



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EDUCATION ASSOCIATION OF PITTSFIELD,
NEA-NEW HAMPSHIRE

Complainant

v.

PITTSFIELD SCHOOL BOARD, ET AL

Respondent

CASE NO. T-0250:6

DECISION NO. 83-22

APPEARANCES

Representing the Education Association of Pittsfield

Anne Richmond, Esq.
Wally Cummings, NEA-N.H.
Stephen Guberman, NEA-N.H.

Representing the Pittsfield School Board

Jay C. Boynton, Esq.

Also in Attendance

F. Andre Paquette
K. McDonough
John W. Lord
Charles Downie

BACKGROUND

The Education Association of Pittsfield, NEA-New Hampshire (association) filed an unfair labor practice complaint against the Pittsfield School Board (school board) August 9, 1982. The association charges the school board with violating RSA 273-A:5, I (a) and (e), in that the school board did change the language of the individual contracts for 1982-83, from the language of 1981-82 contracts, constituting a unilateral change in hours and conditions of employment.

The Pittsfield School Board denies that it has unilaterally changed the hours and conditions of employment, claiming that the individual teachers contract has, through negotiations, been left to the school board, so long as the individual contract was not "repugnant to the collective bargaining agreement".

A hearing was held at the Public Employee Labor Relations Board's office in Concord, N.H. on May 5, 1983.

FINDINGS OF FACT AND RULINGS OF LAW

The contract for 1981-82 expired on August 31, 1982. As of August 24, 1982 the parties had not concluded an agreement for 1982-83.

At issue is a clause (h), inserted by the school board into the 1982-83 individual contracts, to wit: "If either the district or the teacher shall terminate this contract other than in accordance with its terms, shall breach this contract, the party so terminating a breaching hereby agrees to pay all damages incurred by the other thereby and all costs of collection of such damages, including reasonable attorney's fees". This clause is the so-called "indemnification clause".

At hearing, the association made it clear that they had rejected such a clause in previous discussions with the school board, whether expressed as a "concern" or an outright "proposal". Such "negotiations" had taken place several times.

The school board made it clear that they considered the clause as falling within their right to make changes, as they have always done, in the specifics of the individual contracts and that this particular clause was within their "managerial prerogatives" as specified by RSA 273-A, in trying to deal with the problem of "late turnover" in teacher personnel.

The testimony made clear that the language change in the individual teacher contracts was not "negotiated" nor agreed to by the teachers association.

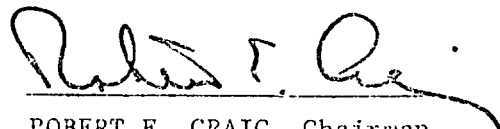
Further discussion made clear that the "indemnification clause", were it a part of the master contract, would be a "condition of employment".

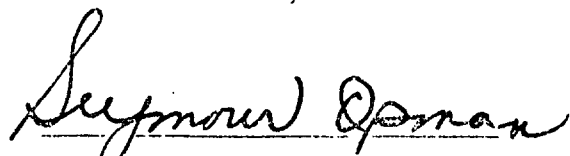
DECISION AND ORDER

The offending language inserted into the individual contracts constitutes a burden upon both the school board and the teachers, should either break their agreement, and imposes penalties which the school board imposed unilaterally and to which the association objects. There is no doubt that such language changes the "conditions of employment" by changing the conditions following an employees leaving employment and should therefore be the subject of negotiation.

It is therefore ordered that such language as is identified as an "indemnification clause" be expunged from the individual contracts as it is an invalid appendage to an otherwise negotiated contract.

Signed this 25th day of May 1983.


ROBERT E. CRAIG, Chairman


SEYMOUR OSMAN, Board Member