

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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BERLIN EDUCATION ASSOCIATION, Affiliated with NHEA/NEA	:	
	:	
Complainant	:	CASE NO. T-0201:1
	:	
and	:	DECISION NO. 79007
	:	
BERLIN SCHOOL BOARD, BERLIN, NEW HAMPSHIRE	:	
	:	
Respondent	:	
	:	

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APPEARANCES

Representing the Berlin Education Association:

John Fessenden, UniServ Director, NHEA/NEA  
Stephen P. Michaud, BEA  
Gerard Poulin, BEA

Representing the Berlin School Board:

Bradley F. Kidder, Esq., Counsel  
William B. Kingston, Chief Negotiator  
Ray Birt, Board of Education  
John Doherty, Board of Education  
Lawrence Dwyer, Board of Education

BACKGROUND

The Public Employee Labor Relations Board found on August 16, 1978, Decision No. 780032, that a grievance filed on March 15, 1978, signed by one, Stephen P. Michaud, constituted a valid filing under the existing agreement and the School Board was ordered to process Mr. Michaud's grievance in accordance with Article 16 of the existing contract.

On September 5, 1978, Attorney Kidder on behalf of the Berlin School Board filed a motion for rehearing and clarification, specifically on orders No. 1 and 2 and on Finding No. 6, which read as follows:

Order No. 1 "The grievance filed on March 15, 1978 signed by Stephen P. Michaud constitutes a valid filing under the contract."

Order No. 2 "A member of a bargaining unit may choose to be represented by someone other than him/herself."

Finding No. 6 "Stephen P. Michaud, a qualified teacher under the contract did in fact file a grievance on behalf of himself and others and the Superintendent did fail, as did the School Board, to process the grievance step by step as outlined in the contract."

Motion for rehearing was granted and held in the Board's offices on December 13, 1978. Evidence and arguments were presented by Counsel for the School Board in support of its position that by adhering to the language of the signed contract, Article 16, "Grievance", they did not breach the existing collective bargaining agreement regarding a grievance filed on behalf of a second party, contrary to that language of the agreement which specifically states:

ARTICLE 16 - GRIEVANCE PROCEDURE:

"A grievance to be considered under this procedure, must be initiated in writing by the employees (emphasis added) within ten (10) days of its occurrence, or within ten (10) days of when the teacher should have known of its occurrence."

FINDINGS

1. Evidence indicated that the grievance filed by Stephen Michaud was in fact filed on behalf of others. Testimony produced evidence that Mr. Michaud was not certified to teach primary grades and therefore could not have suffered a personal loss if the posting requirement had not been met, however, any violation of an existing agreement does in fact affect every member of the unit.
2. In a subsequent filing Mr. Michaud did sign the grievance as Executive Officer of the Association and indicated he was doing so "inasmuch as only individual grievances were allowed".
3. In the good faith negotiations held between the parties, an agreement as to the language and procedure of filing grievances was mutually agreed as follows:

"A grievance shall be a complaint by a teacher that there has been to him/her a personal loss or injury as a result of a violation or misapplication of any of the provisions of this agreement."

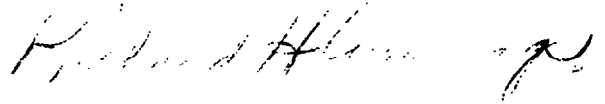
4. In accordance with the agreed procedure by and between the Berlin Education Association and the Berlin Board of Education, the party suffering the personal loss must initiate the grievance, however, once it is filed, the grievant may be represented by person, or persons, or his/her choice.

5. The representative from the affiliated association in the case of Berlin can represent the Berlin Education Association, however by a contractual agreement is prevented from personally filing unfair labor practice complaints; the proper party to filing the complaint is the President of the local association.
6. Grievance was dated September 15, 1977 and complaint filed with PELRB March 17th, two (2) days after the time limits of filing of such complaint in accordance with PELRB Rules and Regulations, Rule 4.1.

DECISION AND ORDER

After careful consideration and review of the evidence and testimony presented at both hearings, the Board finds that on initial examination, a grievance appears to exist and therefore reaffirms its previous order, however,

The Board directs that the grievance be referred to an arbitrator, under the provisions of the contract between the parties, with the express direction that the first findings for the arbitrator to make is whether the matter is arbitable after he has examined all of the facts under the terms of the contract.



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RICHARD H. CUMMINGS, Acting Chairman  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 28th day of March, 1979.

By unanimous vote. Richard H. Cummings, presiding. Members Anderson and Moriarty present and voting. Also present, Board Clerk, Evelyn LeBrun.