



State of New Hampshire
Public Employee Labor Relations Board

**KSC Admin. Staff Assoc., NEA-NH, Case No. E-0189-4;
KSC Staff Assoc., NEA-NH, Case No. E-0190-5; and
KSC Directors & Supervisors Assoc., NEA-NH, Case No. E-0191-6**

v.

Keene State College
Decision No. 2023-001

Pre-Hearing Memorandum and Order

Date of Conference: January 4, 2023

Appearances: Rachel Hawkinson, UniServ Director, for the Complainant
Karyl R. Martin, Esq., for the Respondent

Background:

On November 23, 2022, the KSC Admin. Staff Association, NEA-NH, KSC Staff Association, NEA-NH, and KSC Directors & Supervisors Association, NEA-NH (Associations), filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the Keene State College (KSC) had violated RSA 273-A:5, I (a) ("To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter"); (b) ("To dominate or to interfere in the formation or administration of any employee organization"); (c) ("To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization"); (e) ("To refuse to negotiate in good faith with the exclusive representative of a bargaining unit ..."); (g) ("To fail to comply with this chapter or any rule adopted under this

chapter"); (h)("To breach a collective bargaining agreement"); and (i)("To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule"). The Associations charge that the KSC: (1) unilaterally removed Introductory Employees from the bargaining units represented by the Associations; (2) communicated directly with employees about their status as bargaining unit members without including the Associations; (3) ignored and invalidated the collective bargaining agreement (CBA) provisions related to Introductory Employees; (4) provided incorrect information to Introductory Employees about when they can join the Associations; and (5) refused to give Introductory Employees the pay raise and one-time ratification bonus owed to them under the CBAs. The Associations also argue that the KSC does not have a probationary period within the meaning of RSA 273-A:1, IX; and that Introductory Employees are not statutory probationary employees and, therefore, cannot be removed from the bargaining units except through the PELRB modification process. The Associations request that the PELRB find that the KSC violated RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and (i) and order the KSC to cease and desist from such violations and to make the Associations and the impacted employees whole.

The KSC denies the charges and asserts, among other things, that the Introductory Employees are probationary employees within the meaning of RSA 273-A:1, IX and, therefore, are not within the bargaining units represented by the Associations, and that any past practice of applying CBA terms to these employees was properly terminated by the KSC's June, 2020 end-of-practice notification to the Associations. The KSC also argues that: (1) the Associations have failed to state claims upon which relief can be granted as a matter of law and/or fact; (2) the complaint was not filed within six months of the alleged statutory violations and is, therefore, untimely; (3) the employees at issue are not public employees pursuant to RSA 273-A:1, IX (d) due to their

probationary status and, therefore, the PELRB lacks jurisdiction to grant the relief requested; and (4) the Associations failed to exhaust all administrative remedies prior to filing the complaint. The KSC filed a motion to dismiss the Associations' complaint on the ground, among others, that the complaint was untimely under RSA 273-A:6, VII limitation period because the Associations were on notice of the end of past practice since June, 2020 or, at the latest, since March 30, 2022 when the Associations sent an email to the KSC demonstrating their awareness of the end of past practice. The KSC requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

1. Whether the Associations' complaint is untimely under RSA 273-A:6, VII.
2. Whether the PELRB otherwise has jurisdiction over the Associations' claims.
3. Whether the KSC violated RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and/or (i) as charged by the Associations.

Decision

1. "Parties" means the Associations, the KSC or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The deadline to file an objection to the motion to dismiss is **January 6, 2023**.
3. At the pre-hearing conference, the parties discussed submitting this case for decision on stipulations, exhibits, and briefs. As discussed at the pre-hearing conference, the deadline to file a request to submit this case for decision on stipulations, exhibits, and briefs is **January 10, 2023**. Any such request shall contain a proposed schedule for submission of (1) stipulated facts and joint exhibits; (2) opening briefs; and (3) reply briefs, if any. In the absence of such request, a hearing will be held as previously scheduled. See below.

4. A statement of stipulated facts shall be filed no later than **January 11, 2023**. The parties shall also exchange and file with the PELRB final lists of witnesses no later than **January 11, 2023**. 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.
5. The parties shall exchange and file with the PELRB final lists of exhibits no later **January 11, 2023**. Exhibits shall be pre-marked in the upper right-hand corner as Joint, Associations, or KSC. Joint and Associations exhibits shall be marked numerically. The KSC's exhibits shall be marked alphabetically. Exhibits pre-marked for identification only shall be marked as in the following example: "Associations Ex.1 (ID)." Exhibits to be admitted without objection shall be pre-marked as in the following example: "Associations Ex. 2." The exhibit lists must also indicate whether an exhibit is pre-marked for identification only or is to be admitted without objection as shown in the example below:

Associations Exhibit List:

Associations Ex. 1 (ID)	Jan. 1 2001 email to KSC
Association Ex. 2	Jan 5, 2001 email to KSC

6. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended, and the parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

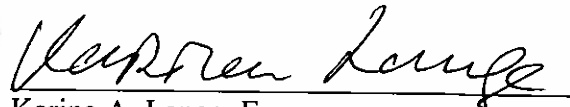
Hearing

Unless otherwise ordered, the hearing in this case will be held on **January 18, 2023, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 hours.

If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 01/04/2023



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

Distribution: Rachel Hawkinson, UniServ Director
Karyl R. Martin, Esq.