State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PELHAM EDUCATION ASSOCIATION - NEA-NEW HAMPSHIRE

Complainant

v.

PELHAM SCHOOL BOARD

Respondent

CASE NO. T-0280:5

DECISION NO. 87-34

APPEARANCES

Representing the Pelham Education Association, NEA-New Hampshire:

Marc Benson, UniServ Director

Representing the Pelham School Board:

Robert P. Leslie, Esquire

Also Appearing:

Henry LaBranche, Superintendent, Pelham School District
Ray Gamache, Pelham High School
Ted Comstock, Director of Labor Relations/NH School Board Association

BACKGROUND

The Pelham Education Association ("Association") filed an improper practice charge against the Pelham School Board ("Board") on February 13, 1987 charging violations of RSA 273-A:5, I (a) (e) and (g).

The Association alleges that during collective bargaining negotiations, on January 24, 1987, the School Board announced that it was increasing the length of the school day in September, 1987 by twenty-nine (29) minutes at the High School, twenty-five (25) minutes at the Middle School and fifteen (15) minutes at the Elementary School. The School Board gave as its reasons

for these changes a desire to allow certain students to take seven courses and still have a lunch period. The Association alleges that the District claims it can make the changes unilaterally and that they need only negotiate the "impact" of this change.

The School Board answered that the on-site work day is not covered by any provision of the collective bargaining agreement but rather is a "past practice" which can be changed so long as it is announced at the bargaining table and changed at the conclusion of the current agreement. The Board further argued that although hours are a mandatory subject of bargaining for hourly employees, members of this bargaining unit are not hourly employees but rather are paid an annual salary for performing an "annual teaching workload" and this will not increase. Further, the Board argued that the decision to provide a seven-course day ... "is a function, program and/or method of the public employer within the managerial policy exclusion of RSA 273-A:1, XI and not a mandatory subject for bargaining".

A hearing was held at the PELRB's office on March 12, 1987 with all parties represented.

FINDINGS OF FACT:

1. The parties are in the process of negotiating a successor agreement to a contract which expires on August 31, 1987.

2. The two parties agree as to the facts of the case: the School Board has decided to lengthen the school day so as to implement a seven-course day in the high school, (with a lunch period) and is willing only to negotiate the impact of this decision, not the decision itself.

3. The time the teachers spend at school is not covered by the contract but is clearly a "past practice" and the change in the school day will change this past practice. (Teachers were at school from 7:55 to 2:10 and under the new system will be required to be there from 7:15 to 2:30).

4. The change in the length of the school day will have certain, not entirely clear, ramifications for teachers including, inter alia, increases in preparatory time available, new (additional) duties perhaps four days per week, etc. (changes for the middle school and elementary school are not entirely clear at this point).

RULINGS OF LAW:

1. To PELRB it seems clear that changes in time that employees are required to be at work is covered under the mandate of RSA 273-A:1, XI: "terms and conditions of employment means wages, hours and other conditions of employment ..." Requiring employees to be at the work site for a given amount of time during a certain period of a given day is certainly a "condition of employment" and also indicates the "hours" that an employee owes to the employer in return for just compensation whether given hourly, weekly, monthly, biweekly or whenever agreed to. (see Decision #83-57, Haverhill Case)

2. While management certainly has the responsibility to make decisions to improve the educational process, in so far as those decisions change the "conditions of employment" of the employees, they must be negotiated with the employees and cannot be implemented unilaterally. If all decisions of School Boards or their agents could be implemented unilaterally, regardless of the effect or impact on employee's conditions of employment, then negotiations are a waste of good time and the safeguards of the statute are made a mockery of. (see Dec. #83-26, White Mountains Education Association and Appeal of, 135 N.H. 790, 1984)

3. The "conditions of employment" covered by the contract and by past practice must remain in force until negotiations are conducted about the desired changes. (see Dec. #78-55, Colebrook Case and #86-25, Sugar River Case, et alia.)

The Association's request for findings #1-17 are granted.

DECISION AND ORDER:

1. The Pelham School Board has committed an unfair labor practice by announcing it will make unilateral changes in "conditions of employment", regardless of the negotiation progress, at a date certain in the future. Such an intention violates the safeguards of RSA 273-A and is an unfair labor practice under RSA 273-A:5, I (a), (e) and (g).

2. The Pelham School Board and its agents are ordered to negotiate with the Association over any changes in the "terms and conditions of employment" as required under RSA 273-A, and

3. The Pelham School Board is ordered to cease and desist claiming it will make unilateral changes regardless of negotiations and progress thereof.

4. This decision shall be posted throughout the schools where employees can easily read it.

Robert E. Craig

ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 11th day of May 1987.

Chairman Robert E. Craig presiding. Members James C. Anderson, Richard E. Molan and Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.