl Roberts Martin, Esq.