

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

SANBORN REGIONAL EDUCATION	:	
ASSOCIATION, NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. T-0256:22
	:	
SANBORN REGIONAL SCHOOL DISTRICT	:	DECISION NO. 2000-013
	:	
Respondent	:	
	:	

---

APPEARANCES

Representing Sanborn Regional Education Association, NEA-NH:

Greg Andruschkevich, UniServ Director

Representing Sanborn Regional School Board:

Bradley Kidder, Esq.

Also attending:

David L. Taylor, Sanborn Regional Education Association  
Kathy Brosnan, Sanborn Regional Education Association  
James Weiss, Sanborn Regional School District  
Philip Pratt, Sanborn Regional Education Association/  
NEA-New Hampshire

BACKGROUND

The Sanborn Regional Education Association, NEA-New Hampshire (Association), filed unfair labor practice (ULP) charges on December 1, 1999 against the Sanborn Regional School District (District) alleging violations of RSA 273-A:5 I (a), (e) (g), (h) and (i) for breach of contract, refusal to bargain and

improperly and unilaterally interpreting the grievance procedure in the collective bargaining agreement (CBA) so that it does not apply to employment related extra-curricular activities. The District filed its answer on December 16, 1999 after which this matter was scheduled and heard by the PELRB on January 26, 2000. The record was closed on that date after closing oral arguments were made by both parties.

#### FINDINGS OF FACT

1. The Sanborn Regional School District, under the direction of the Sanborn Regional School Board (Board), employs teachers and other personnel in the operation of its school system and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Sanborn Regional Education Association, NEA-New Hampshire, is the duly certified bargaining agent for all professional employees of the District.
3. The Association and the Board are parties to a CBA for for the period July 11, 1996 through June 30, 1999, said agreement remaining in effect under *status quo* provisions at all times pertinent to these proceedings. Article 1.1 of the CBA recites the Board's recognition of the Association, to wit:

For purposes of collective negotiations, the Board recognizes the Sanborn Regional Education Association, NEA-New Hampshire, as the exclusive representative of all professional employees of the Sanborn Regional School District. Professional employees shall include any individual employed by the Sanborn Regional School District, the qualifications for which position are such as to require him/her to hold an appropriate credential issued by the State Board of Education under the regulations governing the certification of professional school personnel. Although no certification by the State Board of Education is required, the (NON-TEACHING) School Nurse shall be recognized as a member of the bargaining unit and will be covered by all articles of the agreement unless specifically stated otherwise. The term professional employee, does not include superintendents, assistant

superintendents, business administrators, principals, directors of guidance and other administrators.

The contract also has a four step grievance procedure, found at Article 7, which ends with final and binding arbitration. A grievance is defined at Article 7.1, to wit:

A grievance is a claim made by a teacher based upon an alleged violation of a specific provision of this agreement. A grievance, to be considered under this procedure, must be initiated in writing by the teacher within 15 calendar days of the aggrieved teacher's awareness of its occurrence.

Article 12 of the contract sets forth the salary schedule, by the various school years covered by the CBA, for "compensation for professional duties." Article 12.9 also reflects compensation by school year and is entitled "Extra-Curricular Activities Salary Schedule, "which, according to testimony from David Taylor, is a negotiated document. One of the positions listed in that schedule is that of "Athletic Director" at the high school.

4. Joseph P. Diorio was hired by the District as a special education teacher, a bargaining unit position as defined by Article 1.1 of the CBA, for the 1991-92 school year. (Association Exhibit No. 4.) At that same time he was hired as Athletic Director under another contract. (Association Exhibit No. 5 ) On May 28, 1999, District Superintendent James Weiss sent a memo to the Board making nominations for "co-curricular personnel" for 1999-2000. This list included Diorio as Athletic Director. The Board, meeting on June 2, 1999, approved that list with the exception of the athletic director's position. (Association Exhibit No. 5, pages 2 and 3) On June 8, 1999, Diorio filed a grievance for "loss of position, salary and the workday" associated with being athletic director. (Association Exhibit No. 6). After having been denied relief by the principal, Diorio appealed to the Superintendent on June 11, 1999. (Association Exhibit No. 11.) On June 16, 1999, Weiss sent a memo to Diorio saying, in part, that he could

not undo what had been done by the Board. (Association Exhibit No. 9.) Then, on June 22, 1999, Weiss sent a letter explaining the difficulties he was encountering getting a meeting of the Board with Diorio, as requested. In this letter, Weiss said, in part, that "it appears likely that you will need to move forward with your grievance appeal. At that time you can fully discuss the various facets of the issue..." (Association Exhibit No. 10.) On July 16, 1999, Board Chair Mark Furlong wrote Diorio telling him that the Board had voted to deny his grievance. (Association Exhibit No. 11.) UniServ Director Gregory Andruschkevich wrote Furlong on July 29, 1999 demanding to proceed to arbitration and suggesting three potential arbitrators. (Association Exhibit No. 12.) Weiss countered with a separate list of proposed arbitrators in his letter to Andruschkevich on August 4, 1999. (Association Exhibit No. 12, page 2.) Andruschkevich wrote a letter to Weiss on August 12, 1999 saying there was no agreement on an arbitrator and that he would request the services of the American Arbitration Association. (Association Exhibit No. 12, page 3.) On September 13, 1999, Senior Case Administrator Connelly at the American Arbitration Association office in Boston wrote a letter to the parties confirming that this matter had been withdrawn from arbitration. (Association Exhibit No. 13.)

5. Meanwhile, by letter of August 16, 1999, Diorio, in a letter to Weiss, submitted his letter of resignation as a special education teacher. This letter was accepted by action of the school board on August 18, 1999. (Association Exhibit No. 4, pages 3 and 4.)
6. According to the list of personnel assigned to the co-curricular position for SY 1998-99 and 1999-2000, a number of the appointees are not members of the bargaining unit represented by the 1996-1999 CBA, as referenced in Finding No. 3. In SY 1998-99, twelve of 31 appointees were not members of the bargaining unit. (Board Exhibit No. 1.) In fy 1999-2000, thirteen of 32 appointees were not members of the bargaining unit (Board Exhibit No. 2) as is the case with the current, incumbent athletic director who has assumed those duties on an interim basis. See

also non-unit appointees represented by co-curricular employment contracts for Alan Magnusson, Joseph Ricci, William Mulvey, Russell Kelley, Anthony Fish, Daniel Carbone and Michael Blinn (Board Exhibit Nos. 5, 6, 7, 8, 9, 10 and 11.)

7. The District does not believe persons hired into extra-curricular or co-curricular positions are accorded any rights under the CBA, other than their right to the rate of compensation stated at Article 12.9 of the CBA. (Finding No. 3, above.) Superintendent Weiss testified that when a certain baseball coach was not renewed in his extra-curricular position, all that was available to him was a grievance procedure under the District's personnel policies, a procedure which ended with the decision of the superintendent. (See Board Exhibit Nos. 12, 13 and 14.)

#### DECISION AND ORDER

We examine this case from two perspectives. First is the issue of the grievance procedure. The athletic director's position is covered in Article 12.9 of the CBA relative to compensation. Given the definition of "grievance" found at Article 7.1, the door is certainly open, at least by a crack, for access to the grievance procedure. We next look to the breadth of the bargaining unit positions covered by the CBA in Article 1.1. (Finding No. 3, above). The Association is the "exclusive representative" for "all professional employees," further defined as being any employee whose position is such "as to require him [or] her to hold an appropriate credential issued by the State Board of Education." We were provided with no evidence that the athletic director's position had such a requirement. Thus, when Diorio resigned his academic position as a special education teacher, his umbilical cord of access to the grievance procedure was cut. The Association's position was further mooted, and our conclusion confirmed, by its withdrawal of this matter from arbitration in early September of 1999. Thus, we find no violation relative to the application, use or grievant's access to the grievance procedure.


Our second area of inquiry is whether there were any contract violations which would rise to unfair labor practices, rather than grievances, under RSA 273-A:5 I (h). After reviewing the recognition clause, Article 1.1, we find that, absent a

credential from the State Board of Education for the athletic director, as a stand-alone position from which the ULP is launched, there is no basis for the contract provisions to be applied to the facts of this case, i.e., the school board's non-selection of Diorio to be Athletic Director for SY 1999-2000. We find no violations of the specifications as charged.

The ULP is DISMISSED.

So ordered.

Signed this 9th day of February, 2000.

  
BRUCE K. JOHNSON  
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members Seymour Osman and E. Vincent Hall present and voting.