



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GOVERNOR WENTWORTH EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE
Petitioner
v.
GOVERNOR WENTWORTH REGIONAL SCHOOL BOARD
Respondent

CASE NO. T-0229:7

DECISION NO. 85-26

APPEARANCES

Representing Governor Wentworth Education Association, NEA-New Hampshire

James Allmendinger, Counsel, NEA-New Hampshire

Representing Governor Wentworth Regional School Board

Bradley F. Kidder, Esq., Counsel

Also in Attendance

Robert Arlin, Superintendent of Schools
Eileen Leavitt, Governor Wentworth Education Assoc.
Richard Pecunies

BACKGROUND

The Governor Wentworth Education Association filed a modification petition to change the presently certified unit in the Governor Wentworth Regional School District to include the less than full-time teacher staff. The Governor Wentworth Education Association, NEA-New Hampshire argues:

- (1) that the less than full-time teaching staff is an integral part of the teaching team in all schools within the district;
(2) all such teachers have met the certification requirements of the district in the State of New Hampshire;

- (3) these teachers function within the same organizational unit in the same profession as the full-time teachers; and
- (4) operate within the same geographical location under common work rules, policies and practices, with a self-felt community of interest. The inclusion of the less than full-time teachers would affect approximately eleven part-time teachers in the district.

The Governor Wentworth Regional School Board filed an exception and answer to the modification petition in which they pointed out that the current agreement between the Governor Wentworth Education Association, NEA-New Hampshire and the Governor Wentworth Regional School Board was effective beginning September 1, 1983 and was a three-year agreement. This agreement includes specific language in the recognition clause which excludes those "less than full-time professional staff". The School Board also argues that the contract Article 16 also contains a provision that it "may not be altered, changed, added to, deleted from or modified without the voluntary mutual consent of the parties in writing...". The School Board further points out that the issue of including "less than full-time professional staff" was brought up at the negotiations and the parties could not agree. The language of the contract is clear, direct and without ambiguity. The School Board further argues that the modification petition is an attempt by the Governor Wentworth Education Association, NEA-New Hampshire to obtain, through the Public Employee Labor Relations Board, matters which they conceded at the table in the course of good faith negotiations. The Governor Wentworth Regional School Board asks that the modification petition filed by the Governor Wentworth Education Association be denied.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on March 12, 1985 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

The parties agreed that the existing contract was a three-year contract commencing September 1, 1983 and going until August of 1986. The parties further agreed that the Governor Wentworth Education Association is the recognized bargaining representative for the employees as recognized under the Public Employee Labor Relations Board Orders T-0229 and T-0229:1. The original certification document refers to certified classroom teachers and others but does not include the "less than full-time professional staff", who were excluded under the original certification which was a "grandfathered" unit relative to the establishment of RSA 273-A. Governor Wentworth Education Association argues that the Public Employee Labor Relations Board may modify the unit now, even though it was grandfathered in 1977, in order to include the part-time teachers since they are working under the same circumstances as all the other teachers who were then and are now in the unit.

The School Board argued that the modification would not be proper now since the contract in force at the present time excludes part-time teachers and was agreed to by both parties. The School Board further argues that it might be close to an unfair labor practice to alter the membership of the bargaining unit at the present time while the contract in fact stipulates that they will not be part of the bargaining unit.

The Education Association argued that the contract is subservient to the law and that the statute must rule and that power is allocated to the Public Employee Labor Relations Board to determine "the appropriate bargaining unit" and that we may indeed change the makeup of the bargaining unit if we decide it is appropriate.

The Governor Wentworth Education Association gave "an offer of proof" showing the community of interest between the less than full-time teachers and the full-time teachers in the same school district clearly indicating that they were in fact members of the same profession with the same education; working for the same employer; in the similar geographic units; and obviously have a wide sharing of a community of interest with the other teachers. No objection to this offer of proof was made by the Governor Wentworth Regional School District. In closing arguments, the Education Association argued that we should decide under the law now and void the contract and include the less than full-time teachers because the current unit is inappropriate. The School Board argued that the Public Employee Labor Relations Board should not interfere since the contract is so clear and also was agreed to after some very difficult negotiations and labor relations.

At issue before the Public Employee Labor Relations Board in this case is the question of whether or not the Public Employee Labor Relations Board can modify units that have been grandfathered at the time of the creation of RSA 273-A and under its direction. The Public Employee Labor Relations Board finds that indeed it can change the composition of the bargaining unit and that it should be the sole arbiter of the appropriateness of the bargaining unit as instructed under its Rules and Regulations, Pub. 302.05 (a).

At the same time, the Board is uncertain as to whether or not it should exercise such a power during the life of a contract mutually agreed upon and that it believes under the circumstances in this case it would be unwise to do so.

DECISION AND ORDER

It is the decision of the Public Employee Labor Relations Board that the less than full-time employees should be a part of the bargaining unit and that the effective date for inclusion in the bargaining unit should be the expiration of the contract which is currently in force between the parties which means in effect the end of August 1986.



ROBERT E. CRAIG, CHAIRMAN

Signed this 2nd day of April, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman and Russell Hilliard also present and voting.