

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LITCHFIELD EDUCATION ASSOCIATION *
NEA-NEW HAMPSHIRE *
Petitioner *
v. *
LITCHFIELD SCHOOL BOARD *
Respondent *

CASE NO. T-0283:2

DECISION NO. 86-48

APPEARANCES

Representing the Petitioner, NEA-New Hampshire

Marc Benson, UniServ Director, Region III

Representing the Respondent, the Litchfield School Board

Robert Leslie, Esq., Counsel

Also in Attendance

Cynthia Garside, Teacher
David Chouinard
Peter Dolloff, Superintendent
Neil Macy, Consultant
Larry w. Burton, Asst. Supt.
Sheila Gorman

BACKGROUND

The Litchfield Education Association, NEA-New Hampshire ("Association") filed Unfair Labor Practice charges against the Litchfield School Board ("Board") on September 12, 1985. The Association alleged that the Superintendent withheld a salary increment for Cynthia Garside, the librarian, pending her acceptance in an approved Library Arts program, despite the fact that she had been transferred into the librarian position knowing that she was uncertified as a librarian and despite the fact that she was certified to teach Elementary Education and English in which field(s) there were vacancies in the district. The complaint further alleges that there is no Library Arts/Media Specialist Program available in the State of New Hampshire and that Ms. Garside had been denied admission into such a program at the University of Rhode Island. On June 3, 1985, Ms. Garside filed a grievance against the Litchfield School District citing a violation of contract Article IX, "compensation". The Association claims that "freezing" Ms. Garside's salary breaches the collective bargaining agreement in violation of RSA 273-A:5, I, (h) and (i). The Association further complains that the existing grievance procedure, since it ends at the School Board level, is insufficient as a "workable grievance procedure" under RSA 273-A:4. (See Bedford Police Assn. Decision #85-51.)

The Litchfield School Board ("Board") responded that while Ms. Garside's

"increment" was withheld, that this was in conformity with the negotiated contract. The Board further asserted that Ms. Garside had been advised since May 7, 1985, and several times since, that she was expected to become fully certified as a librarian. The Board also asserted that Ms. Garside never applied for any other teacher vacancy as an Elementary or English Teacher. The Board states that the Grievance Procedure is proper under RSA 273-A and was freely negotiated by the parties and denies that there was any breach of RSA 273-A.

A hearing was held at the PELRB office in Concord, N.H. on May 15, 1986 with all parties represented.

FINDINGS OF FACT

- (1) Ms. Garside's education credentials include a B. A. (Rivier College) in English and an M.A. (Rivier College) in Counseling but do not include a special degree/certificate as a librarian.
- (2) Ms. Garside has been a Librarian for 10 years; she has recently tried to enroll, through UNH, in the Library Program at Rhode Island but, after delays in completing the application (reference from Supt. Dolloff was late) she was turned down.
- (3) Ms. Garside had pursued an alternative (#3) for certification but did not pass the (oral) test. Supt. Dolloff did not think that Alternative #4, under "critical shortage" conditions, (develop a plan, with a mentor, etc.) was appropriate, so no certification as a Librarian was achieved under these alternatives.
- (4) In March of 1985 Ms. Garside's salary was "frozen" at the previous year's level (\$17,350) and Supt. Dolloff so informed Ms. Garside by letter (Assn. #1-#3). Previous to this, Ms. Garside had received the same raise as the teachers.
- (5) Ms. Garside had, over the years, attended Guidance Counselor Workshops and Teacher Workshops to retain certification in these areas. When asked why she did not attend Simmons College Library Program, Ms. Garside responded that Simmons was very expensive.
- (6) A former Teacher Negotiator testified that the Librarian position was new and librarian is within salary "range"; that Article IX, having to do with withholding "increment" for "failure to perform" applies to everyone.
- (7) Assistant Superintendent Burton testified that the librarian was not on "steps" but had been given increases the same as the teachers; that the Association had proposed steps but the School Board didn't agree.
- (8) Superintendent Dolloff reviewed the various letters to Ms. Garside about Librarian certification going back to June of 1985 and including evaluations, which were good but also pointed out that Ms. Garside should but did not have certification as a librarian. Dolloff pointed out that this was one of two factors keeping the school from reaching the top rating.
- (9) Dolloff also testified that the contract called for the School District to pay tuition for Graduate Courses taken in the summer and First Semester of the Academic Year (at whatever the school rate is.)

(10) Superintendent Dolloff further testified relative to Ms. Garside's Grievance:

- a. Dolloff "froze" salary on March 22, 1985;
- b. Grievance letter filed in June, some 40 days after Dolloff's letter;
- c. Contract grievance plan calls for 15 days
- d. Dolloff denied grievance of grounds not timely

ARGUMENT

In closing, the Association argued two points:

1. That the grievance is a "continuing" one since the damage is continuing, and
2. The contract grievance procedure is not in accord with the requirements of RSA 273-A since it does not provide for review by an "impartial person" and/or panel (see Bedford Police Assn. v. Town of Bedford, Dec. #85-51).

The School Board argued that:

- (a) There was a clause in the contract reserving to management those things not covered by the contract;
- (b) Contract does not prohibit withholding increment and therefore management can withhold since performance was less than expected.

RULINGS OF LAW

The PEIRB must address the question of the timeliness of the grievance before it can consider the other issues raised in this case. We consider that the contract clearly requires the filing of grievances within 15 days of the action being grieved. To argue that this does not apply since the inquiry is "continuing" is to allow for the filing of grievances ad infinitum as well as to make a mockery of the contract agreed to. Lacking a bonafide reason for filing late we find the grievance was untimely filed and we decline to make any further findings in this regard.

With respect to the withholding of the usual "increment", while not specifically covered by the contract, the contractual language suggest that management does have the right to evaluate performance and withhold raises if that performance is less than satisfactory.

With respect to the Association's request for findings:

Numbers 1-4, and 6 are granted; 5,7,8, and 9 are denied.

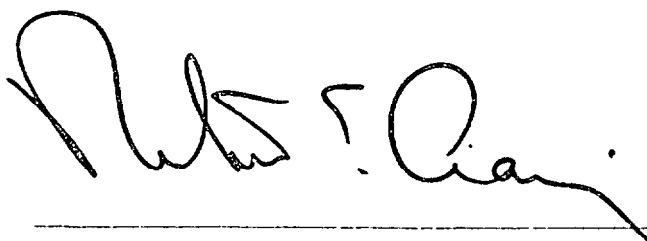
With respect to the Association's Supplemental request for findings:

Numbers 1,2,4-7 are granted; number 3 denied, number 8 neither granted nor denied since not revealed in this case.

DECISION

Since the grievance was not timely filed under the contract and since a reasonable interpretation of the contract allows the School Board to do what

it has done, we hereby dismiss the improper practice charge and decline to make further findings.

A handwritten signature in black ink, appearing to read 'Robt E. Craig', written over a horizontal line.

ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 7th day of August, 1986

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