



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEACOAST EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

v.

SCHOOL BOARD MEMBERS, S.A.U. #21 and
RICHARD HAMILTON, In his capacity as
Superintendent

Respondents

CASE NO. T-0257:3

DECISION NO. 82-04

APPEARANCES

Representing the Complainant, SEA, NEA-NH:

Cathy Hall, UniServ Director, Region II
Janice L. Yost, President
Steven E. Bauer, SEA
Loren H. Hutchins, III, SEA
Herbert S. Moyer, SEA
Kevin Fleming, SEA

Representing the Respondents, Supt. Hamilton & School Board Members:

William Kingston, Chief Negotiator
Richard Hamilton, Superintendent

BACKGROUND

The Seacoast Education Association, an affiliate of NEA-New Hampshire, on September 24, 1981 filed a prohibitive practice complaint against Richard Hamilton, Superintendent of S.A.U. 21 and the school board members from Hampton, Hampton Falls, North Hampton, Seabrook, South Hampton and Winnacunnet for restraining, coercing and otherwise interfering with their employees in the exercise of their rights conferred under RSA 273-A; refusing to negotiate in good faith with the exclusive representative; breaching the collective bargaining agreement; and, adopting a rule relative to terms and conditions of employment, specifically "personal leave", which invalidates a portion of the agreement by attempting to unilaterally change a negotiated condition of employment. Additionally, the complainant alleged that the School Boards refused to recognize the exclusive representative by requiring individuals to negotiate terms and conditions of personal leave.

Hearing on the matter was held in the PELRB office in Concord on October 15, 1981 and extensive evidence and testimony was presented by the parties.

The main issue revolved around the 1970 contract and past practice relative to "personal leave" which simply required a teacher requesting such leave to indicate on the form provided that the leave was being requested under the appropriate contract provisions.

The 1970 contract, Article 11, "Personal Leaves of Absence" stated that teachers would be entitled to three (3) personal days each year and further specified under what conditions such leave should be given; i.e.,

- 11-1.1 Death in immediate family,
- 11-1.2 Religious observance,
- 11-1.3 Death of a relative or close friend,
- 11-1.4 Attendance at professional meetings, conferences and conventions,
- 11-1.5 Receiving a degree,
- 11-1.6 School visitation,
- 11-1.7 Professional examinations for advanced study,
- 11-1.8 Legal, personal and business affairs,

The 1981-83 contract, Article X stated,

"Request for such leave shall be in writing adequately in advance of the day requested except in emergencies. Said request shall state that it is taken under the appropriate contract reference."

The respondents denied any charge of unfair labor practice and stated that any action taken by the Superintendent and the various school boards was totally within their administrative rights. They requested that PELRB dismiss the complaint on the basis of untimeliness.

FINDING OF FACTS

-- The parties stipulated that the policy was changed in September of 1981 and that under the new policy teachers were to give specific reasons for their requests for personal leave; such leave to be approved first by the principal and then by the superintendent.

-- The parties agreed that two grievances had been filed relative to personal leave and that the change in policy occurred after the filing of the grievances.

-- An agreement between the Seacoast Education Association and the School Administrative Unit 21 School Boards is in full force and effect from July 1, 1981 to June 30, 1983.

-- Evidence was presented through oral testimony from several witnesses, testifying under oath, that the specific reason requirement had not been required and that the practice had been to merely circle the contract reference on the form and indicate the date requested.

-- Two teachers requesting personal leave had been required to give specific reasons and were then denied leave.

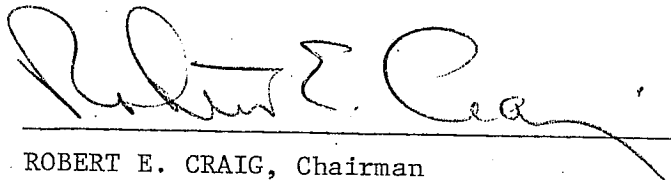
-- In prior negotiations no proposal had been made to change the personal days except to add "religious days" to the legal, personal and business days.

DECISION AND ORDER

After careful review of all written and oral evidence presented at hearing, the Board finds as follows:

1. By adopting a new policy relative to personal days after the filing of grievances on that matter was a violation and would invalidate a portion of the agreement by and between the parties negotiated in good faith for the school years, 1981-82 and 1982-83.
2. The overriding factor that is applicable is the language of the existing agreement in addition to the long established past practice which merely required appropriate contract reference.
3. The term "personal" means private and should be left at that, requirement to divulge the nature of one's personal affairs is an invasion of one's privacy.

Having found as above that the Superintendent and the individual school boards did commit unfair labor practices in unilaterally adopting a new policy relative to personal days, they are hereby ORDERED to cease and desist such action. Further, any change relative to leaves is subject to negotiations between the parties.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

By unanimous vote of the members present and voting.

Signed this 12th day of February, 1982.

