



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAMPSTEAD EDUCATION ASSOCIATION,*
NEA-NEW HAMPSHIRE *

Complainant *

v. *

HAMPSTEAD SCHOOL BOARD *

Respondent *

CASE NO. T-0230:3

DECISION NO. 87-12

APPEARANCES

Representing Hampstead Education Association, NEA-N.H.

Marc Benson, UniServ Director

Representing Hampstead School Board

Robert P. Leslie, Esq., Counsel

Also in attendance

Henri Eastman, Chairman, School Board

Robert Crompton, Superintendent

Dillard Collins, HEA

Ted Comstock, Dir. Labor Rel. N.H.S.B.A.

Rita Jordans

James Dodge, Industrial Arts Teacher

BACKGROUND

The Hampstead Education Association ("Association"), NEA-New Hampshire filed a complaint of improper practices against the Hampstead School Board ("Board") on July 17, 1986, the Association alleged that on May 28, 1986 teacher James Dodge applied for an unpaid leave of absence under the collective bargaining agreement in force, that Mr. Dodge met the criteria stipulated in the master agreement but his request was denied by the School Board. Mr. Dodge filed a grievance over this matter but his grievance was denied by the School Board. The Association claims the School Board violates RSA 273-A:5, I, (h) "to breach a collective bargaining agreement".

The Board answered that it admitted that Mr. Dodge did apply for such a leave of absence and it was denied but the Board disagreed that it must grant such a leave claiming the contract language makes it discretionary. The Board also denied that the purpose of Mr. Dodge's

leave was to pursue "work programs related to his professional responsibilities". The Board claims it denied the request for unpaid leave because it had concluded that it "...was not related to Mr. Dodge's teaching assignment and that Mr. Dodge teaches in "critical shortage" area and replacement is a problem.

Prior to the hearing, on December 2, 1986, the Association filed an amendment to their complaint alleging that Mr. Dodge had applied for an unpaid leave again on October 3, 1986 for the 1987-88 school year and that the Board refused to act pending a PELRB ruling on the original complaint. The Association charges that this Board action violates RSA 273-A:5, 1, (a) and (d), by interfering with an employees rights under the statute.

A hearing was held at the offices of the PELRB in Concord, N.H. on December 18, 1986 with all parties represented.

FINDINGS OF FACT

At the hearing, witnesses and exhibits established that:

1. Mr. Dodge did apply for an unpaid leave of absence for the 1986-87 school year and gave to his principal the reason that he wished to go into industry for one year (see Association #1);
2. Mr. Dodge had taught industrial arts for 18 years, only one in the Hampstead Schools (grades 5-8);
3. The School Superintendent, and other administrator(s) supported Mr. Dodge's request;
4. Mr. Dodge had stated that he wished to return to teaching after his leave;
5. Mr. Dodge's request was denied by the School Board which stated it had denied similar requests (See Association #2); and was concerned with replacing Mr. Dodge (See Association #2);
6. Mr. Dodge filed a grievance over the denial (See Association #3 and 4) and was subsequently granted a hearing before the School Board (Mr. Dodge believed his leave was in accord with School Board Policy, Association #5);
7. The School Board denied Mr. Dodge's grievance (Association #6) and the Superintendent notified Mr. Dodge of the denial saying that "your proposed industrial experience is not closely related to your teaching assignment" and the problem of finding a qualified replacement who would step aside the following year (See Association #7);
8. Mr. Dodge described his plans for his leave of absence as carpentry-cabinet-making, working with the same tools as in the school shop, and stated that going into industry allowed him to experience the situation and any changes in the industry he also discussed the work he did in school and the school curriculum (See Association #8 and 9); Mr. Dodge's students were primarily going on to high school. They do not learn to build cabinets;

9. Mr. Dodge did file again for a leave of absence for school year 1987-88 (on October 3, 1986) and this leave was subsequently denied because the case was before the PELRB (See Association #10, 11 and 12);
10. Mr. Dodge had worked as businessman during summers, building cabinets, etc., in the past.
11. The Superintendent testified he supported the leave request because he didn't want to lose Mr. Dodge, who was a good teacher, despite the fact that his leave of absence plan was not closely related to his teaching job but rather to other jobs at different levels of curriculum.
12. The School Board Chairman testified that the granting of unpaid leave of absence is discretionary whereas other leaves are not: Section 1 of the contract reads: "Section 1. An unpaid leave of absence if one contracted year or less may be granted to any employee..." the chairman established that in other leaves (maternity, adoption, etc.) the word "will" is used to remove such discretion.
13. The School Board Chairman established that the Board felt the first request was more personal than professional, and denied it, and that during the grievance process the Board made a judgement based on the request, the guidelines in the contract, Board policy, etc. and denied the request.

REQUEST FOR FINDINGS

With respect to Requests for Findings the following is ordered:

Association requests: #2 granted, insofar as the contract guidelines only: #1, 3, 4, 5, 11, 12, 13, 18 and 19 are granted; #6, 7, 8, 9, 10, 14, 15, 16, 17, 20 and 21 are denied.

With respect to Requests for Findings of the School Board, the following is ordered:

Board requests: #9, this PELRB has no knowledge of this; #1, 2, 3, 4, 5, 6, 7, 8, 11, 13 are granted. #10 and #12 are denied.

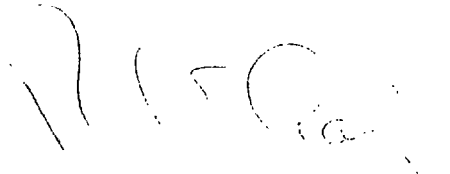
RULINGS OF LAW

The language of the contract allows the School Board reasonable discretion in granting unpaid leaves of absence, provided the minimum guidelines of the contract are met. The use of the term "may" in Section one, Article VII, leaves reasonable discretion to the School Board and does not make the granting of such leave mandatory.

DECISION

1. The Hampstead School Board did not violate RSA 273-A:5, I (h) in its denial of a leave of absence to Mr. Dodge and the Association's complaint is hereby dismissed.

2. The Hampstead School Board did not violate RSA 273-A:5, I (a) and (b) in its postponement of a second request for unpaid leave pending this decision and the Association's amendment to its complaint is dismissed.



ROBERT E. CRAIG, CHAIRMAN

Signed this 17th day of February, 1987.

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