



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NH Supreme Court reversed Superior Court decision re PELRB jurisdiction on April 5, 1985, Slip Opinion No. 84-240, 126 N.H. 339 (1985).

KEENE STATE COLLEGE EDUCATION
ASSOCIATION, NEA-NEW HAMPSHIRE

Complainant

v.

UNIVERSITY OF NEW HAMPSHIRE,
KEENE STATE COLLEGE

Respondent

CASE NO. U-610

DECISION NO. 82-56

APPEARANCES

Representing Keene State College Education
Association, NEA-New Hampshire:

Jack B. Middleton, Esq., Counsel
David Smith, NEA-New Hampshire

Representing the University System of N. H.,
Keene State College:

Nicholas DiGiovanni, Jr., Esq., Counsel
Robert Mallat, Director of Resource Administration
Gary W. Wulf, Vice Chancellor of Resource Administration

BACKGROUND

This matter came on for hearing before the Board (PELRB) on July 8, 1982, pursuant to an unfair labor practice complaint filed by the Keene State College Education Association (KSCEA) on behalf of several of its members. The responding University System (System) of New Hampshire raised no substantial factual disputes, and thus, the matter was heard on the pleadings and arguments of counsel.

The salient facts may be recited briefly. Pursuant to the grievance procedure in the collective bargaining agreement between KSCEA and the System, several members of the KSCEA pursued

grievances concerning promotion and tenure. The process led to arbitration before a three-member panel on August 24, 1981, culminating in a decision dated November 3, 1981, sustaining the grievance of three of the complainants. The decision was not thereafter implemented by the respondent.

On January 28, 1982, KSCEA filed this unfair labor practice seeking to enforce the arbitration award, and the respondent answered on February 8, 1982. Thereafter, on March 16, 1982, the respondent filed an equity action in the Cheshire County Superior Court seeking to overturn the arbitration award. This action is currently pending on a Motion to Dismiss filed by KSCEA.

FINDINGS OF FACT

The relevant portions of the collective bargaining agreement are as follows:

"Article VI (3). If a grievance is filed under this article, neither the grievant nor the association shall file or process any unfair labor practice charge under RSA 273-A:5, 1, (h) alleging that the agreement has been breached by the college's conduct giving rise to the grievance or that such conduct is in any way objectionable under law."

"Article VII (4). Both parties agree to abide by the decisions of the Board of Arbitration but shall retain whatever rights they have under the law to challenge the decisions of the Board of Arbitration."

The position of the respondent is two-fold. First, it argues that Article VI (3) bars the filing of this unfair labor practice. This argument is wide off the mark, as the pending unfair practice challenges not the respondent's action on the individual grievance, but the failure of the respondent to comply with the grievance procedure by implementing the arbitration award. Thus, Article VI (3) imposes no bar to this action.

Second, the respondent urges that the action in the Cheshire County Superior Court is merely an additional step of the grievance procedure contemplated by Article VII (4). The failure of this article to specifically preserve the right to appeal the arbitration decision pursuant to state law belies any such intent. Cf. RSA Chapter 542.

BOARD DECISION

The Board is thus left with the following posture. Having utilized the grievance procedure, an arbitration award which both

parties agreed to abide by has been obtained. Failure to so abide is a breach of the collective bargaining agreement, an unfair labor practice under RSA 273-A:5, 1 (h). The Board so finds.

The respondent is ordered to implement the arbitration award as soon as reasonably possible, and the parties are ordered to apprise the Board of all procedural developments in the Cheshire County Superior Court action as they occur.

John M Buckley

JOHN M. BUCKLEY, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 9th day of August, 1982.

By unanimous vote. Alternate Chairman John M. Buckley presiding. Members Hilliard, Mayhew, and Osman present and voting. Also present, Alternate Labor Representative, Russell Verney and Executive Director, Evelyn C. LeBrun