



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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EVELYN C. LeBRUN
Executive Director

MERRIMACK SCHOOL BOARD
Complainant
v.
MERRIMACK TEACHERS ASSOCIATION
Respondent

CASE NO. T-0205:4
DECISION NO. 86-78

Please correct the signature date to reflect February 2, 1987.

Thank You.
PUBLIC EMPLOYEE LABOR RELATIONS BOARD



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK SCHOOL BOARD

Complainant

v.

MERRIMACK TEACHERS ASSOCIATION

Respondent

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CASE NO. T-0205:4

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APPEARANCES

Representing the Merrimack School District:

Charles Dunn, Esquire, Counsel

Representing the Merrimack Teachers Association, NEA-N.H.

Marc Benson, UniServ Director, NEA-NH

James Allmendinger, Esquire, Staff Counsel

Also Appearing:

Claude Leavitt, Superintendent

Kenneth Taylor, Director of Personnel

Nancy Hennas, Teacher

Kenneth Monteith, President MTA

BACKGROUND

The Merrimack School Board (Board) complained of unfair labor practices by the Merrimack Teachers Association (Association) when the Association demanded arbitration of a grievance dated August 25, 1986 involving an alleged violation of the collective bargaining agreement between the parties relating to a teacher formerly employed by the Merrimack School Board, Nancy Hennas. The Board alleges violations of RSA 273-A:5 (II), (d) and (f) in that the Association insisted on arbitration despite the fact the grievance was not filed within the 30-day limit imposed on them by the grievance procedure in the contract.

On October 3, 1986, the PELRB issued a cease and desist order staying the arbitration pending a hearing before PELRB.

In its response, the Association argues that the date of the last "reoccurrence" in the Hennas grievance was August 15, 1986 and referring to contract language, argues that Ms. Hennas was "entitled to be recalled", that the grievance was timely filed and that the parties should now proceed to arbitration.

A hearing was held on November 6, 1986 at PELRB office in Concord, NH with both parties represented.

FINDINGS OF FACT

1. The Merrimack School Board and the Merrimack Teachers Association are parties to a collective bargaining agreement dated May 7, 1984, which expires June 30, 1987.
2. Nancy Hennas was notified by letter dated March 19, 1986 that in accordance with RSA 189 she was not being offered a contract for the next year. Hennas was not a tenured teacher but rather in probationary status.
3. On March 26, 1986, Hennas wrote Superintendent Leavitt asking to be placed on a "recall list" and given the "opportunity to fill any available position consistent with my certification." In the letter, Hennas refers to the collective bargaining agreement, sections 7.7A, B and C, which section begins:

"7.7 In the event a teacher's position becomes eliminated or changes..."

The Hennas letter conforms to all the requirements of the section of the contract.

4. Superintendent Leavitt wrote to Hennas on March 31, 1986 acknowledging the receipt of her March 26, 1986 letter. Superintendent Leavitt testified that Hennas was not placed on a "recall list" because she was not eligible since she was non-renewed. He also testified that there was no such "recall list" in 1985 - 1986 school year.
5. On August 25, 1986, the Teachers Association (by Kenneth Monteith, President) filed a grievance claiming the District had violated Article 7.7 by not recalling Nancy Hennas to a teaching position. The Superintendent responded by letter dated August 26, 1986, to the Association's grievance by denying the matter was grievable under the contract since the teacher was not renominated under RSA 189:14. Superintendent Leavitt further states that, "no teachers at the Masticola Middle School were laid off due to enrollment reductions. Any decrease in actual teaching positions was resolved by attrition".

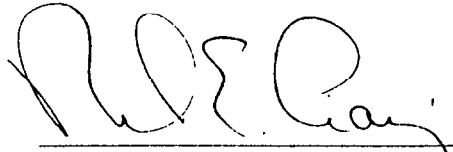
6. On September 8, 1986, the Association began the arbitration process by writing the American Arbitration Association and the Board brought the case to PELRB.
7. Section 7.7 of the contract clearly refers to "reduction in force" type situations ("position becomes terminated") and also others ("or changes") but does not speak to the question of probationary or tenure status. Superintendent Leavitt also testified that if a position was eliminated a person would likely be non-renewed as was done in the Hennas case.
8. Superintendent Leavitt testified he did not tell Hennas there was no "recall list" because he thought the Principal had. The Superintendent further testified he was unaware that Hennas was interviewing for other jobs in the district.
9. Association witness, Monteith, testified that negotiations over language similar to current Section 7.7 had taken place since 1975 and that at one point the Board had proposed to eliminate "recall" provisions but they were covered by current contract (Section 7.7). Monteith testified that "reduction in force" was different than non-renewed because the former implied job elimination or change while the later did not. He further testified the recall provisions of the contract applied to all members of the bargaining unit whether probationary or tenured.
10. Monteith testified that the grievance was not filed until August because until then they thought that Hennas was in a kind of "recall" process, interviewing for various jobs, etc.
11. Hennas testified she was told by Principal and Vice-Principal that she would be non-renewed because of reduction in force. The Principal's letter of recommendation of Hennas refers to a "reduction in force" at the school. (See letters of March 25 and 26, 1986: Association Exhibit #8 & #9) and the Personnel Director of the School District had helped her to interview for various openings in the District (for which she was qualified). Hennas further testified she tried to get positions and almost did, kept on interviewing until she saw newspaper advertisement (Association Exhibit #7) for same job she had at the Middle School (Math), and realized she was not being recalled.
12. Personnel Director Taylor testified that he was treating Hennas as non-renewed, not subject to "recall" and had no recall list anyway. He further testified that reduction in force was not his explanation since jobs at Middle School were really changed to meet reduction of number of students. He testified that there used to be nine (9) math teachers and now there was eight (8).

RULINGS OF LAW

The changes which took place at the Middle School resulted in a reduction in force from nine math teachers to eight. The contract does refer to job reductions or changes and can arguably apply to the Hennas case. In addition, the process through which Ms. Hennas applied for several openings, for which she was qualified, with the help of some school personnel would lead a reasonable person to believe she might be successful, or even be recalled since she was never notified to the contrary. As a result we believe Ms. Hennas did file her grievance in a timely fashion after learning conclusively that she was not going to be recalled to her math position. The contract is not altogether clear in this matter.

DECISION

1. We find no unfair labor practice was committed but simply the pursuit of a somewhat complicated grievance;
2. We order the parties to complete the grievance process in this matter.


ROBERT E. CRAIG, Chairman

January, 1987
Signed this 18th day of December, 1986.

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