



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TIMBERLANE TEACHERS' ASSOCIATION

Complainant

v.

TIMBERLANE REGIONAL SCHOOL BOARD

Respondent

CASE NO. T-0285:3

DECISION NO. 85-72

APPEARANCES

Representing the Timberlane Teachers' Association

Stephen G. Hermans, Esq., Counsel

Representing the Timberlane Regional School Board

Robert Leslie, Esq., Counsel

Also in Attendance

Elesabeth Gustavson, Timberlane School Board
James E. Devine, Timberlane School Board
Terrance Holmes, Timberlane School Board

BACKGROUND

On June 26, 1985, the Timberlane Teachers' Association ("Association") filed an unfair labor practice complaint against the Timberlane School Board ("School Board").

The Association filed its complaint on behalf of four teachers who sought to "recover sick leave benefits while on maternity leave". The Association claimed that under their existing contract (1984-1989), Articles 5C ("sick leave") and 5E ("maternity/paternity leave"), the four teachers were entitled to sick leave but that the requests were denied by the Superintendent and were then grieved to the School Board which also denied the sick leave on June 7, 1985. The Association contends the School Board has violated RSA 273-A:5 I (h), "to breach a collective bargaining agreement".

In its answer, the School Board agreed to the facts of the request for sick leave and the denial but denied any breach of RSA 273-A, claiming that Article 5E of the contract provides that maternity leaves are "without pay or other benefits". The School Board further argued that the contract Article 5E also provides that maternity leave "must commence on or before the birth of the child" and that therefore a person is "...not entitled to be paid for a disability which occurs while she is on an unpaid leave of absence". The School Board stated clearly that if a person was not on maternity leave they could be compensated (to the extent earned) for disability as a result of pregnancy.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, N.H. on August 27, 1985, with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

The teachers did apply for sick leave, having already applied for and been granted maternity leave, and were denied sick leave under the School Board's interpretation of the contract in force, Articles 5C and 5E:

Article 5 "Leaves-of-Absence", Section C "Sick Leave" provides for earning sick leave at a rate of 15 days per year, which can accumulate to a total of 120 days; reasonable evidence of disability may be demanded by the superintendent; and Association members with 10 years service in the district may redeem unused sick leave at a rate of \$5.00 per day up to a maximum of 90 days.

Article 5E "Maternity/Paternity Leave" provides (inter alia) "Maternity/Paternity leave of one (1) year shall be granted without pay or other benefits to teachers with at least two years of service with the district... "For definition purposes, the commencement of the leave must coincide with a day on or before the date of delivery..."

The testimony of witnesses also established that this language had been added to this current agreement for the first time, since the Superintendent and the School Board were concerned about treating people differently depending on their due date.

The PELRB finds that in view of the fact that employees accrue sick leave prior to taking maternity leave, the sick leave is "vested" in the employee and therefore the prohibition against "either benefits", while on maternity leave, must refer to newly accrued benefits as would be the case for instance with "new pay". A person on unpaid leave does not get pay or accrue new or additional benefits, such as sick leave, etc. However, previously accrued benefits must be available to the employee when they are needed, regardless of leave status, so long as they are still covered by the contract. Employees must, of course, be suffering, or have suffered, some disability in order to use these accumulated, or "vested" sick days.

DECISION AND ORDER

The PELRB finds that the employees are entitled to use their accumulated sick leave while on unpaid maternity leave and find the denial of such by the School Board to be a breach of the collective bargaining agreement and an unfair labor practice as stated in RSA 273-A:5, I (h).

We hereby order the Timberlane School Board to cease and desist denying employees the use of accrued sick leave while on "maternity/paternity leave" and further, we order the School Board to compensate the four named teachers as appropriate for periods of disability regardless of leave status.


ROBERT E. CRAIG, CHAIRMAN

Signed this 16th day of September, 1985.

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