



Appeal to NH Supreme Court withdrawn on April 12, 1996, Supreme Court Case No. 95-167.

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ASSOCIATION OF CAMPTON	:	
EDUCATORS/NEA-NEW HAMPSHIRE	:	
	:	
Petitioner	:	CASE NO. T-0334:5
	:	
v.	:	DECISION NO. 94-113
	:	
CAMPTON SCHOOL DISTRICT	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing Association of Campton Educators, NEA-NH:

Steven Sacks, Esq.  
Jan Paddleford, UniServ Director

Representing Campton School District:

Bradley F. Kidder, Esq.

Also appearing:

Sue Karsten, ACE, NEA-NH  
Christine Quimby, ACE, NEA-NH  
Dorothy Ely, ACE, NEA-NH  
Nicki Vanek, ACD, NEA-NH  
John True, SAU #48, Campton  
Sue Rubel, SAU #48, Campton  
Paul Dulac, Superintendent  
Wally Cumings, NEA-NH  
Tish Hoyt, Campton NEA-NH  
Tatyana Hoyt, Campton NEA-NH  
Jerry Dunfey, Waterville Valley  
Marcy Dovholuk, AGE, NEA-NH  
Tom Hoyt, Campton, N.H.

BACKGROUND

The Association of Campton Educators (Association), NEA-New Hampshire filed unfair labor practice charges against the Campton

School District on September 27, 1990 alleging violations of RSA 273-A:5 I (a), (e), (g) and (h) for non-renewal of a fourth grade teacher, Patricia Dunfey Hoyt, without just cause. The Campton School District (District) filed its answer on October 12, 1990 and the PELRB initially heard the matter on June 6, 1991 after several continuances to allow for completion of the grievance process. A decision was issued on November 27, 1991. After denial of the District's Motion for Rehearing, appeal was taken to the New Hampshire Supreme Court where the matter was heard. On March 15, 1994, the Court reversed the decision of the PELRB and remanded the matter for a full de novo hearing to take up the question of whether or not the District had committed an unfair labor practice by non-renewing Ms. Hoyt without just cause. Appeal of Campton School District, 138 N.H. 267 (1994). That hearing was held on June 16th and September 29, 1994. In its previous full decision, Decision No. 91-66, the PELRB had considered on the findings of the arbitrator in determining the absence of just cause. The Court had found that reliance to be in error.

#### FINDINGS OF FACT

1. The Campton School District is a public employer of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Association of Campton Educators is the duly certified representative of teachers as recognized in RSA 273-A:8 and 11.
3. The District and the Association are parties to collective bargaining agreements (CBA) for the years 1988-90 and 1990-93. The latter contract contains a reduction in force (RIF) clause.
4. The 1990-93 CBA defines the term "teacher" to mean "a person included in the bargaining unit" with no mention of tenure.

The CBA, in pertinent part provides the following:

#### Article VII-Fair Treatment

A. Notification of Deficiencies: The Board, in recognition of the concept of progressive improvement, shall promptly notify a teacher in writing of any alleged deficiencies, indicate expected correction, and indicate a reasonable period for correction.

C. Just Cause: A teacher shall not be

discharged, non-renewed, suspended, disciplined, reprimanded, adversely evaluated, reduced in rank or compensation, or deprived of any professional advantage without just cause. All information forming the basis for disciplinary action will be made available to the teacher and, if the teacher so desires, to the Association.

. . . .

E. Evaluation:

1. Teachers not being nominated or re-elected shall be notified in writing before March 31. (RSA 189:14A [sic])

2. Formal evaluations shall be at the rate of at least two (2) a year. A teacher shall be given a copy of any class visit or evaluation report prepared by his/her evaluator. No such report shall be submitted to the Superintendent's office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. If a teacher feels an evaluation report is unfair, he/she may write comments which will be attached to the report.

3. It is the responsibility of both parties to agree to a time for a post observation conference. At the end of each observation a conference will be conducted between evaluator and teacher as soon as possible after the observation. A teacher's signature on an evaluation report does not necessarily denote agreement with the report.

4. Teachers may request an additional evaluation during the contract year.

F. Assistance Procedure:

Assistance shall be provided to teachers upon recognition of 'professional difficulties'. For the purpose of this article the term 'professional difficulties' shall apply to deficiencies relating to job performance. The administration will

develop a program of assistance to fit the needs of the individual teacher.

5. Ms. Hoyt received good evaluations during her first year at the Campton Elementary School and was issued a contract for a second and a third year. She received no evaluations at all during her second year of teaching (1988-1989).
6. On October 20, 1989, early in her third year of teaching, she was observed by the new principal, Ms. Susan Rubel and she received a positive review at the post observation conference of October 30, 1989. (SB #1).
7. The first notice Ms. Hoyt was given of any inadequacy followed an observation on February 5, 1990. The teacher observation report dated February 9, 1990 is signed by Susan Rubel and acknowledged by Tish Hoyt. (SB #2) It reads in part:

The script of the class was reviewed, and commendations and recommendations given. The evaluator expressed concern about the lesson observed and stated that there is a possibility of non-renewal of her contract. That decision will be deferred until March. Professional difficulty lies primarily in the area of 'productive techniques', but also in 'class management and environment.' (See evaluative criteria handed out at the beginning of the year). And 'intensive assistance plan' is being developed to work with the teacher for the purpose of instructional improvement.

8. Tish Hoyt was given the seven week intensive assistance plan (I.A.P.) designed for her by Ms. Rubel on February 12, 1990. (SB #3) Two days later, the next observation was held. Observations followed by conferences occurred on the following dates:

<u>Observation</u>	<u>Conference</u>
February 14th	February 20th
February 23rd	March 5th
March 9th	March 9th
March 15th	March 16th

March 22nd

March 29th

9. The last observation was performed by Assistant Superintendent John True. The conference of March 29, 1990 occurred on the day the School Board was to take up the matter of Ms. Hoyt's contract renewal in order to meet the non-renewal notice deadline of RSA 189:14-a I (a) which calls for notification on or before March 31st.
10. Testimony by Mr. True confirmed Ms. Hoyt's testimony that she had been told that she would have his recommendation for renewal when the matter was taken up by the School Board. She was told by Ms. Rubel that she had made progress and that Ms. Rubel would recommend her with reservations. At the School Board meeting, both Ms. Rubel and Mr. True withheld recommendations and a letter of non-renewal was delivered to Ms. Hoyt on March 30, 1990, less than seven weeks from the date she was given the seven week IAP, the first notification of deficiency.
11. The IAP was designed by Ms. Rubel specifically for Ms. Hoyt who was advised to treat the plan as confidential. In addition to her regular classroom duties, she was asked to read numerous books and articles, to incorporate certain teaching techniques, to arrange and make classroom visitations to suggested teachers' classrooms and to arrange and carry out classroom observations by peer coaches. The IAP suggests attending a writing workshop, watching video tapes and preparing, handing in and then reviewing each week's lesson plans with Ms. Rubel.
12. Ms. Hoyt testified that it was her understanding that her renewal depended upon successful compliance with the IAP. She visited other classrooms, attended a workshop and a mini-class at Plymouth State College, read books, prepared lesson plans and expended considerable effort carrying out the IAP. Ms. Rubel did not expect the whole plan to be completed by Ms. Hoyt but stated that seven weeks was a sufficient time to make the required changes. She said that it was referred to as a seven week plan because it represented the time period between February 9th and March 30th, a span of seven weeks.

13. Others testifying indicated that the plan could not be completed in seven weeks. Nicki Vanek, a fourth grade teacher who worked with Ms. Hoyt, expressed the opinion that such a plan could not be completed in less than one year. Dorothy Ely, a nine year teacher at Campton, stated that one could not comply with such a plan and hold a full-time teaching position at the same time.
14. Although not specified in the IAP, Ms. Hoyt was required to change her method of teaching reading and writing from the basal method to the whole language/writing process method. She was told to make the change gradually. Testimony from other teachers including Marcy Dovholuk and Christine Quimby was that there was no policy or directive to other teachers to change from a basal text oriented method to a whole language/writing process method.
15. Two other IAPs were given teachers during Ms. Rubel's one year at Campton. The first teacher left her position in the middle of the IAP compliance process. The second teacher, Debbie Mayhew, approached Ms. Rubel accompanied by a union representative, Susan Karsten. Upon request, the IAP was withdrawn.
16. In June 1990, a meeting was called by the Association to deal with problems relating to Ms. Rubel's evaluations and dissatisfaction among teachers. Susan Karsten testified that there was a need to facilitate trust among teachers, the administration and the School Board. She said that teachers were experiencing anxiety. A school board member, Bruce Henderson, allowed teachers to take objectionable evaluations from their files. Nicki Vanek testified that she removed an evaluation report which referred to Ms. Rubel's intention to issue her an IAP. She removed the evaluation from her file in response to the suggestion from Mr. Henderson. She testified that she had subsequently been assigned two student teachers which she believes to be a recognition of her effective teaching.

#### DECISION AND ORDER

RSA 273-A:6 I, gives the PELRB primary jurisdiction to hear unfair labor practice disputes. The legislature has also vested

the PELRB with authority to define and interpret in the first instance the terms of a collective bargaining agreement. Appeal of Hooksett School District, 126 N.H. 202, 204 (1985). Most recently, the Court has instructed that, when parties to a collective bargaining contract have not agreed to be bound by an arbitrator's decision, the PELRB, in the context of an unfair labor practice charge, must conduct a de novo evidentiary hearing when appeal from the non-binding arbitration is taken and must not consider the arbitrator's decision as evidence in reaching its decision. Appeal of Campton School District, 138 N.H. 267, 270 (1994). After the Court's reversal on the determination of invalidity of a grievance procedure ending with non-binding arbitration, the question before the Board on remand is whether or not the School District committed an unfair labor practice by terminating Ms. Hoyt without just cause.

Ms. Hoyt is a probationary teacher. Probationary teachers who are not renewed are accorded very limited process to challenge their non-renewal under RSA Chapter 189 unless greater rights of redress are bargained for and included in a collective bargaining agreement. Brown v. Bedford School Board, 122 N.H. 627, 629 (1982). Such is the case before the Board. The collective bargaining agreement defines "teacher" to include probationary teachers so extending to them the protections of the CBA, Article VII-Fair Treatment. This contract article includes safeguards in the form of specific processes when there exist questions of disciplinary violations or professional competence. The parties have spelled out and have agreed to be bound by the requirement of an enhanced just cause standard.

The just cause standard is used throughout the vast field of law. Unless otherwise defined, the term "just cause" used in a labor relations context is understood to mean fairness of process in disciplinary situations as laid down in a seven question test by Professor Carroll Daugherty in Whirlpool Corporation, 58 LA 421 (1972) and Enterprise Wire Company, 46 LA 359 (1966). The questions as asked in Enterprise Wire Company, are quoted in Roberts' Dictionary of Industrial Relations, 377-78, (4th Ed. 1994):

1. Was the employee given advanced warning of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the rule or order reasonably related to the efficient and safe operation of the business?
3. Before administering discipline, did the employer make an effort to discover whether the employee did, in fact, violate a rule or order of management?
4. Was the employer's investigation conducted fairly and

objectively?

5. Did the investigation produce substantial evidence or proof that the employee was guilty as charged?
6. Had the company applied its rules, orders, and penalties without discrimination?
7. Was the degree of discipline administered in the particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the employee's record of company service?

In adapting and broadening the application of the just cause standard beyond discipline cases, the parties have adopted remedial provisions to be applied when professional inadequacies are alleged. Regular evaluation and early notice of difficulties are incorporated. The District is to develop a plan of assistance to be used to remedy deficiencies. The requirement of a reasonable period to overcome the deficiencies is directly addressed.

Reviewing the facts of this case in light of Article VII of the CBA, Ms. Hoyt was given inadequate warning, approximately six weeks notice that her teaching methods did not conform with the new administrator's expectations, before being non-renewed. The regular evaluations which might have given her notice and opportunity to correct problems did not occur though promised by the CBA. The School District did not supply a sufficient time period to implement suggested corrections in the IAP before non-renewing Ms. Hoyt. Instead, an abbreviated, telescoped process was applied in order to meet the March 31st notice of non-renewal deadline spelled out in RSA Chapter 189 and the contract. Testimony indicated a clear element of predisposition toward non-renewal which likely coerced and threatened Ms. Hoyt.

The School Board's requirement of high teaching standards is reasonable and is related to the expected goals of good education. However, evidence shows that the process of assessing deficiencies in teaching, notifying the teacher and then assisting in remedying deficiencies was inadequate as applied. Further, the process was not applied fairly and evenhandedly in this case as shown below.

The first evaluation following notice of possible non-renewal occurred, not on a typical day as would be expected, but on St. Valentine's Day prior to a party, when fourth graders are hard to manage and excitable. Another evaluation took place on the last day before the winter vacation. The winter vacation began and ended within the seven week period thus shortening the actual time during which Ms. Hoyt could observe other teachers and be observed. Only Ms. Hoyt was required to change her method of teaching reading. Of those people for whom an IAP was designed or contemplated, only Ms. Hoyt was required to carry out the plan as



best she could in the time allotted under the threat of losing her employment. Testimony showed one case in which a teacher was designated to receive an IAP but was never given a plan and another case in which the plan was given and then withdrawn when Ms. Rubel was challenged. Further, other teachers were allowed to remove the controversial Rubel evaluations from their files while Ms. Hoyt was non-renewed based on the Rubel evaluations and was never given the option offered to other teachers. Instead, she was non-renewed and, when the question of reinstatement occurred, she was given a notice that she was subject to a reduction in force (RIF).

The School Board contends that Ms. Hoyt was not a good teacher and that her deficiencies could not be remedied, but they have failed to follow the specific separate steps of the process they have agreed to use in making such a determination. They have provided Ms. Hoyt with a summary process in order to avoid the missing of the March 31 notice date and the tolling of the tenure clock. They then repeated the error when applying the RIF provision.

Indeed, Ms. Hoyt was dismissed without the basic requirements of just cause and without the application of the remedial processes spelled out in the CBA in cases of alleged professional deficiency. In so doing, the School Board has acted contrary to statute committing unfair labor practices detailed as RSA 273-A:5 I (a), (b), (g) and (h). Negative evaluations shall be removed from Ms. Hoyt's file. She shall be reinstated forthwith and she shall receive back pay to the date of non-renewal.

So ordered.

Signed this 23rd day of December, 1994.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Richard E. Molan and Seymour Osman present and voting.