



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK VALLEY FEDERATION OF TEACHERS, :
LOCAL 3812, AFT/NHFT, AFL-CIO :
Complainant :
and :
MERRIMACK VALLEY SCHOOL DISTRICT and :
WILLIAM B. BASTON, In his capacity as :
Superintendent :
Respondents :

CASE NO. T-0313:2

DECISION NO. 82-07

APPEARANCES

Representing the Complainant, Merrimack Valley Federation of Teachers:

Emmanuel Krasner, Esq., Counsel
Theodore Wells, State Representative, AFT/NHFT
Thomas Dimitriadis, Field Representative, AFT/NHFT

Representing the Respondents, Merrimack Valley School District & Supt. Baston:

Roger Burlingame, Esq., Counsel
William B. Baston, Superintendent

WITNESS:

Allan S. McCausland, Arbitrator/Mediator

COMPLAINT

This case was remanded to the PELRB by Merrimack County Superior Court, January 5, 1982 and complaint filed with the Board on January 12, 1982 by the Merrimack Valley Federation of Teachers, Local 3812, AFT/NHFT, AFL-CIO, charging unfair labor practice on the part of the Merrimack Valley School District and William B. Baston, Superintendent.

Specifically, the teachers' organization charged a breach of contract, contrary to RSA 273-A:5, I(h) to wit:

"Requiring teachers to recite an in-depth detailed account explaining the specific reasons and conditions for requested personal leave constituting a procedure which is not included in Article VI, Sections 6.2.1 and 6.2.2 of their contract and that the School Board has utilized a practice of disciplining the Districts' teachers in such a manner as to dock minutes and/or hours from their personal leave for arriving late or leaving school early." (From Master's Report to Superior Court)

BACKGROUND

Parties are part of a Collective Bargaining Contract, effective September 1, 1979 to August 31, 1982. Relevant Contract Sections Article 6.2.2, 6.3 and 6.5 refer to "non-accumulative leave of absence" and it is understood that this is the

same as that referred to above as "personal leave", the every day method of referring to such leave of absence.

Having exhausted their contract grievance procedure without reaching agreement on the issues, the Merrimack Valley Federation of Teachers filed suit in Superior Court of Merrimack County and that Court remanded the case to PELRB, under RSA 273-A, as having proper jurisdiction. A hearing was held on this matter on January 21, 1982 at the Board's Concord office.

FINDINGS OF FACT

The teachers' organization pointed out that during mediation to reach this contract, the words "with reasons given" were specifically omitted from the contract language at the urging of the teachers and that the phrase "clause and purpose" was agreed to instead and now appears in the contract.

The mediator testified to the accuracy of this change and also to the fact that several other sections were changed too.

Counsel for the School Board maintains that while the changes were made they were really meaningless and "clause and purpose" have the same effect as "with reasons given" and hence the School Board is following the contract.

The professional mediator testified that it would be highly unusual for a negotiated change in contract language to mean nothing had really changed.

DECISION AND ORDER

1. The Board has great difficulty disagreeing with the thesis that negotiated changes mean some change, albeit disagreements will arise over exactly what change was meant, etc. To do otherwise would seem to negate the very basis of negotiation itself and this we cannot do.

With respect to the so-called "disciplinary action", the School Board maintains that the contract is silent and therefore teachers can be "docked" for time from non-accumulative leave if they are late or leave early since the times of school day were negotiated.

Counsel for the teachers maintains that this is new and constitutes a change in "past practice" and should be negotiated and not changed unilaterally.

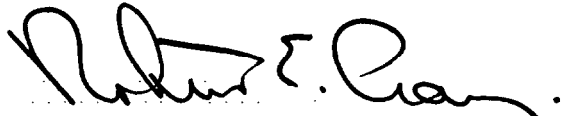
The School Board agreed that the above was a change in "past practice" but argues that the new procedure is consonant with the contract and "past practice" does not apply.

2. Since the School Administrators did not see fit to "dock" anyone in this manner in the past it does seem that the new procedures are related to the controversy about "personal leave" and have a distinctly disciplinary purpose in that regard different say from placing a letter of reprimand in a personnel file or arranging the time to be "paid back" as it were. Surely "past practice" does enter the picture since at the very least, it demonstrates that small problems have been resolved in the past by common practice, which, having been changed, are now causing disagreements and bad feelings.

3. The Board must take the position that, in general, "past practice" constituting significant and commonly recognized work practices are included in

the "terms and conditions of employment" as enumerated in RSA 273-A:1:XII and should be the subject of negotiation and not unilateral change by either party.

The N.H. PELRB finds the actions taken with respect to "non-accumulative leaves of absence" by the Superintendent of Schools of the Merrimack Valley School District to be unfair labor practices and further, orders said School District to cease and desist in such practices. Any changes in working conditions covered under RSA 273-A should be subject of future negotiations.

A handwritten signature in black ink, appearing to read "Robert E. Craig", written over a horizontal line.

Robert E. Craig, Chairman
Public Employee Labor Relations Board

Signed this 16th day of February, 1982.

Chairman Robert E. Craig presiding. By unanimous vote of Members Anderson, Hilliard, Osman. Also present, Evelyn C. LeBrun, Executive Director.