



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

OYSTER RIVER TEACHERS GUILD, NEA/NH

Complainant

v.

OYSTER RIVER SCHOOL BOARD

Respondent

CASE NO. T-0207:1

DECISION NO. 84-45

APPEARANCES

Representing Oyster River Teachers Guild, NEA/NH

Jo Campbell, UniServ Director, Region II

Representing Oyster River School Board

Robert P. Leslie, Esq.

Also present

John Parsons
Jay W. Simmons

BACKGROUND

On February 17, 1984 the Oyster River Teachers Guild, NEA/NH (Guild) filed an improper practice charge against the Oyster River School Board (Board).

The Guild charged that the Board during 1983 had refused to bargain the salaries paid to persons for "co-curricular activities" despite the fact that these had been negotiated since the 1979-1980 contract and, therefore, had violated RSA 273-A:5 I (a) (e) and (g).

The Board responded that it had not violated RSA 273-A since negotiations over "extra-curricular" activities are a permissive not a mandatory subject of bargaining and further counter-charged that the Guild did violate RSA 273-A:5 II (d) in refusing to remove extra-curricular pay from the bargaining table.

A hearing was held at the PELRB's office in Concord, N.H. on April 26, 1984 at which all parties were represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing the parties agreed to the following facts:

1. The Oyster River Teachers Guild, NEA/NH was certified by the PELRB on February 12, 1976 as exclusive bargaining agent for...

"all certified professional employees, employed by the Oyster River Cooperative School District, excluding principals and assistant principals..."
2. The School Board is under no obligation to employ members of the bargaining unit to fill extra-curricular activity positions; and,
3. of the forty-nine (49) separate extra-curricular activity positions, twenty-three (23) are filled by persons who are not members of the bargaining unit.

Witnesses testified and established to the PELRB's satisfaction that the following facts obtained:

1. The negotiations over extra-curricular pay dates back to 1973 and was first included in 1978 for the 1979-1980 contract
2. There is a renewal clause in the current (1983-1984) contract which reads:

"a. all terms and conditions of employment contained within this agreement applicable on the effective date of this agreement shall continue to be in force unless provided for in a successor agreement"
3. The contract also contains part B. of the recognition clause:

"the term "professional" as used in this agreement shall mean employees of the Oyster River Cooperative School District whose position requires certification by the State Board of Education; and,
4. No certification is required (no process exists) for extra-curricular activities; and,
5. Those who do the extra-curricular activities work do so voluntarily, they are not required, even though regular staff professionals are desired by the Board.

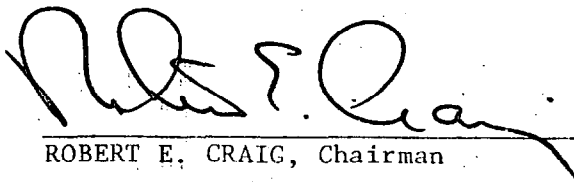
The Board argued that the subject of pay for extra-curricular work is a permissive subject of bargaining and is not mandatory (re: PELRB Decision No. 81-61) and that negotiating a permissive item does not convert it to a mandatory one (re: dissent in PELRB Decision No. 81-42) and that a public employer may properly refuse to bargain over a permissive subject (re: Appeal of International Association of Firefighters, 123 N.H. 404, 408).

The Guild argued that the contract provision for renewal, cited above, means that negotiations must take place on all items in that contract before they can be removed, or they remain in force.

We believe the Guild argument is compelling in this case, given the renewal clause in the current contract. We hold that by agreeing to the renewal clause the Board committed itself to negotiate about all items, including the extra-curricular activities pay and cannot unilaterally remove them from the negotiations and the bargaining table.

DECISION AND ORDER

- A. We find the Oyster River School Board guilty of an unfair labor practice violating RSA 273-A:5 I (e);
- B. We order the parties to continue negotiations over the disputed sections of the 1983-84 contract;
- C. We order both parties to report their progress to PELRB.



ROBERT E. CRAIG, Chairman

Signed this 21st day of May, 1984.

By unanimous vote. Chairman Robert E. Craig presiding; members Seymour Osman and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.