

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LACONIA EDUCATION ASSOCIATION	:	
	:	
Complainant:	:	CASE NO. T-0239:1
	:	
and	:	
	:	DECISION NO. 79020
LACONIA SCHOOL BOARD	:	
	:	
Respondent:	:	
	:	

APPEARANCES

Representing the Laconia Education Association:

David N. Smith, UniServ Director, NHEA/NEA
Dan Nason, Teacher
Ken Martin
Nancy Hemlin, Teacher
Richard Coggin

Representing the Laconia School Board:

Alan Lewis, Principal
Robert Musgrove, Superintendent of Schools
Harry Gale, Gale Associates

BACKGROUND

In May, 1977 the Laconia Education Association, hereinafter referred to as LEA, filed unfair labor charges against the Laconia School, hereinafter referred to as the School Board, alleging that specifically on April 29, 1977 certain teachers, Jane Taylor and Nancy Hemlin, scheduled a meeting with Alan Lewis, Principal of the Elm Street School. The purpose of the meeting was to discuss informally a number of grievances which had arisen at that school. Such informal discussion is provided for in Section 9.2 of the grievance procedure of the collective bargaining agreement between the LEA and the School Board.

On the morning of April 29th Mrs. Hemlin informed Alan Lewis, Principal, that Dan Nason, President of the LEA would be present at that meeting. Mr. Lewis thereupon refused to allow Mr. Nason to attend the meeting. Subsequent to that attempted meeting, Mr. Lewis issued letters of reprimand, dated May 4, 1977, which charged Mrs. Hemlin and Miss Taylor with insubordination for insisting that Mr. Nason attend. The two letters of insubordination were identical, a copy of which is part of the official record in this case. RSA 273-A:11, I (a) provides that public employees shall extend to the exclusive representative the right to represent employees in the settlement of grievances. Nothing in the statute limits the right to representation only at higher levels of the grievance procedure.

First off the School Board by its representative, Harry Gale of Gale Associates alleged that the Public Employee Labor Relations Board had no jurisdiction in this matter inasmuch as the contract had been negotiated outside of the New Hampshire law, Chapter 273-A. This objection caused for some continuation of the authorities and served to delay hearings. When PELRB finally convinced the representative of the School Board, Mr. Gale, that it did have jurisdiction over this matter, hearings were further delayed by the inability of one side or the other to meet hearing dates scheduled by the Board or by the mutual postponement.

The agreement between LEA and the School Board contains a section dealing with the disposition of grievances. Among other things, the grievance procedure clearly spells out resolutions of grievances by arbitration; however, close examination of the contract indicates that the arbitration aspect is clearly advisory and not binding and it specifically relates that the School Board shall have the final decision where arbitration has been called into play.

This case was finally brought to hearing on April 11, 1979. LEA in its presentation alleged that the School Board had denied certain members the right of representation at a meeting which had been requested with the principal, Mr. Lewis, by a Mrs. Hemlin. The principal had been approached by Mrs. Hemlin stating she wanted to discuss with him certain sensitive matters concerning the school. At this stage of the discussion there was no reference made to the possibility of discussing any grievance. Because of the apparent background of some restlessness on the part of the School Board and the Association with respect to the teachers' organized approach to certain things, LEA attempted to point out to the Board that Mrs. Hemlin and Miss Taylor were denied their rights of representation.

Evidence indicated that Mrs. Hemlin did in fact ask Mr. Lewis to meet with them. The meeting was established to take place at a time certain on April 29th. In the meantime Mrs. Hemlin had asked that Jane Taylor, another teacher at the Elm Street School, be present at the conference as she wanted some support in her discussions. The principal then requested to know the purpose of the meeting. Testimony indicated that after much discussion Mr. Nason, who was president of the LEA, was invited by Mrs. Hemlin and Miss Taylor to be present. When Mr. Lewis was confronted with the list of attendees representing the teachers for the meeting in his office he objected to Mr. Nason's presence. Mr. Lewis again attempted to elicit from Mrs. Hemlin and Miss Taylor whether or not a grievance would be filed or whether the nature of their visit was a grievance. Testimony of the individuals involved indicated that at no time up to this point was a grievance contemplated; however, upon the statement of the Principal that he saw no need for Mr. Nason's attendance at the meeting and his refusal to meet, he was advised by Mrs. Hemlin that it would be cause for the filing of a grievance if Mr. Nason was not permitted to attend. Essentially the meeting was for the purpose of discussing certain disturbing situations within the Elm Street School.

All during this discussion there was no indication of any grievance to be discussed. The only point of the meeting was to discuss some concerns which the teachers might have had. Testimony indicated that some of the concerns alleged at the hearing were somewhat frivolous in their nature. For example, certain of the teachers took exception to the placement of the

principal's desk in his office and took further exception to the fact that at certain times the principal closed the door to his office when in conference with other people and the teachers wanted an "In Conference" sign when his office door was shut. This Board feels that items of this nature do not properly require the expenditure of any substantial amount of time in considering them as concerns for the teachers.

At 3:30 p.m. on April 29th Mrs. Hemlin, Miss Taylor and Mr. Nason went to Mr. Lewis's office for the scheduled meeting. At this point the Principal asked if they were invoking the grievance procedure, Mr. Nason replied "No". Mr. Lewis then reiterated his position on the presence of Mr. Nason and again objected to his presence, whereupon Mr. Nason replied "I represent the teachers and I have a right to be here". Mr. Lewis then declined to meet with Mr. Nason on that day. There were conferences between the Superintendent, Mr. Musgrove; Mr. Lewis and the Assistant Superintendent, Mr. Blastos, and they suggested the question of a meeting with the teachers be tabled until the following Monday because he wanted to clear it with their superintendent whereupon Mr. Nason replied, "We want the meeting now and if you don't agree we'll file a grievance". Subsequent to this, on the same day, Mr. Lewis was advised by Mr. Gale that his position regarding the attendance of the meeting was fair and reasonable. At this point in time Mr. Nason then stated he was invoking level "A" of the informal grievance procedure; the grievance was filed in accordance with the contract and various levels of the grievance procedure were followed in detail. It was finally submitted to arbitration and the arbitrator indicated that the teachers in question were denied their rights of representation and found that the letters of insubordination issued on May 3rd to grievants Hemlin and Taylor were improper under the terms cited in their collective bargaining agreement. The School Board declined to accept the arbitrator's award and LEA submitted their case to this Board. Testimony brought out that the majority of the concerns of the teachers had been resolved with Mr. Lewis and such other concerns such as mailbox uses and meetings of unreasonable durations were strictly inhouse matters.

This Board has consistently declined to superimpose itself on grievance matters as long as the procedures and processes are followed in strict accord with the terms of the negotiated agreement. LEA presented several witnesses to substantiate their position in the case. Throughout the threads of testimony before this Board, a common weave appears to be that of some animosity between the teachers and the principal, Mr. Lewis, who had at one time been a member and an officer of LEA and had now switched titles and become a member of management. The negotiated contract between LEA and the School Board clearly deals with rights of teachers to be heard and clearly deals with rights of representation at any time. The contract further deals with informal meetings and evidence and intent of the parties to try to mutually resolve their differences in an informal manner whenever possible. There is in this case a clear lack of any real meaningful communications in this issue in an attempt to resolve the disagreement. The letters of reprimand issued by Mr. Lewis to Mrs. Hemlin and Miss Taylor received substantial discussion and analysis. The letters of reprimand which were identical in both cases are quoted below:

May 3, 1977

"Based upon written reports and conferences between myself and Superintendent Robert Musgrove, it is my duty to cite you for insubordination for your refusal to follow my instructions concerning not bringing Mr. Nason with you to a meeting between yourself and me held at 3:30 p.m. on April 29, 1977.

I am reluctantly forced to the conclusion that this was deliberate insubordination, since you could have exercised your right not to have the meeting at all in which case the matter of insubordination would be an irrelevant issue.

Yours Truly,

Alan Lewis
Principal

It appears to this Board that there were certain conflicts which had developed between the principal, who was once a part of the organization, certain members and the new leaders of the union. The School Board through Mr. Gale attempted to establish a case of harassment of the new principal on the part of the teachers in the union. This attempt was somewhat feeble in its nature and really was not persuasive. The basic issues to be resolved in this case are, (1) were teachers unjustifiably denied the right to representation and, (2) were the letters of reprimand in order.

As previously stated, this Board does not intend to second-guess grievance procedures or awards made thereunder provided they are made in strict compliance with the written agreement.

FINDINGS OF FACT

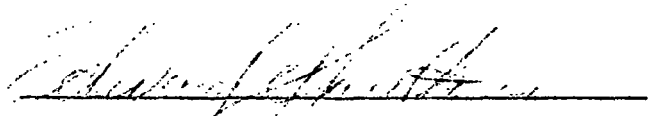
1. The Board finds that the teachers are in fact entitled to representation by anyone of their choice at meetings. As a general rule when differences occur between the teachers and management, the contract calls for grievances to be handled in an informal way. Absent resolution of concerns in the informal manner, the more formal procedure spelled out in Article IX of the existing contract specified precisely the procedure to be followed.
2. There was a definite breakdown in communication between the principal, the teachers, and the representative of LEA with respect to the meeting of April 29th.
3. Based upon the testimony presented, certain concerns were properly handled in the informal stages of the grievance procedure but others were petty and frivolous in nature and a detriment to good employee-employer relationship.
4. Once the matter did get into the mainstream of the grievance procedure, as spelled out in the contract, it was followed to the letter of the law set forth in the agreement.

5. Whereas neither party is bound to accept the arbitrator's award, there is no justifiable basis for a finding of unfair labor practice.

ORDER

After careful consideration of all the testimony by witnesses and written evidence presented by both parties, the Board rules as follows:

- A. The charge of unfair labor practice is hereby denied.
- B. The letters of reprimand issued by Principal Lewis to Mrs. Hemlin and Miss Taylor are to be removed from their personnel files and any reference to the letters discontinued.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 23rd day of August, 1979

Chairman Edward Haseltine presiding. Board members present and voting, Richard Cummings, Joseph Moriarty and James Anderson. Also present Board Clerk, Evelyn C. LeBrun.