



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GORHAM SCHOOL DISTRICT

Complainant

v.

GORHAM TEACHERS ASSOCIATION,
NEA/NH and JOHN FESSENDEN

Respondent

CASE NO. T-0276:2 (A&B)

DECISION NO. 86-04

APPEARANCES

Representing the Gorham School District

James Burke, Esq., Counsel

Representing the Gorham Teachers Association, NEA/NH and John Fessenden

John Fessenden, UniServ Director, NEA/NH

Also in Attendance

Conrad Graham
Margaret Graham
Robert Bellavance, Superintendent SAU #20

BACKGROUND

The Gorham School District ("District") filed a complaint against the Gorham Teachers Association ("Association") on August 30, 1985, alleging unfair labor practices. The District charges that the Association is insisting on a grievance arbitration, in the case of a non-renewal of Mr. Conrad Graham, despite their non-compliance with the contractual grievance procedure, constituting a breach of the contract as well as an unfair labor practice under RSA 273-A:5, II (h).

The Association, in its answer, accused the District of attempting to avoid an agreed upon grievance procedure, contrary to PELRB rulings.

At the same time, the Gorham School District filed a motion with the PELRB for "immediate hearing and interim orders", requesting a hearing to determine if the Association should be ordered to withdraw its demand for arbitration pending a full hearing on the merits of the unfair labor practices case.

The PELRB held an extraordinary hearing on September 12, 1985

and granted the motion of the District ordering the Association to withdraw its demand for arbitration until the merits of the unfair labor practices charge could be heard.

A hearing on the merits of the charge was held at the PELRB office in Concord, N.H. on October 15, 1985, with all parties represented.

FINDINGS OF FACT

Testimony and exhibits at the hearing established the following factual circumstances:

1. The District and the Association were parties to a collective bargaining agreement covering the period from July 1, 1981 to June 30, 1984, which agreement contained a grievance procedure (Article XV). A subsequent agreement covers the period from 1984-1986.
2. By letter dated March 7, 1984, Superintendent Robert Bellavance notified Mr. Conrad Graham that the Superintendent was not renominating Mr. Graham for a contract for the 1984-85 school year. In this same letter, Mr. Bellavance informed Mr. Graham that the School Board had adopted a new counselor/psychologist program requiring two (new) individuals with dual certification (counselor/psychologist).
3. On March 8, 1984, Mr. John Fessenden, UniServ Director, NEA/NH, wrote to Mr. Bellavance notifying him that Mr. Fessenden was representing Mr. Graham and requesting specific reasons for the non-renewal as well as a hearing on the matter be held within fifteen days.
4. By letter of March 16, 1984, Superintendent Bellavance informed Mr. Fessenden of the reasons for non-renewal of Mr. Graham. Basically the reasons given were re-organization of the "pupil services" requiring new qualified personnel and stating Mr. Graham was not qualified for these positions. Mr. Bellavance also agreed to a meeting, as requested, on April 4th.
5. On May 2, 1984, the Gorham School Board held a hearing on the non-renewal of Conrad Graham. Its report was issued on May 8, 1984 and the Board's decision upheld the actions of Superintendent Bellavance in restructuring the guidance department/special education departments and the non-renewal of Conrad Graham.
6. Subsequently the case was appealed to the State Board of Education which considered the matter on December 12, 1984 and affirmed the School Board (in a vote of 4-2) and so notified the Board by letter December 13, 1984.
7. On January 14, 1985, UniServ Director Fessenden wrote to Mr. Bellavance, indicating that Mr. Graham had a grievance against the School Board in that the Board did violate two articles of the contract in not renewing Mr. Graham for 1984-85. The change was specifically made that Mr. Graham was the victim of "age discrimination".

8. By letter dated January 16, 1985, Mr. Bellavance informed Mr. Fessenden that a grievance record should be filed, enclosing the form, and telling Mr. Fessenden that Mr. Bellavance would confer with the school attorney after receiving the proper grievance form.
9. On January 29, 1985, the Superintendent received a copy of a "grievance record" dated September 11, 1984 alleging a grievance occurring September 4, 1984 (first working day of 1984-85 school year).
10. Subsequent to January 29, 1985, the parties proceeded to go through a series of exchanges (as in the grievance procedure) with the Superintendent denying the grievance as untimely (since filed September 4, 1984) and culminating in a hearing before the School Board on July 9, 1985. The Board issued its decision on July 16, 1985, supporting the actions taken by the Superintendent and denying the grievance "due to late filing" and also "lack of information".
11. On July 23, 1985, Mr. Fessenden requested arbitration.
12. On August 5, 1985, the School Board denied the request for arbitration on the ground that the grievant had not participated in a fair hearing, that the request was defective because it did not appoint an arbitrator as required by the contract and that the "...grievance has been waived because it was not presented in accordance with the procedures and schedules set forth under Article XV".
13. On August 19, 1985, the Association filed a "Demand for Arbitration" with the American Arbitration Association which was subsequently followed by the filing of an unfair labor practice with PELRB by the School Board.
14. Principal Tarantino testified he had no notice of the grievance between March of 1984 and September 11, 1984 when he discussed the possibility with Mr. Graham; he further testified that Mr. Graham was employed to June 30, 1984 under the contract then in force and that the first working day of the new school year would be September 3rd or 4th, following Labor Day.
15. Witness Fessenden admitted that he did have information which he said he would give only to the arbitrator and did admit that his opinion of the procedure (from January to June, 1985) was an "exercise in futility". Mr. Fessenden also pointed out that sometimes contracts stipulate that "nothing may be added" between the last grievance step and arbitration but that this was not the case in this contract.

RULINGS OF LAW

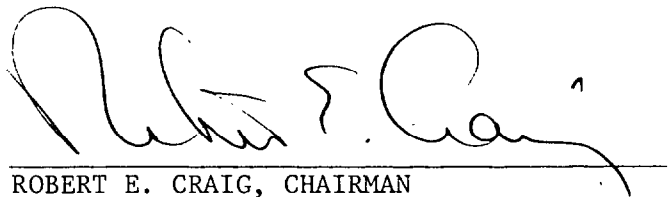
The requirement of RSA 273-A:4 that "every agreement...shall contain workable grievance procedures" certainly requires the full cooperation

of both parties to resolve grievances at the earliest possible step in accordance with their contractual procedures. The PELRB has also ruled that neither side may take upon itself the power to re-define the procedure unilaterally.

In this case, the Association's representative has failed to participate in the grievance process, at least at the School Board level, by refusing to offer information as to why Mr. Graham's non-renewal was wrong and other information. In this behavior the Association's representative is guilty of removing any possibility of the resolution of the grievance at that level. Despite his belief in the "futility" of the process from his point of view, the Association's representative has the duty to proceed in such a way as to make resolution of the grievance at least possible by participating in a meaningful way. Failure to do so is a violation of RSA 273-A:4.

DECISION AND ORDER

1. The PELRB finds that the Association is guilty of an unfair labor practice in that it refused to participate meaningfully in the step of the grievance procedure at the School Board level.
2. The PELRB orders the parties to return to the grievance procedure at the School Board level, with the meaningful participation of all parties, to the full completion of the grievance procedure as stipulated under the existing contract.
3. Any refusal to participate meaningfully shall be deemed a waiver of any rights to further proceedings under the contracted grievance procedure.



ROBERT E. CRAIG, CHAIRMAN

Signed this 16th day of January, 1986.

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