State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WHITE MOUNTAINS EDUCATION ASSOCIATION, NEA-NEW HAMPSHIRE Petitioner v. WHITE MOUNTAINS REGIONAL SCHOOL BOARD Respondent	CASE NO. T-0210:5 DECISION NO. 83-26

APPEARANCES

Representing White Mountains Education Association
John Fessenden, UniServ Director, NEA-New Hampshire

Representing White Mountains School Board
Bradley F. Kidder, Esq.

Also in Attendance
Jean Dubreuil
Virginia Merrow
Hugh Watson
William H. McCann, Jr.

BACKGROUND

White Mountains Education Association (WMEA), NEA-New Hampshire filed an unfair labor practice complaint against the White Mountains Regional School Board on February 8, 1982 and a hearing was held on May 13, 1982 at the PELRB's Concord office. Briefs were allowed to be filed subsequently.

The WMEA complaint alleges that the contract between the parties, dated January 1, 1980 and having effective dates of January 1, 1980 to June 30, 1981, was in effect when certain individuals signed their specific contracts on April 22, 1981 for the school year 1981-1982. (A new collective bargaining agreement went into effect in July of 1981 to continue to 1984.) Subsequently, employees hours were reduced (4 employees) on October 22, 1981 and one employee was terminated on that date as well. WMEA argues a breach of 273-A:5, I (e) and (h) in that the school board did breach the existing collective bargaining agreement and also failed to bargain in good faith. WMEA also argues that the school board does not have the right to terminate an individual contract before its termination date.

FINDINGS OF FACT

At the hearing it was testified to that the school board's business manager had submitted budget figures which anticipated federal funding, particularly the "hot lunch program", and federal budget changes caused him to review the program continuously from June 1981 on, with a view to making changes in order to take

into account the subsequent reduction in federal funds. The reduction in staff and the reduced hours were the business manager's methods of reducing costs so that the budget would not be in deficit but would break even.

At the hearing, WMEA reiterated its contention that the reduction in hours was a unilateral change in the conditions of employment and as such a violation of 273-A:5, 1 (e) and that the employer could not terminate an employee while a contract existed in force.

RULINGS OF LAW

(1) As in the Hanover, Orford and Lyme decision (81-08) we hold that the individual contracts are made necessary by the historical evolution of the school workers and school managers unique relationship and do stipulate at least some of the "conditions of employment" for individuals as here the actual hours of employment and the actual hourly wage as well as the duration of the contract and as such constitutes a part of the collective bargaining process;

(2) further, we hold that the individual contracts cannot violate the negotiated collective contract; that the individual contract cannot be changed unilaterally (without negotiation between the parties) whether subtracted from (Orford, Lyme decision 81-08) or added to (Pittsfield decision 83-22);

(3) that the individual contracts cannot stipulate "wages, hours and other conditions of employment" (RSA 273-A:1, XII) so as to "shield" them from the necessity of collective bargaining. To do otherwise, we hold, would be to allow the individual contracts to become a strictly one-sided instrument and a means to undermine the collective bargaining process itself;

(4) in addition, we hold that the "managerial policy within the exclusive prerogative of the public employer" (RSA 273-A:1, XII) includes "the selection, direction and number of its personnel" but that "wages and hours" are mandatory subjects of bargaining and not a part of the unilaterally decided "managerial policy" prerogative, as is a decision to terminate a position at the appropriate time.

DECISION

(1) The school board has committed an unfair labor practice under 273-A:5, 1 (e) in refusing to negotiate the reduction of hours of the employees in this case;

(2) the school board is directed to re-instate the hours reduced and to pay back wages to those employees affected;

(3) in the future, the school board is directed to negotiate all changes in the conditions of employment with the exclusive representative of the employees.

ROBERT E. CRAIG, Chairman

Signed this 30th day of June 1983

Chairman Craig presiding, members Seymour Osman, David Mayhew and James Anderson present and voting in the affirmative; member Russell Hilliard dissenting. Also present, Executive Director Evelyn C. LeBrun and alternate member Russell Verney.

DISSENT

I reluctantly feel compelled to dissent from the majority decision in this case.

At issue here is a clear breach of individual employment contracts outstanding between the employer and certain food service workers for a given academic year. Because of financial considerations, the employer cut back the hours of some employees, and terminated another.

Since the number of employees, and any guaranteed minimum work hours, are not part of the collective bargaining agreement provisions, and, in my view, fall within the managerial prerogative expressed in RSA 273-A:1 (XII), no unfair labor practice has been committed by the employer in these circumstances.

This is not to say that each of the effected employees does not have a common-law cause of action for breach of contract which may be pursued in a court of general jurisdiction, I only would hold that these facts do not present an unfair practice in the labor relations context.

The majority opinion fails to appreciate that its reasoning necessarily writes into any collective bargaining agreement where individual contracts are outstanding, a guaranteed minimum work force and working hours. This was not the intent of RSA 273-A, and it should not therefore be so construed. For these reasons, I respectfully dissent.

RUSSELL F. HILLIARD, Board Member

Signed this 30th day of June 1983.