NH Supreme Court declined appeal of this decision on October 20, 1993, Supreme Court No. 93-331.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, SEIU, LOCAL 1984 Complainant v. STATE OF NEW HAMPSHIRE Respondent	CASE NO. S-0384:3 DECISION NO. 93-43

APPEARANCES

Representing State Employees Association:

Thomas Hardiman, Director of Operations
Stephen J. McCormack, Field Representative

Representing State of New Hampshire:

Douglas N. Jones, Esq., Attorney General
Thomas F. Manning, Chief Negotiator

Also appearing:

Barbara J. Morgan
Sarah Sawyer

BACKGROUND

The State Employees Association of New Hampshire, SEIU Local 1984 (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire (State) on October 21, 1992 alleging that the State was violating the collective bargaining agreement (CBA) by the manner in which it compensated 234 day academic employees thus constituting a violation of RSA 273-A:5 I (a), (g) and (h). The State filed its answer on the form of a Motion to Dismiss on November 5, 1992 after which this case was heard by the PELRB on March 25, 1993.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of academic instructors and other personnel employed by the NHTI, as defined by RSA 273-A:1 X.

2. The State Employees Association of New Hampshire is the duly certified bargaining agent for academic instructors and other personnel employed by the State at the NHTI.

3. The parties negotiated and have been operating under a collective bargaining agreement (CBA) for the period July 1, 1989 through June 30, 1991 and continued thereafter for all periods pertinent to these proceedings.

4. The Union filed what appears to have been a timely grievance on behalf of "Barbara Morgan and all other similarly situated employees" complaining about the method of compensation for year-round academic employees, otherwise referred to as "234 employees" in these proceedings. The nature of the grievance involved the compensation of three types of academic employees: 180 employees (who work a traditional 180 day academic year), 216 employees (who work an extended 216 day academic year due to extra duties or summer teaching), and 234 employees (who work "year round" and are required to report to work on the same basis as full-time, non-academic state employees).

5. The Union's complaint at the grievance level was that 180 employees and 216 employees receive extra compensation if required to work beyond their 180 day or 216 day schedules, respectively, while 234 employees receive no such extra compensation but do accumulate extra leave days if extra work is required. This practice is alleged to be violative of various portions of the CBA, including but not limited to Article 19.1 ("Employees shall be provided with all the rights and benefits to which they are entitled by law any by this Agreement.") and Article 1.5 ("The provisions of this Agreement shall be applied equally to all employees in the bargaining unit in accordance with state and federal law"). A hearing on this grievance occurred before Arbitrator John McCrory on May 27, 1992 with a

decision issuing on June 26, 1992 in which he denied the grievance.

6. Academic employees under consideration in this case, at the grievance level and before the PELRB, are compensated under pay schedules enacted as Chapter 231 of the Laws of 1986, now found at RSA 99:1-a. The Union and the State agreed on the contents of what was to become RSA 99:1-a before it was enacted as such. Payments to employees thereunder, as amended by subsequent legislative enactment pertaining to salary adjustments in the scale itself, have followed a consistent pattern since June 6, 1986, inclusive of the parties' practice of compensating 234 employees who work more than 234 days in a year with excess leave in lieu of an extra cash payment.

7. Article 14.5.2 of the parties' CBA provides for final and binding grievance arbitration with the scope of the grievance procedure intending to include "disputes arising with respect to interpretation or application of any provision of this Agreement." The applicable salary scale enacted as RSA 99:1-a is also incorporated as part of the parties' CBA.

DECISION AND ORDER

This case must be dismissed for several reasons, each of which is sufficient to warrant that dismissal. First, the parties appear to have had an agreement on the contents of what has become RSA 99:1-a. Finding No. 6. One of the parties cannot now repudiate that agreement by using the grievance procedure or, for that matter, an unfair labor practice charge. Second, the methodology of paying academic employees has been "open and notorious," dating back to 1986 or earlier. This constitutes a past practice to the extent that methodology was not challenged or negotiated when the parties bargained their 1989-91 CBA, current to the present time under its continuing provisions (Article 21.1). If either that interpretation or methodology is unsatisfactory to one of the parties, the remedy is through the negotiations process. Third and finally, this Board said in AFSCME, Local 3438 v. Sullivan County Nursing Home, Decision No. 92-156 (October 7, 1992) that "failing a representation and proof that the arbitration proceedings were unfair or irregular....the objective of

encouraging the voluntary settlement of labor disputes will be best served by recognition of an arbitrator's award." The Union has not shown sufficient grounds to warrant a reversal under Sullivan County, supra.

For the reasons set forth above, the State's Motion to Dismiss is GRANTED and the charges of ULP are DISMISSED.

So ordered.

Signed this 2nd day of April, 1993.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and Arthur Blanchette present and voting.