



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WHITE MOUNTAINS EDUCATION ASSOCIATION,
NHEA/NEA - AFFILIATE #1

Complainant:

and

CASE NO. M-0515:4

DECISION NO. 81-62

ROLAND SCHOEPF, In his capacity as
Superintendent of Schools

Respondent :

APPEARANCES

Representing the Complainant, WMEA, NHEA/NEA, Affiliate #1:

John Fessenden, UniServ Director, Region v

Representing the Respondent, Roland Schoepf:

Jay C. Boynton, Esquire, Counsel
William H. McCann, Jr., Business Administrator

Subpoenaed Witnesses:

Gary W. Savage, Claimant
Andre J. Barbeau, Counsel, DES, State of N. H.
Andrew Peloquin, DES, State of N. H.
Barbara Ingerson, Employee of White Mountains Regional School Dist.

BACKGROUND

The White Mountains Education Association, NHEA/NEA, Affiliate #1, by its representative, John Fessenden, filed unfair labor practice charges against Superintendent Schoepf for dismissing employee Gary W. Savage for alleged misconduct in violation of RSA 273-A:5. Alleged misconduct involved the mishandling of school property, specifically the taking of food, snacks, from the kitchen while on duty.

The Association sought the following relief; i.e., (a) reinstatement to original position of custodian, (b) awarding of back pay and benefits, and (c) removal of records of the alleged misconduct from the employee's personnel file.

Hearing on this matter was held in the Board's offices on August 6, 1981. Opening statements were made by both Counsel for the Superintendent and Representative for the Claimant. Counsel for Supt. Schoepf stated that the

charges, as filed, were not specific as to facts as required by law and gave the respondent a difficult, if not impossible, task to prepare an adequate defense. He further added that a collective bargaining agreement was in existence and said agreement did not deal with "discharge" and that the alleged injured party (Savage) had refused to attend the hearing without being subpoenaed.

The Education Association stated that the grievance was not used as the matter, in their opinion, could not be grieved under the existing contract.

Neither party had filed a copy of the ratified agreement required under RSA 273-A:16, 1. which states:

"A copy of all agreements reached as a result of collective bargaining under this chapter shall be filed with the board (PELRB) by the parties within fourteen days after execution of said agreement."

Motion for dismissal filed by Counsel for the respondent was taken under advisement and the hearing continued.

Claimant Savage testified that he had been before PELRB in the original hearing to determine the bargaining unit for the "Cooks and Other Related Jobs" and that he had been employed by the School District for over five years and had never received an evaluation of his work during that period of employment.

Objection to that line of questioning was made by Counsel for the Superintendent; objection was denied and Savage then testified that he had never received a reprimand, that the head cook had given him permission to take a carton of milk or some ice cream while on duty, that he did not do so everyday and that privilege he assumed had been granted because he mopped the floors, work which is normally done by the cooks. On November 21, 1980 was the first time he heard that he was being accused of stealing from the McIntyre School. Upon discharge, he applied for unemployment benefits which were authorized as there was no evidence of misconduct. Neither the Superintendent nor the School Board objected to the benefit award.

The single thread of testimony of several of the witnesses appeared to be that the custodians had privilege to have milk and a snack or two while on night duty as they performed floor cleaning services in the kitchen. Other witnesses, including the head cook, testified that permission was given for custodians to have occasional snacks and they had enjoyed the privilege; some taking cartons of milk or potato chips. The best estimate of monetary value for snacks enjoyed by the various custodians was approximately ten dollars per week.

Certain subpoenaed records of the Department of Employment Security were reviewed only for the purpose of establishing the fact that the Superintendent or School Board members did not challenge the unemployment compensation benefit award for any reason whatsoever.

The Superintendent testified that the loss of some foods had been reported to him and the estimated dollar value was approximately ten dollars per week, also that other schools in the District had experienced some losses and as a result, some personnel transfers were made and locks changed in the food storage areas. All pointed to circumstantial evidence against Savage but no factual evidence was offered.

Counsel for the Superintendent felt it was both necessary and desirable for management to discharge someone they felt was untrustworthy.

The letter of dismissal from the Superintendent dated November 20, 1980, terminating Savage as Lead Man and Night Custodian read, as follows:

"...because of theft of food from the kitchen of McIntyre School. These incidents of food missing was first discovered several days ago, on Tuesday, November 18, 1980, the locks were changed and you were the only person in the building at night who was given a key. Food was missing on both Tuesday and Wednesday nights."

FINDING OF FACTS

-- Gary W. Savage was an active participant in the formation of the bargaining units for the support staffs in the White Mountains Regional School District during 1978-79.

-- It had been the custom for custodians during working hours to be given milk and occasional snacks under the supervision of the head cook.

-- The night shift custodians and specifically Savage had been given permission to help himself to milk/snacks during his tour of duty and he did have access to the locked food storage areas.

-- No specified amount of snacks had been authorized by those persons authorizing their consumption.

-- No evidence was presented that any food had been removed from the school buildings; quite to the contrary, empty milk cartons and chip bags were found in the wastebaskets.

-- The dollar amount of the food loss was not specific but merely estimated at approximately ten dollars per week.

-- Gary Savage was discharged by the Superintendent on November 20, 1980 for alleged theft of food.

-- The School Board failed to appear in opposition to Savage's claim of unemployment benefits.

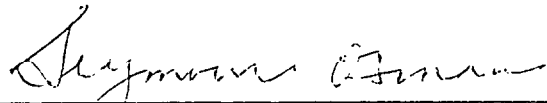
-- There appeared to be a justifiable misunderstanding as to what food (snacks) could or could not be taken by the night shift custodians and specifically the lead man (Savage).

-- No factual evidence was presented at the hearing to justify the charge of theft of food by Savage.

DECISION AND ORDER

After considering all the oral and written evidence presented at the hearing, the Board finds as follows:

1. The motion for dismissal filed by Counsel for the Superintendent is hereby denied.
2. The Superintendent and the School Board are guilty of unfair labor practice under RSA 273-A:5.
3. The School District is hereby ordered to re-employ Gary W. Savage in the same or equal position with same benefits held at time of discharge.
4. That all reference to theft of food and discharge be removed from his personnel records.
5. No award of back pay or benefit is made to the claimant as he was awarded unemployment compensation benefits and has been employed elsewhere during this period.



SEYMOUR OSMAN, Board Member
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 4th day of December, 1981

By unanimous vote. Chairman Edward J. Haseltine presided at the hearing, however current Chairman Robert E. Craig present along with members Russell F. Hilliard and Seymour Osman voting. Also present, Executive Director Evelyn C. LeBrun.