



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HANOVER EDUCATION ASSOCIATION, NHEA/NEA

and

ORFORD TEACHERS ASSOCIATION, NHEA/NEA

and

LYME EDUCATION ASSOCIATION, NHEA/NEA

Complainants

v.

DR. HUGH WATSON

In his capacity as Auperintendent of

HANOVER/DRESDEN BOARD OF SCHOOL DIRECTORS,

ORFORD BOARD OF SCHOOL DIRECTORS, and

LYME SCHOOL BOARD

Respondents

CASE NOS: T-0206:5 (Orford)

T-0286:3 (Lyme)

T-0231:3 (Hanover) ✓

DECISION NO. 81-08

APPEARANCES

Representing the Hanover, Orford and Lyme Associations:

John Fessenden, UniServ Director, NHEA/NEA

Anne Richmond, Esquire, NHEA/NEA Staff Attorney

Represnting Dr. Hugh Watson, Superintendent:

Jay C. Boynton, Esquire, Counsel

BACKGROUND

By complaints filed by the Hanover, Orford and Lyme Associations alleging violation of RSA 273-A:5, I (a), (d), (e), (g), (h), and (i), by instituting a unilateral change in the working conditions; i.e., changing the individual contracts of teachers eliminating the reason for non-renewals, the Board (PELRB) found in the case of Hanover and Orford on October 30, 1981, that the action complained about over the language of the individual contracts was and is in this case a proper subject of negotiations between the parties, that the individual Board of School Directors were guilty of unfair labor practices and ordered the parties to return to the table to negotiate the language of the contract.

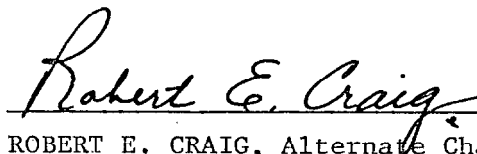
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Motion for rehearing was granted and held on January 8, 1981 at which time both parties were represented and heard in full. Following the rehearing, the associations and the Counsel for the school boards were granted leave to submit briefs, extensions were granted in this process with final briefs received on March 12, 1981.

DECISION AND ORDER

After review of the complaints, briefs filed and hearings held, the Board reaffirms its October 30, 1980 decision as follows:

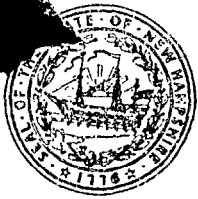
1. The Board finds that the action complained about over the language of the individual contracts is a proper subject of negotiations between the parties.
2. The individual Board of School Directors (Hanover-Orford-Lyme) have committed unfair labor practices in violation of RSA 273-A:5, I.
3. The parties are ordered to return to the table and negotiate the language of the contracts.



ROBERT E. CRAIG, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 10th day of April, 1981.

By unanimous vote: Alternate Chairman Craig presiding, members Hilliard, Mayhew and Osman present and voting. Also present, Executive Director LeBrun.



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PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MEMBERS

EDWARD J. HASELTINE. CHM.
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DAVID L. MAYHEW
SEYMOUR OSMAN
RUSSELL F. HILLIARD

Pine Inn Plaza, Building No. 2
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Tel. (603) 271-2587

May 5, 1981

Hanover Education Association, NHEA/NEA :
Orford Teachers Association, NHEA/NEA :
Lyme Education Association, NHEA/NEA :
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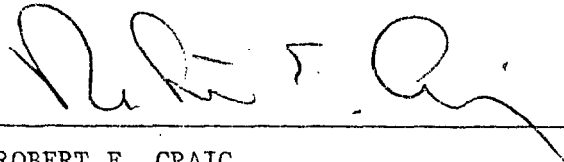
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DECISION NO. 81-08

FINDINGS OF FACT AND RULINGS OF LAW

Due to the pressure of time, Decision No. 81-08 was issued on April 10, 1981 without the findings of fact and rulings of law.

Please attach the enclosed addenda to the original decision mailed on April 10th.


ROBERT F. CRAIG
Alternate Chairman

enc.

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Hanover Education Association, NHEA/NEA:	ADDENDA TO DECISION No. 81-08
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1. Complainants and Respondents agree that the following language has been included in individual contracts issued by school boards since 1972:

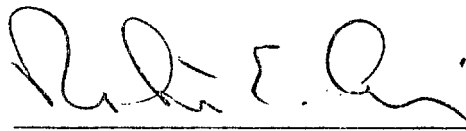
"The teacher shall be notified in writing on or before March 15 if the Superintendent fails to renominate or the Board fails to re-elect the teacher; such notification shall include a statement of reasons."

and that this wording was the same for all teachers, including probationary ones. Complainants and Respondents further agree that the above language was removed from the individual contracts for 1980, without notification of the Teachers Association or attempts to bargain over the language.

2. Complainants allege an unfair labor practice, citing RSA 273-A:5, I (a), (d), (e), (g), (h), and (i), in that said action was a unilateral change in the working conditions prevailing over a nine-year period, constituting a refusal to negotiate in good faith.
3. The method of termination of employees is a mandatory subject for negotiation, whether or not it has ever actually been negotiated, and is recognized as a "condition of employment" under RSA 273-A:1 (XII); distinct from the employers right to decide not to renew a contract of probationary teachers (SEA v. County Commissioners, Belknap County, Case No. 5-0341, PELRB Decision No. 79005, March 21, 1979).
4. Although the School Boards argue correctly that the individual performance contracts are "necessitated by the collective bargaining process itself, they wish not to have the individual contracts seen as a part of that process and therefore immune from law covering the process itself. However, the individual contracts do stipulate some at least of the "conditions of employment" for the individuals, growing out of the collective agreement (salaries, school year length, subject to be taught, etc.) and other conditions as well. Even though the individual contracts are not themselves negotiated they do appear to constitute part of the "conditions of employment" covered under the law, such that they may not violate the collective agreement. And, as the School Boards, argue, individual contracts are actually necessitated

by the process itself; are applied uniformly to all employees, over a significant period of time; and therefore constitute a matter of widely understood practice, such that any changes can be viewed as changing mutually understood "conditions of employment."

5. The School Board argues, correctly, that probationary employees, by their nature, have "no guarantee, right or expectation of renewal." No law exists which requires school boards to give reasons to probationary employees upon non-renewal, but no law prohibits such practice either. The difference between non-renewal and giving reasons for same is the difference between having a guaranteed right to the position and having a reasonable claim to a certain procedure while employed.
6. The School Boards argue, again correctly, that management may not be required to negotiate that which is "managerial policy" (RSA 273-A:1 (XII)). However, management policy cannot be broadened to include all "conditions of employment" for under the same law these are the mandatory subjects of negotiation (RSA 273-A:1 (XII)) and cannot be defined by one section of the law as negotiable while another says not. "Managerial policy," whatever else it means, surely covers decisions of a programmatic nature and failure to adopt a practice of giving reasons for non-renewal does not appear to be of this stature. Where individual contracts are necessitated by the unique history of the teaching profession, employees are not unreasonable in expecting that these contracts constitute a part of their "conditions of employment" and, where they are uniform and of long-standing, subject to negotiation in good faith, as would be any such established practice.
7. RSA 189:14a describes the rights and duties of parties upon non-renewal of probationary employees, and does not require that reasons be given for non-renewal but also does not prohibit voluntary agreements whereby reasons for non-renewal does not diminish management's right to decide about the renewal itself. Clearly, giving reasons for one's action neither increases nor decreases the latitude of the decision.
8. Failure to complete the grievance process does not constitute grounds for dismissal of the complaint since the Board felt compelled to act in order to safeguard the collective bargain process itself and should be permitted to do so whenever necessary, despite a general disinclination to become involved unless all avenues have been exhausted.



ROBERT E. CRAIG, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 5th day of May, 1981.

Members James Anderson, Seymour Osman, Robert E. Craig, Acting Chairman, present.
Also present, Evelyn C. LeBrun, Executive Director.



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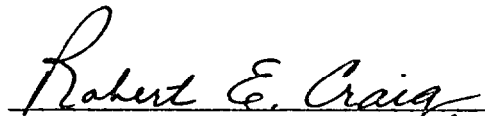
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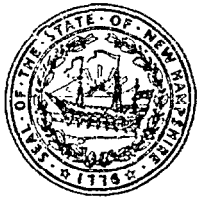
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Signed this 10th day of April, 1981.

By unanimous vote: Alternate Chairman Craig presiding, members Hilliard, Mayhew and Osman present and voting. Also present, Executive Director LeBrun.



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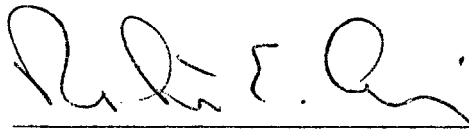
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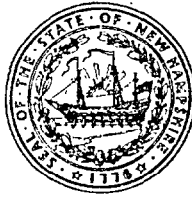
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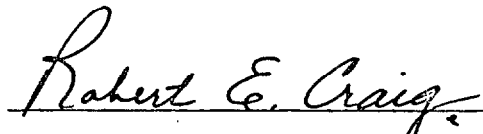
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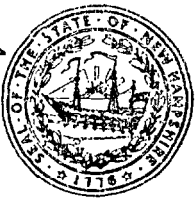
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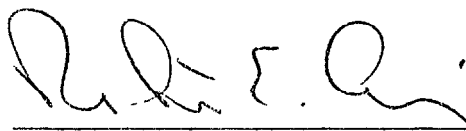
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