



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON EDUCATIONAL ASSOCIATION,	:	
NEA-NEW HAMPSHIRE (DOROTHY KESARIS)	:	
	:	
Complainant	:	CASE NO. T-0240:6
	:	
v.	:	DECISION NO. 83-49
	:	
LEBANON SCHOOL BOARD	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing the Lebanon Education Association, NEA-N.H.

Anne Richmond, Esq.

Representing the Lebanon School Board

David H. Bradley, Esq.

Also in attendance

Dorothy Kesaris
Anthony A. Kesaris
David J. Whitaker
Margaret Jestude
Rosanna Kerin

BACKGROUND

On July 7, 1983, Dorothy B. Kesaris and the Lebanon Education Association (LEA), NEA-New Hampshire, filed improper practice charges against the Lebanon School Board (Board). The LEA charges a breach of RSA 273-A:5, I (a), (g), (h) and RSA 273-A:4 in that the Board "illegally interfered with Mrs. Kesaris' right to use the grievance procedure of the Professional Agreement (Agreement) between the Lebanon Education Association, NEA-New Hampshire and the Lebanon School Board".

Specifically, LEA charges that Ms. Kesaris, a part-time social studies teacher for two (2) years, believed her position was to be eliminated and that Article XII of the Agreement granted her rights, due to reduction in force (RIF), to be renominated and re-elected to fill vacancies for which she would be qualified. On March 30, 1983, Ms. Kesaris received a letter from Superintendent Daniel J. Whitaker, informing her she would not be "renominated/elected" for the 1983-84 school year based on her evaluation. Although Article X of the Agreement requires that teachers be informed of any "delinquencies, the corrections expected, and the

time limits for the corrections", Ms. Kesaris received no such notice.

Ms. Kesaris filed a grievance on April 4, 1983, charging the School District with violating her rights under Article IX (Evaluation), Article X, (Just Cause), and Article XII (Reduction in Force) of the Agreement. Following the Superintendent's denial of her grievance, (replying she was not covered by the Agreement.) Ms. Kesaris appealed to the School Board under the Agreement (Article XXIII, D 2 and 3) and the School Board also denied her a hearing on the grounds that her non-renewal was not subject to the grievance procedure. Following the Board's denial, Ms. Kesaris sought to take the matter to arbitration, under the Agreement (Article XXIII, D4) but the Board filed a "Petition for Declaratory Judgement and to Stay Arbitration" in Superior Court of Grafton County on May 12, and LEA and Ms. Kesaris brought the complaint to PELRB on July 7, 1983; also LEA appealed to N.H. Supreme Court for a Stay of the Superior Court action.

The Lebanon School Board answers the complaint by stating that the Grafton County Superior Court has ruled, in Lebanon School District v. Lebanon Education Association and Kevin T. McGill (E-81-047) that the non-renewal of a teaching contract was not intended to be subject to the grievance procedure and arbitration and that this decision was affirmed by the New Hampshire Supreme Court on September 2, 1982 (Case #82-333), and the cases were identical in nature and fact and therefore the School Board is not required to proceed with this non-renewal "grievance".

A hearing was held at the PELRB office in Concord on September 22, 1983 and all were represented.

FINDINGS OF FACT

At hearing, the parties reiterated their arguments. The LEA argued that Ms. Kesaris was entitled to use the grievance procedure either for the reduction in force clause and because she was not notified of her "delinquencies" (evaluation clause), that the School Board could not have it both ways and deny that either were grievable.

The School Board argued that the negotiations over the master contract resulted in a "just cause" clause but that this did not apply to non-renewals and that the principle of "Res Judicata" meant that the McGill case was controlling law here in that a RIF may be arbitrated but not a non-renewal.

Testimony served to establish the sequence of events as outlined above. Also, Ms. Kesaris testified she wanted her job back, in addition to the answers to questions raised in her complaint. Also, Superintendent Whitaker testified that he made the decision for non-renewal based on his evaluation of Ms. Kesaris.

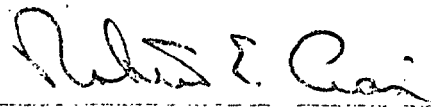
RULINGS OF LAW

Ms. Kesaris must be bound, as we all must, by the ruling in the McGill case to the extent that circumstances are parallel. Her non-renewal cannot be the subject of a grievance and/or arbitration proceeding. However, as we have ruled elsewhere (Decision 83-21) the PELRB's interest in seeing to it that the grievance process is fairly and impartially applied requires us to examine the other issues raised by Ms. Kesaris and question whether these issues are so clear in themselves that a flat denial of grievability is appropriate. We think not. The language of the contract is not so clear as to foreclose differences of opinion about the procedures to use (i.e., the grievance process) when disagreements arise over "evaluation", and perhaps other matters. In these cases, it is our view that it is unfair (as well as unwise) to truncate the full grievance

process by simply refusing hearings called for by the process in the contract and any other provisions of the grievance process. If the grievance process is to be truly a "workable grievance procedure", protecting all parties, as required by law.

DECISION AND ORDER

- (a) PELRB does find improper practice by the School Board in denying Ms. Kesaris access to the complete grievance procedure, and,
- (b) The Lebanon School Board is ordered to participate fully in the grievance process, as outlined in the agreement, with respect to Ms. Kesaris' complaint surrounding her non-renewal.



ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of October, 1983.

By unanimous vote. Chairman Robert E. Craig presiding, members Seymour Osman and Russell Verney present and voting. Also present, Executive Director, Evelyn C. LeBrun.