



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EPPING SCHOOL DISTRICT

Complainant

v.

EPPING EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Respondent

CASE NO. T-0225:13

DECISION NO. 96-091

APPEARANCES

Representing Epping School District:

Jon Meyer, Esq.

Representing Epping Education Association:

Steven R. Sacks, Esq.

Also appearing:

Larry Rondeau, NEA-New Hampshire

Robert Bell, SAU #14, Epping

BACKGROUND

The Epping School District (District) filed unfair labor practice (ULP) charges against NEA-New Hampshire acting on behalf of the Epping Education Association (Association)¹ on July 23, 1996 alleging a violation of RSA 273-A:5 II (f) resulting from the Association's attempting to arbitrate what the District believes is a non-arbitrable subject. The Epping Education Association, NEA-New Hampshire filed its answer on August 6, 1996 after which this matter was heard by the PELRB on September 24, 1996.

¹ The District originally brought this action against NEA-New Hampshire, a non-party to the applicable collective bargaining agreement. The Association was the answering party and a party to the CBA. The caption of this case has been modified to reflect this contractual relationship.

FINDINGS OF FACT

1. The Epping School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Epping Education Association, NEA-New Hampshire is the duly certified bargaining agent for teachers and other professional personnel employed by the District.
3. The District and the Association are parties to a CBA for the period July 1, 1993 through June 30, 1995. Article I thereof is "Recognition" and recognizes the Association as the "exclusive representative of the nurse, librarian, guidance counselor and all certified teachers under written contract with the Epping School District." Certified teachers are defined as "any certified individual employed by the...District who deals directly with children in the classroom more than 50% of his/her time per day, per week or per school year whose position is such as to require him or her to hold an appropriate credential issued by the New Hampshire Board of Education...."
4. Article VII of the CBA is entitled "Fair Treatment" and provides:
 - A. In the event that in the opinion of the school administration a deficiency in a teacher's performance could result in termination of employment, reduction in rank or compensation, the teacher shall be notified of the deficiency, in writing by the administration. The administration shall clearly state the deficiency, state the expected corrections and the teacher shall be given a reasonable time to correct said deficiency.
 - B. A teacher will be entitled to have present a representative of his/her[sic] choosing when he/she is being disciplined or discharged.
 - C. No teacher shall be disciplined, non-renewed (applicable after the second complete year and thereafter), discharged, reduced in rank or compensation without just cause.
5. Article X of the CBA is entitled "Evaluation" and

provides:

Teacher evaluation is an ongoing process within the total supervisory process. Its purpose is to improve and maintain the quality of instruction. With these understandings it is necessary to formalize the evaluation process.

- A. Instructional Goals - The building principal will meet with each teacher to establish the teacher's annual instructional goals. The principal will meet with continuing teachers at a mutually agreed to time, but at least once annually. Newly hired teachers will be conferred with not more than 90 days after the effective date of their election.
- B. Observation & Formative Evaluation - Observation and Formative Evaluation shall provide an opportunity for the teacher to receive constructive critique and support as an effort to improve instruction.
 - 1. Teachers in their first, second and third years in the school district will be observed by an administrator or supervisor elected by the School Board and minimum of two (2) times. Within ten (10) days of the observation, the teacher will receive a draft of the observation report and will be granted a conference by the observer. The first such evaluation will occur on or before December 15th; the second on or before March 15th.
 - 2. All other teachers will be observed by an administrator or supervisor elected by the School Board once during the school year. The evaluation will occur on or before March 15th.
 - 3. There may be additional observations and evaluations at the discretion of the administration.
 - 4. The observation document will be signed by both parties prior to placement in the teacher's file.
- C. Summative Evaluation - Once annually, prior to March 15th, each teacher shall receive a written evaluation by the building principal.

A conference shall be scheduled as soon as possible but not more than 10 days after receipt of the evaluation.

The evaluation shall be reviewed in the conference and shall be signed by both parties.

The summative evaluation will be based on but not limited to the aforementioned formal observation, informal observations and other information gathered by the principal.

6. Lawrence Rondeau has taught industrial arts in and for the District since 1990. With the exception of two expirations which were thereafter renewed, he has been a certified teacher with credentials in comprehensive agricultural education technology education, inclusive of predecessor titles, since 1972. His most recent credential expired on June 30, 1995 and was subsequently renewed on October 31, 1995. (Association Exhibit Nos. 1 and 3.) This was the only certification under which Rondeau was hired and under which he taught industrial arts, or as a "shop teacher," in Epping. (Association Exhibit No. 1 and 4.)
7. On or about March 31, 1995 the District notified Rondeau of its intent not to renew his contract for 1995-96 because he had not secured recertification. Superintendent Robert Bell testified that this was normally the practice for teachers who had failed to recertify so they would be alerted to the need "to hurry up and get recertified," even though the certification would not expire until two months later. The Association grieved this action on Rondeau's behalf by letter of April 5, 1995. (Association Exhibit No. 5.) Article IV of the CBA provides that grievances must be filed within 15 working days of its occurrence. This grievance was timely filed.
8. The parties stipulated that Rondeau had not submitted documentation in the form of a Professional Growth Plan, activity forms, a Staff Development Cumulative Record or a Master Plan Completion Sheet by April 25, 1995. (District Exhibit Nos. 2-a through 2-d.) Bell noted that he did not receive Rondeau's documentation dated April 21, 1995 (Association Exhibit No. 2) until after April 25, 1995; it was supposed to be submitted in the form of the Professional Growth Plan by June of 1992. Likewise, once Rondeau submitted the paperwork, it was not approved because clock hours

were not approved before Rondeau attended the programs for which he sought credit. Bruce Christie, the Staff Development Coordinator, had refused to certify hours or forms to the Superintendent for this reason. (District Exhibit No. 5.)

9. Bell testified that he also non-renewed Rondeau for incompetence. Notwithstanding this, there is no evidence that the District had informed, counseled or warned Rondeau about less than satisfactory performance during School Year 1994-95, or prior school year, as contemplated by contract Articles VII, § A or X, § B and C.
10. Rondeau submitted his documentation for recertification accomplishments from 1989 through 1992 or April 24, 1992, at which time it was accepted by Christie. (Association Exhibit No. 4 inclusive of Master Plan Completion Sheet.) Rondeau further testified that it was not uncommon to grant extensions to teachers to submit recertification materials, citing the instances of this having been done for an English teacher, a new language arts teacher and a now-deceased teacher.
11. After Christie refused to accept Rondeau's documentation submitted in 1995, Rondeau met with representatives of the State Department of Education (DOE) on August 24, 1995. Since, at that time, Rondeau was no longer an employee of the District, the DOE's Bureau of Credentialing intervened to consider his documentation for recertification. This process was completed on August 30, 1995, at which time DOE requested an \$80.00 recertification fee from Rondeau. That fee was received on October 31, 1995 at which time Rondeau was recertified through June 30, 1998. Rondeau testified that he was unable to pay the fee any earlier because he had limited income after he was non-renewed for School Year 1995-96. (Association Exhibit Nos. 1 and 2.)
12. At the outset of the hearing, the parties stipulated that the only issue they intended to be decided by the PELRB in this case was the arbitrability of Rondeau's grievance.

DECISION AND ORDER

Our role in this case is limited to the need to determine arbitrability. We do so based on two considerations: whether the grievance was timely filed by a bargaining unit teacher and whether the language of the CBA can be read with "positive assurance" that the subject matter of this dispute is outside the contemplation of

what the parties intended to be covered by their negotiated grievance procedure.

The matter of timely filing by a certified teacher is addressed in Finding No. 7, above. The CBA provides that grievances must be filed within 15 working days of occurrence. It was. The grievance must have been filed by a teacher. It was. Rondeau was certified as a teacher and a member of the bargaining unit through June 30, 1995, and, thus, was covered by the recognition clause of the CBA when the grievance was filed. (Association Exhibit No. 1.) There is no deficiency in the filing of the grievance. Rondeau was not lacking certification at the time his contract was non-renewed.

In order for the District to prevail in its attempt to preclude the Association's processing this case to grievance arbitration, there must be "positive assurance" that the CBA cannot be read to cover the dispute. Given the contents of contract articles IV defining a grievance, VII relating to fair treatment and X regarding evaluations vis-à-vis the history of this case, we cannot reach that conclusion.

In Appeal of the City of Nashua, 132 NH 699 (1990), the New Hampshire Supreme Court said it would not set aside a PELRB order to arbitrate "unless we find by a clear preponderance of the evidence that it is erroneous as a matter of law, unjust or unreasonable." "We will not reverse an order to arbitrate unless we can say with positive assurance that the CBA's arbitration clause is not susceptible of a reading that will cover the dispute." (Emphasis added.) 132 NH 699 at 701 (1990). The District's case failed to meet the quantum of proof required to convince us with "positive assurance" that this matter is excluded from the grievance process contemplated by and provided in the CBA.

The ULP's hereby DISMISSED and the parties are directed to proceed with arbitration of the pending grievances.

So ordered.

Signed this 18th day of October, 1996.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.
Members Richard Molan and William Kidder present and voting.