



Appeal to NH Supreme Court
withdrawn on December 15,
1997, Supreme Court Case
No. 96-802.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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NASHUA SCHOOL DISTRICT		:
		:
Complainant		:
		:
v.		:
		:
NASHUA TEACHERS' UNION		:
		:
Respondent		:
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CASE NO. T-0244:15

DECISION NO. 96-087

APPEARANCES

Representing Nashua School District:

Sonja Finney, Esq.

Representing Nashua Teachers Union:

Emmanuel Krasner, Esq.

Also appearing:

- Edward Phaneuf, Nashua Teachers' Union
- Alan P. Hallee, Nashua Teachers' Union
- Bob Sherman, Nashua Teachers' Union
- Deborah Migneault, Nashua Teachers' Union
- Francia A. Barksdale, Nashua Teachers' Union
- Jane Bangert, Nashua School District
- Berard Masse, Nashua School District
- Joseph Guiliano, Nashua School District

BACKGROUND

The Nashua School District (District) filed unfair labor practice (ULP) charges against the Nashua Teachers Union (Union) on July 3, 1996 alleging violations of RSA 273-A:5 II (f) resulting from the union's attempting to grieve the non-renewal

of a tenured teacher, a subject which it claims to be outside the scope of the collective bargaining agreement (CBA). The Union filed its answer on July 12, 1996 and a Motion to Dismiss, or alternatively, a Motion for Summary Judgment on September 9, 1996. The District filed objections to those motions on September 10, 1996. This matter was heard by the PELRB on September 10, 1996, whereupon the District completed its case and rested. The union renewed its request for dismissal or summary judgment and was given seven (7) days, upon request, to respond to the District's objections to its motions for dismissal or summary judgment. The PELRB then adjourned, holding the Union's two motions in obeyance pending receipt of the Union's memoranda on or before September 17, 1996.

FINDINGS OF FACT

1. The Nashua School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A: 1 X.
2. The Nashua Teachers Union is the duly certified bargaining agent for teachers and other professional personnel employed by the District.
3. The Union and the District are parties to a collective bargaining agreement (CBA) for the period September 1, 1992 through August 31, 1996. That contract contains both a grievance procedure (Article III) and a management rights clause (Article XIII). Article 3.1 defines a grievance as "an alleged violation of a term or provision of the existing contract." Article 13.3 (B) provides that the school board has retained "all power, rights, authority, duties and responsibilities . . . to hire, promote, transfer, assign, retain, evaluate, renew or nonrenew, and to lay off employees. No employee who has taught in the Nashua School District for more than three consecutive years shall be disciplined, including discharge, without just cause...."
4. On April 2, 1996, Superintendent Joseph Giuliano advised teacher Anne "Juni" Pierce by letter that he would not be renominating her to a teaching position in the District for the 1996-97 school year. This notification was pursuant to RSA 189:14-a; Pearce was a teacher who had taught for more than three (3) years in Nashua, i.e. for more than twenty (20) years.

5. Pierce grieved the Superintendent's actions on April 3, 1996 whereby the Union's counsel, Emmanuel Krasner, forwarded the grievance to the Superintendent by letter of transmittal dated April 4, 1996. By letter of April 22, 1996, Giuliano advised Krasner that he had reviewed the grievance and denied it because "I have determined that my decision to non-renew Ms. Pierce is outside the scope of the CBA grievance provision."
6. Pierce requested and was granted a RSA 189:14-a hearing before the Nashua School Board. This was held May 13, 1996. The Board issued a five-page report in which it concluded that the contract language "excluded nonrenewal of staff from the grievance procedure." "There was general consensus that the nonrenewal of a 20-year staff person for reasons of job performance or failure to perform to job expectations was, in fact, discipline.... However, in this case, ...a majority of the Board agrees that the parties [to the CBA]...in negotiating the language of their collective bargaining agreement have specifically argued to exclude teacher non-renewals from the just cause provision." The Board then directed that the case be prepared for a RSA 189:14-a hearing on the merits.
7. The Union disagreed with the Board's conclusions in Item 6, above, and requested the American Arbitration Association to process the grievance to arbitration in letters of June 3, 1996 and June 11, 1996. By letters of June 14, 1996 and June 21, 1996, Assistant Corporation Counsel, Sonja Boyan [now Finney] protested the processing of this case to arbitration to the American Arbitration Association. Thereafter, the District filed the instant ULP seeking to stop the further processing of this matter to arbitration under the CBA.
8. At the conclusion of the hearing before the PELRB on September 10, 1996, it was moved, seconded and unanimously voted to take the Union's motions to dismiss, or alternatively, for summary judgment under advisement until receipt of the Union's response to the District's objections to those motions, with an additional hearing to be set if the PERLB's disposition of those motions is not dispositive of the pending complaint.

9. It is undisputed that the PELRB has the primary jurisdiction to determine arbitrability under Appeal of Westmoreland School District, 132 N.H. 103 (1989). Wrongful demands to arbitrate, if found to be such, are unfair labor practices. Nashua School District v. Murray, 128 N.H. 417 (1986).

DECISION AND ORDER

The PELRB has examined the contract language in question in earlier proceedings, Nashua School District v. Nashua Teachers Union, Decision No. 93-013 (March 2, 1993), otherwise known as the Marandos case. As here, the City brought an action to stop the arbitration of a grievance filed by a teacher, Marandos, who had received a non-renewal notice and requested a RSA 189:14-a hearing. After his appeal failed at the school board level (there is some confusion in the record whether the school acted as a grievance appellate body or as a RSA 189:14-a tribunal), Marandos filed for arbitration. The City claimed the matter was outside the scope of the arbitration clause of the CBA. The PELRB disagreed and ordered the parties to proceed to arbitration.

The pertinent contract language, from the 1988-92 CBA, in the Marandos case was:

The UNION recognizes the following responsibilities, rights, authority, and duties of the BOARD, except as they are modified by provision of this Agreement...to hire, promote, transfer, assign, retain, evaluate, renew or nonrenew, and to lay off employees. No employee who has taught in the Nashua School District for more than three consecutive years shall be disciplined, including discharge without just cause.

The "no employee who has taught in the Nashua School District for more than three consecutive school years shall be disciplined, including discharge, without just cause" language remains unchanged in the 1992-96 CBA. For whatever reasons, after receiving the PELRB's interpretation of this language in the Marandos case, the parties either chose not to renegotiate it or were unsuccessful in attempting to do so. It appears that there was ample time to do so as the 1992-96 CBA was not signed until March of 1995.

The standard we are required to apply is the "positive assurance" test that the CBA cannot be read to cover the dispute. Appeal of Westmoreland School District, supra. To the contrary, the language in question, on its face, suggests that unit members with three or more consecutive years of service are protected by a just cause standard, as agreed by the parties. While the District has argued that the language means something else, to the extent it should block the arbitration of the Pierce grievance, it has either not attempted to or been unsuccessful in its attempts to negotiate something different from our interpretation in Decision No. 93-013 involving the Marandos grievance.

As the parties are not in agreement about their interpretation of the Article 13.3 (B) language as it appears in 1996, we look to the meaning it conveys on its face, namely, the parties have agreed to a just cause standard for discipline, inclusive of discharge, for teachers and unit members with more than three consecutive years of service. The words, granting the just cause protections are obvious and, in our opinion, standing alone permit the parties to proceed to arbitration. When weighed against the "positive assurance" language of Appeal of City of Nashua, 132 N.H. 699 (1950) and Westmoreland, supra, there is no doubt that there is a just cause standard in the contract and that its application must be measured and adjudicated through the grievance procedure of the CBA when there is disagreement as to disciplinary measures imposed by the District.

The Union's Motion to Dismiss is GRANTED and the parties are directed to proceed with grievance arbitration on the matter of Pierce's nonrenewal.

So ordered.

Signed this 7th day of OCTOBER, 1996.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding. Members Richard Molan and William Kidder present and voting.