



NH Supreme Court affirmed this decision on February 15, 1985, Slip Opinion No. 84-053, 126 N.H. 95 (1985).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEACOAST EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, NEA-NH

Complainant

v.

S.A.U. #21, JOINT BOARD NEGOTIATING TEAM AND ITS AGENTS

Respondents

CASE NO. T-0340:1

DECISION NO. 83-48

APPEARANCES

Representing the Seacoast Educational Support Personnel Association:

Jo Campbell, UniServ Director, Region II, NEA-NH
Gloria Hosker, Association President
Janice L. Yost, Seacoast Education Association

Representing the S.A.U. #21 Joint Board Negotiating Team and its Agents:

Bradley F. Kidder, Esquire, Counsel
William Kingston, Chief Negotiator
Richard Hamilton, Superintendent

BACKGROUND

On March 8, 1983, the Seacoast Educational Support Personnel Association, NEA-NH (SESPA) filed an improper practice charge against S.A.U. #21, Joint Board Negotiating Team and its Agents (S.A.U.), charging that the joint negotiating team had refused to negotiate with SESPA thereby violating RSA 273-A:5, (a) and (e).

On May 17, 1982, SESPA petitioned the Public Employee Labor Relations Board (PELRB) to hold a bargaining representative election. PELRB determined the unit to consist of:

"Educational Support Personnel in S.A.U. #21 School District; specifically, paraprofessional including teacher aides, nurse aides, L.D. tutors, library clerks and Title I employees except at Sacred Heart and Odyssey House."

in each of the six School Districts that compose S.A.U. #21; namely, Hampton, North Hampton, Hampton Falls, Seabrook, South Hampton and Winnacunnet High School.

On June 22, 1982, PELRB certified SESPA as the exclusive bargaining representative.

In the Fall of 1982, SESPA submitted its intent to bargain and its representative, Loren Hutchinson, met with Superintendent Richard Hamilton as a preliminary to negotiations. As of January 1983, the S.A.U. bargaining team still had not met with SESPA's team. On February 8, 1983, Gloria Hosker, then co-president of SESPA received written notice from Dr. Hamilton that the S.A.U. would not bargain with SESPA.

No reply to the improper practice charge was received from S.A.U. #21. A hearing was held on the complaint in the PELRB office in Concord on June 7, 1983.

FINDINGS OF FACT AND RULINGS OF LAW

-- At the hearing, S.A.U. #21, through its Counsel, argued basically the following:

That School Administrative Unit #21 is a legally organized corporation under RSA 186 and as such does not employ the persons named in the unit determination order.

That the school boards comprising S.A.U. #21 are each in themselves distinct and separate school districts, sovereign units unto themselves and cannot be ordered to establish a service to negotiate with the Seacoast Educational Support Personnel Association.

In an additional brief, S.A.U. #21 argues that PELRB violated its own rules in not holding a hearing on the May 27, 1982 letter from Superintendent Hamilton outlining their exceptions to PELRB's final determination of the unit known as the Seacoast Educational Support Personnel Association.

SESPA at the hearing and in a brief filed with PELRB on June 27, 1983 argues that S.A.U. #21 did not seek a rehearing after PELRB established the SESPA unit even though RSA 273-A grants such an appeal procedure and that, therefore, they did not object to the establishment and that S.A.U. #21 is prohibited from raising these issues now on the doctrine of Res Judicata. SESPA further argues that S.A.U. #21's budget for 1982-83 does contain a line item entitled "Negotiations/Contract Administrative Services" and these funds were appropriated by the constituent school districts

for the purpose of negotiating contracts and that includes the SESPAs contracts.

Further, SESPAs argues that the school districts are joined together in S.A.U. #21 under a common and single Chief Administrator, namely the Superintendent, and that they all fall within the same geographic area and share similar values and traditions.

SESPA further argues that RSA 273-A:1, XI provides for a broad interpretation of the meaning of public employer when it stipulates that:

"Public employer" means the state and any political subdivision thereof, any quasi-public corporation, council, commission, agency or authority, and the state university system.

and further that RSA 273-A:8, 1. gives PELRB the authority to determine the "appropriate bargaining unit" and in so doing, to consider the community of interest.

The statute provides that "community of interest" may be exhibited in a variety of ways, including employees in the same historic craft or profession, and employees functioning within the same organizational unit, and that nothing in the statute precludes combining units.

SESPA further points out that S.A.U. #21 has a long and successful history of negotiating with its teacher bargaining unit, that it has been the practice in ratifying the teachers units that each of the six school districts has a veto and that under this arrangement, smaller districts cannot be outvoted.

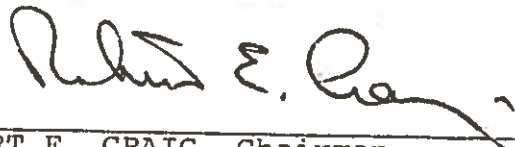
With respect to the issue of Mrs. LeBrun's letter, to Dr. Hamilton, following Dr. Hamilton's letter requesting a declaratory judgment, PELRB finds that Mrs. LeBrun's letter is in the nature of an advisory opinion to Dr. Hamilton and that PELRB under its own rules is not required either to issue a declaratory judgment nor to hold a hearing.

PELRB further finds that it is within its jurisdiction in defining the appropriate bargaining unit, to designate that the public employer will bargain with that unit, and if that means the combination of public employers bargaining with a single unit, that is within the jurisdiction of PELRB to determine. Indeed this method of bargaining has been used in

the past with success and would seem to expedite and make less complicated the task of dealing with similar employees in the same organizational unit, albeit scattered throughout several buildings and schools.

DECISION AND ORDER

It is PELRB's decision that S.A.U. #21 has acted improperly in refusing to negotiate with the Seacoast Educational Support Personnel Association and PELRB herewith orders the Joint Board Negotiating Team, S.A.U.#21, to begin immediate bargaining with SESPA with a view to the resolution of their differences.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 17th day of October, 1983.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman and Russell Verney present and voting. Also present, Executive Director Evelyn C. LeBrun.