



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BERLIN EDUCATION ASSOCIATION, NHEA/NEA

Complainant:

and

BERLIN BOARD OF EDUCATION

Respondent :

CASE NO. T-0201:2

DECISION NO. 81-61

APPEARANCES

Representing the Berlin Education Association, NHEA/NEA

John Fessenden, UniServ Director, Region V  
Ken Proulx, President

Representing the Berlin Board of Education

John Doherty, Superintendent  
William Kingston

BACKGROUND

On June 10, 1981 the Berlin Education Association, NHEA/NEA, by its president, Ken Proulx, filed an unfair labor practice charge against the Berlin Board of Education alleging that the Board of Education had specifically refused to negotiate all cost items. The cost items referenced were specifically extra curricula salaries for duties such as coaching and various athletic activities. The relief requested was a PELRB order directing the Berlin School Board to negotiate the salaries (cost items) for extra curricula duties of various teachers.

Berlin School Department in response to the unfair labor practice charges stated that contract relationships between the Berlin Education Association and the School Board had existed prior to the advent of 273-A in 1975. The School Board further stated in its answer that the extra curricula salaries were non-negotiable, not covered in the contract currently existing and that the designation of who shall perform extra duties, the compensation is the sole responsibility of the superintendent.

The matter came on for hearing, September 11, 1980 before a hearing officer representing the PELRB. Witnesses for both sides appeared at the hearing and stipulated that the petition and the answer were defective in that they did not meet a specific time requirement required by statutes and regulations. Witnesses for the Berlin Education Association in support of its charge contended that salary payments for additional duties over and above that of a teacher was a cost item and therefore must be a mandatory subject of negotiations.

Testimony at the hearing indicated that by mutual agreement, the subject of extra curricula salaries had been introduced in prior negotiations, however resolution of the

issue had never been accomplished, but on at least one prior occasion the Berlin Education Association had dropped the issue at the table. Berlin Education Association felt strongly that because the teachers are members of the bargaining unit, by and large the recipients of the extra curricula monies, the bargaining unit should negotiate on their behalf. During the last negotiations there were 15 items submitted by the teachers through the negotiating committee and the extra curricula activities was one of the items. This item was unacceptable to the School Board and was not resolved at the table. Evidence indicated that this issue was currently before the factfinder and there was no evidence provided that those faculty members desired representation with respect to the extra curricula activities.

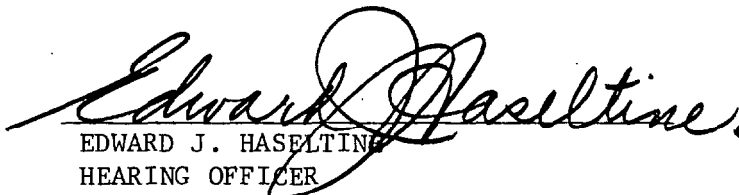
The recognition clause in the existing contract between the Berlin Education Association and the School Board reads as follows, "The term 'teacher' as used in this agreement shall mean a full time employee of the Berlin Public Schools under contract for the school year, whose position required certification by the State Board of Education as a professional engaged in teaching. Superintendents, Assistant Superintendents, Elementary Consultants, Principals, Directors, Department Heads, Nurses, Business Administrators, and other persons employed by the State Board of Education, paraprofessionals, and specialists who teach three periods or less per day or who spend 50% or less of their time per week teaching are excluded from this definition of teacher. Guidance Counsellors and Librarians are included in the bargaining unit." The recognition clause clearly defines the term teacher with clear bounds of inclusions and exclusions based on the contract and the requirements of the Berlin School system. There are no specifics in the contract language for the filling of the extra curricula positions. It is also apparent that the superintendent can by his own election, fill extra curricula positions outside of the bargaining unit membership. While that has not been the practice, quite the contrary, nevertheless the option is there and available.

#### DECISION

After hearing all the evidence and testimony, it is this officer's opinion that,

1. The, Berlin Education Association is attempting through PELRB to secure an agreement for an item in negotiations when they have been unable to prevail in its inclusion in the contract.
2. The extra curricula duties are not contained in Article I, "Recognition".
3. The subject of extra curricula payments is a permissive subject of negotiations, but
4. under the language of the existing agreement, the subject is not mandatory.

After considering all the testimony offered and the conclusions shown above, the unfair labor practice charge is hereby dismissed.

  
EDWARD J. HASELTINE  
HEARING OFFICER

Signed this 3rd day of December, 1981