

Appeal to NH Supreme Court
withdrawn on October 16, 1996,
Supreme Court Case No. 96-483.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MASCOMA VALLEY REGIONAL	:	
EDUCATION ASSOCIATION,	:	
NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	CASE NO. T-0290:16
	:	
v.	:	DECISION NO. 96-028
	:	
MASCOMA VALLEY REGIONAL	:	
SCHOOL DISTRICT	:	
	:	
Respondent	:	

APPEARANCES

Representing Mascoma Valley Regional Educ. Assoc:

James Allmendinger, Esq.

Representing Mascoma Valley Regional School District:

Bradley F. Kidder, Esq.

Also appearing:

Terri Paradis, Mascoma VEA
Keith Pfeifer, SAU #62
Edward Gallagher, Mascoma School Board

BACKGROUND

Mascoma Valley Regional Education Association, NEA-New Hampshire, filed unfair labor practice charges against Mascoma Valley Regional School District on February 12, 1996, alleging violations of RSA 273-A:5 I (a), (e) and (h) for failure to follow the recall procedure of the collective bargaining agreement. The Mascoma Valley School District filed its answer on February 27, 1996. A hearing was held before the undersigned

hearing officer on two hearing dates: March 19, and April 2, 1996.

FINDINGS OF FACT

1. Mascoma Valley Regional School District (School District) is a "public employer" within the meaning of RSA 273-A:1 X.
2. Mascoma Valley Regional Education Association, NEA-New Hampshire, (Association) is the duly certified representative of teachers employed by the School District.
3. The School District and the Association are parties to a collective bargaining agreement (CBA) for the period, July 1, 1994, through June 30, 1996, a copy of which is on file with the PELRB in compliance with RSA 273-A:16 I. Article 22.02 of the CBA is entitled "Reduction in Personnel." It specifies that, for a period of two years, any teacher not renominated because of a reduction in force shall be renominated and reelected "to fill vacancies for which they are qualified and currently certified."
4. Terri Paradis is employed by the School District as a health education teacher at the Indian River School. In March, 1995, her position was reduced from a full-time position to a part-time position. In June, 1995, Ms. Paradis learned that Pat Chiudioni, who taught health education at the high school, would be leaving at the end of the school year. She expressed an interest in the position to Mascoma Regional Valley High School Principal Edward Gallagher. She applied for the position of health education teacher. She never saw a job posting for Pat Chiudioni's position and did not know the posting was for a physical education teacher. Ms. Chiudioni's certification had been in physical education (S.B. No. 8).
5. An undated "Notice of Anticipated Vacancies" was posted by the School District. (S.B. No. 9). The closing date for application was May 19, 1995. It included the position of physical education teacher but not the position of health education teacher. Melanie Lavigne was hired for the vacant position of physical education teacher on July 18, 1995. She is now

employed teaching physical education classes and shares the teaching of health classes with another physical education teacher. This year the number of health classes being taught has decreased.

6. Terri Paradis was not interviewed for, nor considered for the open position of physical education teacher. Her certification is in health education (S.B. No 7). The position advertised was for a physical education teacher (S.B. No 8, 9). On August 14, 1995, Terri Paradis received a letter by ordinary mail informing her that another had been chosen and that she had not been hired to teach health education at the high school for the 1995-96 school year. Edward Gallagher, Principal of Mascoma Valley Regional High School, testified that the wording of the letter was erroneous and that no health education teacher had been hired.
7. Terri Paradis began the process of filing a grievance shortly thereafter (Assoc. No. 3) but this process was not completed for reasons beyond Ms. Paradis's control, namely the death of John Fessenden, UniServ Director for the region. Thereafter, this unfair labor practice was filed on February 12, 1996.

DECISION AND ORDER

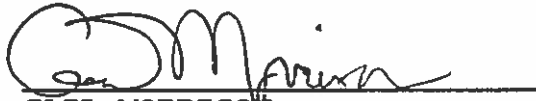
Resolution of a grievance at the local level is generally favored. But RSA 273-A:6 I requires exhaustion of remedies in only two cases. Exhaustion of remedy is mandatory before charges under RSA 273-A:5 (c) and (d) may be brought before the PELRB. No such charge is made under paragraphs (c) and (d) and so failure to complete the grievance process is not a bar contrary to the position of the School District. The School District also argues that Ms. Paradis's charges are time barred. However, the matter is properly before the PELRB since filing of unfair labor practice charges occurred within six months of Ms. Paradis' actual knowledge that she had not been hired thereby meeting the limitation of RSA 273-A:6 VII. It was Ms. Paradis's uncontroverted testimony that she had learned via letter which arrived in the mail on August 14, 1995, that she had been passed over for the position formerly held by Pat Chuidioni. The filing of unfair labor practice charges occurred on February 12, 1996. There is no time bar which would require summary dismissal.

On the merits of the matter, no unfair labor practice is found to have occurred because the position open was a position for which Ms. Paradis was not "currently certified." The choice

of the qualifier, "currently," in the recall provision, Article 22.02 of the CBA, resulted from negotiations between the parties. It is found to be purposeful language which separates and makes inapplicable testimony as to past practices regarding newly hired or transferring teachers. The School District was not obliged by the collective bargaining agreement to hire a health education teacher to fill the open position of physical education teacher.

So ordered.

Signed this 30th day of April, 1996.


GAIL MORRISON
Hearing Officer