



Appeal to NH Supreme Court dismissed on December 18, 1996, Supreme Court Case No. 96-652.

State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

|                                 |   |                     |
|---------------------------------|---|---------------------|
| _____                           | : |                     |
| HAVERHILL EDUCATION             | : |                     |
| ASSOCIATION, NEA-NEW HAMPSHIRE: | : |                     |
|                                 | : |                     |
| Complainant                     | : |                     |
|                                 | : | CASE NO. T-0232:20  |
| v.                              | : |                     |
|                                 | : | DECISION NO. 96-020 |
| HAVERHILL COOPERATIVE           | : |                     |
| SCHOOL DISTRICT                 | : |                     |
|                                 | : |                     |
| Respondent                      | : |                     |
| _____                           | : |                     |

APPEARANCES

Representing Haverhill Education Association, NEA/NH:

Brian Sullivan, UniServ Director

Representing Haverhill Cooperative School District:

Bradley Kidder, Esq.

Also appearing:

- Linda Nelson, SAU #23
- Seymour Osman, Dover, N.H.
- Jacqueline M. Lewis, Teacher
- Regis Roy, Haverhill Education Association
- Susan Kimball, Teacher

BACKGROUND

The Haverhill Education Association, NEA-New Hampshire (Association), filed unfair labor practice charges against the Haverhill Cooperative School District (District) on August 7, 1995 alleging violations of RSA 273-A:5 I (c), (g), (h) and (i)

resulting from a bargaining unit member's being required to carry a full-time teaching load but only receiving part-time remuneration. The District filed its answer on August 25, 1995. The parties then requested that processing be held in abeyance for a period of sixty (60) days per Decision No. 95-93 dated October 5, 1995. After the parties were unable to reach their own resolution of the dispute, the PELRB rescheduled this matter for hearing on February 15, 1996. After a continuance sought and granted for that date, this matter was heard by the PELRB on February 27, 1996.

#### FINDINGS OF FACT

1. The Haverhill Cooperative School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Haverhill Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers, school nurses, guidance counselors and other non-administrative certified personnel employed by the District. [The PELRB is aware that the foregoing unit description varies from the recognition clause of the current collective bargaining agreement (Board Exhibit No. 1); however, no modification thereto has been placed on file with the agency.]
3. The Association and the Haverhill Cooperative School Board are parties to a collective bargaining agreement (CBA) for the period July 1, 1990 to June 30, 1994. It has remained in effect thereafter and for all times pertinent to these proceedings under the status quo doctrine. It contains a step and track compensation schedule. Article I thereof acknowledges the Board's recognition of the Association as the "exclusive representative of all permanent full-time teachers...." Article IX obligates the District to "pay for (single/two person/family) membership in Blue Cross-Blue Shield for each full time employee of the District." (Emphasis added.) Article XIX involves "Teacher Workload" and provides, "High school and junior high school teachers shall be assigned a course load which requires no more than five (5) different class preparations or six (6) periods for any given school day unless specifically agreed to by the individual teacher. Except in exigent circumstances each teacher in the Haverhill

Cooperative School District shall have two hundred twenty-five (225) minutes of planning time weekly."

4. Jacqueline "Jackie" Lewis has been employed by the District as a French teacher at the Middle School and High School for ten years. Since the beginning of the 1990-91 school year through the 1993-94 school year, she has been employed under an individual teacher's contract, similar to that which was offered to other teachers in the District, with the exception of a disclaimer saying, "This is a half time position." (Board Exhibit Nos. 13 through 17.) During school years 1994-95 and 1995-96 she was similarly employed, with the exception that the disclaimer in the contracts for those two school years read, "This is a 6/7 position." (Board Exhibit Nos. 18 and 19.)
  
5. The daily schedules for the High School and Middle School both show seven (7) periods per day. (Board Exhibit Nos. 20 and 22.) According to her testimony and Board Exhibit No. 21, Lewis reports to the High School at approximately 9:00 a.m. in order to teach periods 2,3 and 4. Then she travels to the Middle School, six to seven miles away, during the fifth period which also serves as her lunch time and her time to coordinate any business with the school offices. She finishes her day by teaching 8th grade and 7th grade French, respectively, during periods 6 and 7. Testimony from Lewis and Board Exhibit No. 21 successfully rebutted the District's assertion (Board Exhibit No. 3) that Lewis had one planning period per day. Instead, Lewis arrives at the High School in time for period 2 and has no preparation during the school day on the school premises. This is in contrast to other teachers who do have preparation periods during the day but who also arrive before period 1 and leave after period 7 for a total of 7 1/2 hours as contemplated by Article 22.5. Another teacher who is required to travel between buildings (Francis Leafé) receives a preparation period, arrives before period 1 and leaves after period 7, gets credit for his travel time between buildings, (i.e., it is scheduled work time) and receives both full pay and health insurance benefits. Likewise, the art teacher teaches at both the High School and Middle School, works the period 1 through period 7 schedule, gets credit for travel time and receives full pay and benefits. Board Exhibit No. 21

shows no planning period for the art teacher.

6. Lewis performs extra duties expected of all teachers, i.e., she does afternoon bus duty at the Middle School seven school weeks per year. During the year she also does detention duty at the High School and provides extra help time for students. Unlike Leafé and the art teacher in Finding No. 5, Lewis does not receive health insurance benefits. This is consistent with the District's treatment of other less than full time teachers who, likewise, have not received health insurance benefits when teaching a 4/5th or 80% load. (Board Exhibit Nos. 6, 7, 10 and 11.)

#### DECISION AND ORDER

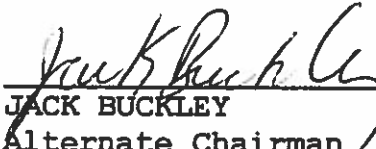
The PELRB is faced with internal inconsistencies which the parties have negotiated into the CBA. By way of example, Article 22.5 contemplates a 7 1/2 hour school day. This is presumably inclusive of school funded preparation time as explained and provided in Article 19.2. If the preparation time were provided to Lewis, she would be on-premises the same as other teachers covered by the CBA. Her circumstances are further bolstered by the language of Article 19.1 which speaks to five different class preparations or six class periods in any given school day. This is exactly what Lewis has been asked to do by her employer and exactly what she does!

Notwithstanding the foregoing contract language and for whatever their reasons, the District and Lewis decided her duties would be a 6/7th position in school years 1994-95 and 1995-96, as represented by Board Exhibit Nos. 18 and 19. This being the case, Lewis is essentially estopped by Board Exhibit Nos. 18 and 19 from asserting rights to certain benefits, namely, health insurance, under the CBA. Having so determined, we note nevertheless, the District's egregious assertion of the technical defenses it raised in this case. Its collective conscience should have provided a common sense guideline to treat a teacher conforming to an Article 19.1 schedule and having, essentially, waived her planning period under Article 19.2, as a regular full-time teacher under the CBA. Common decency and the ability to engage in effective labor-management relations demand no less. By its actions in this case, the District, at best, has created an atmosphere where the good faith of an arms-length employment relationship may be scrutinized for minute technical deficiencies for years to come. This is not good labor-management relations,

but, since failure to exercise common sense is not a unfair labor practice, the underlying ULP is DISMISSED.

So ordered.

Signed this 8th day of APRIL, 1996.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.  
Members E. Vincent Hall and Frances LaFavor present and voting.