



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EPPING EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE AND
LAWRENCE RONDEAU

Complainant

v.

EPPING SCHOOL DISTRICT

Respondent

CASE NO. T-0225:12

DECISION NO. 93-167

APPEARANCES

Representing Epping Education Association:

Steven Sacks, Esq.

Representing Epping School District:

Jon Meyer, Esq.

Also appearing:

Barbara Young, Epping Education Association, NEA-NH
Nancy Rondeau, Epping Education Association, NEA-NH
Larry Rondeau, Epping Education Association, NEA-NH
Greg Andrushevich, UniServ Director, NEA-NH

BACKGROUND

The Epping Education Association (Association) and Lawrence Rondeau (Rondeau) filed unfair labor practice (ULP) charges against the Epping School District (District) on October 5, 1993 alleging violations of RSA 273-A:5 I (h) relative to a breach of contract pertaining to the grievance process. The District filed its answer on October 19, 1993 after which this matter was heard by the PELRB on December 16, 1993.

FINDINGS OF FACT

1. The Epping School District is a "public employer"

within the meaning of RSA 273-A:1 X.

2. The Epping Education Association, NEA-NH, is the duly certified bargaining agent for teachers and other personnel employed by the District. Lawrence Rondeau is/was a member of that bargaining unit.
3. The District and the Association are parties to a collective bargaining agreement (CBA) effective thru June 30, 1990, which has been continued thereafter by actions of the parties in order to maintain the status quo pending negotiations for a successor agreement. Article IV (D) (4) of that CBA provides for binding grievance arbitration. Article IV (E) (4) thereof provides that "the decision of the arbitrator shall be binding upon both parties subject to the provisions of RSA 541..." Article VII of the CBA is entitled "fair treatment" and provides that "no teacher shall be disciplined, non-renewed...discharged...without just cause."
4. Lawrence Rondeau was the subject of disciplinary proceedings brought by the District which resulted in a hearing on December 30, 1992. Rondeau was thereafter dismissed from employment with the District.
5. Rondeau thereafter grieved his discharge, alleging, among other claims, that this action violated the just cause provisions of Article VII of the CBA. The grievance was then submitted to binding arbitration through the auspices of the American Arbitration Association.
6. Grievance arbitration hearings were conducted on May 11 and June 7, 1993 in Epping, New Hampshire. To the extent the arbitrator found he had jurisdiction, the parties stipulated (Issue 2) that he should also determine whether the District violated Article VII A or C when it removed and subsequently terminated Rondeau. The issue of remedy was left to the arbitrator by commonly used "what shall be the remedy" language.
7. By previous arrangements with the parties, the arbitrator advised them of his decision to reinstate Rondeau on August 23, 1993.
8. By letter of August 27, 1993, the Epping School

Board, through its Superintendent, notified Rondeau that it had voted on August 26, 1993 not to implement the award of the arbitrator.

9. The arbitrator issued his written decision on September 1, 1993 (AAA Case No. 1139-1985-92) in which he found (1) he had jurisdiction over Rondeau's dismissal, (2) the District had violated Article VII C because it lacked just cause to dismiss Rondeau, and (3) ordered that Rondeau be reinstated and made whole less a period of thirty days which was to be considered a disciplinary suspension.
10. In its answer to the pending ULP dated October 19, 1993, the District asserted (page 2, item C) that the arbitrator had "committed plain mistake" as well as its intention "to file an appeal to the Superior Court pursuant to RSA 542:8." On or about December 8, 1993, counsel for the District filed such an action in Rockingham County Superior Court as a "Petition in Equity" to vacate the award of the arbitrator.

DECISION AND ORDER

The facts in this case are not in dispute. The parties in this case had and are continuing to operate under an expired CBA. That CBA contains a binding grievance procedure which concludes with binding arbitration. Finding No. 3. Rondeau was disciplined. He believed that discipline to be contrary to the contract, namely, Article VII. Finding No. 3. Thus, he pursued this discipline through the grievance procedure, to and including binding arbitration. The arbitrator issued his written decision on September 1, 1993, notwithstanding that arrangements had been made with the parties to advise them of the outcome on August 23, 1993. Findings No. 9 and 7, respectively. It was not until on or about December 8, 1993 that the District brought its "Petition in Equity" seeking relief under RSA 542:8 because the court "has jurisdiction to correct or modify the award for plain mistake."

It is not uncommon for parties to reserve unto themselves, through the CBA, the alternative of judicial review of arbitration awards under RSA 542:8. Notwithstanding this reservation, there is no prohibition to the Association's seeking to enforce the arbitration award through the filing of a ULP. When and if this style of remedy is sought, the New Hampshire Supreme Court has spoken to the timeliness of such a procedure:

We...hold that the PELRB may not exercise its jurisdiction over an unfair labor practice complaint for failure to implement an

arbitration award until a reasonable time has elapsed from the rendering of the award. This will allow parties who have contracted in their CBA for judicial review of arbitration awards a reasonable opportunity to exercise this right. We deem thirty days to be a reasonable period.

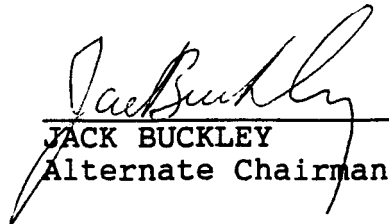
Board of Trustees v. Keene State College Association.
126 N.H. 339, 343 (1985)

Both the ULP filed by the Association and the Petition in Equity filed by the District exceeded the Court's thirty day standard recited in Keene State, above. Thus, we believe that this matter is properly and timely before the PELRB.

Turning to the merits, we also believe that the District did commit an unfair labor practice when it failed to implement the arbitrator's award and breached the CBA in violation of RSA 273-A:5 I (h). The parties contracted for this relief in their grievance procedure unless an appeal should be timely taken. It was not. Therefore, the District is obligated to implement the arbitrator's award. Since Keene State, 126 N.H. 339, 343 (1985) says that "once the PELRB considers a complaint charging that failure to implement an arbitration award is an unfair labor practice, the superior court may not review the award for defects properly reviewable by the PELRB, either during or after the PELRB proceeding," we believe our decision in this case to be dispositive of pending matters permitting the implementation of the arbitrator's award forthwith. That remedy is hereby directed.

So ordered.

Signed this 5th day of JANUARY, 1994.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting.