STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

FALL MOUNTAIN REGIONAL SCHOOL DISTRICT PROFESSIONAL TEACHERS ASSOCIATION, NHEA/NEA Complainant v. FALL MOUNTAIN REGIONAL SCHOOL BOARD Respondent	CASE NO. T-0227:1 DECISION NO. 80040

APPEARANCES

Representing the Complainant:

Donald Murphy, UniServ Director, NHEA/NEA

Representing the Respondent:

Harry S. Gale, Gale Associates
John Menton, Assistant Superintendent

BOARD DECISION

This matter came on for a hearing before this Board pursuant to a complaint of unfair labor practice filed by Elsie Andrews. The essence of the alleged unfair practice was that the employer had violated the collective bargaining agreement. RSA 273-A:5, I(h).

The facts necessary to the decision in this matter are not essentially in dispute. During the spring of 1978, Mrs. Andrews was out of work for a period of several weeks due to a pregnancy. A dispute arose between the parties as to whether she was thereby eligible for sick leave under the terms of the contract then in force, or merely entitled to maternity leave without pay during that period of time.

The grievance procedure which was a part of the then contract, was utilized in full by the parties in an attempt to resolve this dispute. Although the arbitrator's award found in favor of Mrs. Andrew, the employer exercised its right under the contract to reject the finding of the arbitrator, and in accordance with the terms of the contract, such decision is final and binding.

The complainant in this case requests the Board to find an unfair labor practice based on a violation of the contract, on the authority of the arbitrator's award in her favor. Although we do not reject as a matter of law that this Board may find a violation, and thus an unfair labor parctice, where the employer has rejected an unfavorable finding following advisory arbitration, we hold that we are not compelled to do so in this case. The finding of an unfair labor practice based on violation of the contract should be reserved for those cases in which a clear and convincing violation occurs, not one based on ambiguous language subject to differing interpretations by the parties concerned.

Such is the case here· the pertinent language of the contract admits of some uncertainty in its application and interpretation to the instant case. Although the arbitrator has adopted the interpretation of the complainant, the grievance procedure negotiated by the exclusive representative of the employees accorded that finding only advisory weight, and consented to the decision of the employer being final and binding. As stated above, in matters of this nature, absent a clear and convincing violation of the contract, this Board will not disturb the exclusive nature of the grievance procedure as a remedy for such differences.

We are not unmindful of the decision of this Board in the matter of Laconia Education Association v. Laconia School Board, Decision No. 79020. Our decision herein is wholely consistent with the result in that case. It bears repeating that this Board will not hesitate to find an unfair labor practice where the employer has rejected the finding of an advisory arbitrator in a case where the contract is subject to only one reasonable interpretation, that being in favor of the employee.

For all the foregoing reasons, the complaint is hereby dismissed.

RUSSELL F. HILLIARD, ESQ., BOARD MEMBER

Signed this 30th day of October, 1980

By unanimous vote; Chairman Haseltine presiding, members Mayhew, Hilliard and Osman present and voting. Also present, Alternate Chairman Craig and Executive Director LeBrun