State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LITCHFIELD EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

     Complainent

   v.

LITCHFIELD SCHOOL BOARD

     Respondent

CASE NO. T-0283:4

DECISION NO. 86-46

APPEARANCES

Representing the Litchfield Education Association, NEA-NH:

  Marc Benson, NEA-NH UniServ Director, Region IV

Representing the Litchfield School Board:

  Robert P. Leslie, Esq., Counsel

Also in Attendance:

  Peter G. Dolloff, Superintendent
  Larry V. Burton, Assistant Superintendent
  Mark Genovesi, Principal Griffin Memorial
  Neil Macy, Professor, U-Conn and Negotiator
  Sheila Gorman, Member School Board
  Susan Chiocca, Teacher
  Cynthia Garside, Librarian

BACKGROUND

On February 3, 1986, the Litchfield Education Association, NEA-New Hampshire (Association) filed improper practice charges against the Litchfield School Board (Board) alleging unfair labor practices in violation of RSA 273-A: 5, I, (h) and (i). Specifically, the Association claims that the Board refused to grant sick leave to an employee who had requested maternity leave, contrary to the language of the contract thereby violating the existing agreement.

The Board denied any breach of RSA 273-A and stated it was simply carrying out past practice in its decisions.

A hearing was held in the PELRB office on May 15, 1986.

FINDINGS OF FACT

1. The Litchfield Education Association, NEA-NH is the exclusive representative for all permanent full-time teachers and

librarians;

(2)   On August 5, 1985, Susan Chiocca, a teacher at Griffin Memorial
        School in Litchfield applied for a "maternity leave" commencing
        on or about November 15, 1985 and lasting the remainder of the
        1985-86 school year.

(3)   On October 21, 1985, Mrs. Chiocca requested sick leave for eight
        weeks of medical disability as certified by a physician;

(4)   On October 3o, 1985, Mrs. Chiocca received a written response
        from Superintendent Dolloff stating that her request for "child
        rearing leave" (unpaid) had been granted by the School Board on
        August 21, 1985;

(5)   On October 31, 1985 Mrs. Chiocca initiated a grievance against the
        Litchfield School Board;

(6)   On January 10, 1986, the Litchfield School Board denied Mrs.
        Chiocca's grievance (final step);

(7)   The explicit language of Article V, Section E, "Child Rearing
        Leave", in the master agreement does not prohibit the use of
        sick leave benefits for pregnancy disability;

(8)   Article V, Section A, "Sick Leave" does not prohibit the use
        of sick leave benefits for pregnancy disability.

(At the hearing, a motion from the School Board to limit testimony
 to procedural questions only was denied.)

(9)   Extensive testimony was received from expert witness, Professor
        Neil Macy of the University of Connecticut, who was a negotiator
        for this contract to the effect that previously used categories
        of "maternity leave" had to be changed to "child rearing" leave
        to meet new legal guidelines and deal with "sick leave" separately.
        Professor Macy testified it was his interpretation of the contract
        that while on (unpaid) "child rearing" leave, other benefits
        were "stored" and if the individual returned to work they could
        claim "stored " benefits but if they did not return they lost them.

        Under questioning, Professor Macy testified that his understanding
        was that those on leave of absence had no benefits but that an
        individual could get sick benefits before going on "child rearing"
        leave but not after beginning such leave.

(10)   Superintendent Dolloff testified that it was the Board's practice
        not to grant "sick leave" in anticipation of an illmess but only
        when illness occurs and that usually one was expected back to work
        after "sick leave". But the issue of combining the two kinds of
        leave is not clear as to past practice.

(11)   Assistant Superintendent Burton, who took part in the bargaining,
        testified that his understanding was that the negotiations did not
        focus on combining "sick leave" and "child rearing" leave but
        rather focussed on the "event", (the child's birth or adoption
        per se) in terms of the marking period during the school year
        (the language specifying "prior to birth" is not in contract).

With respect to the Association's request for findings of fact and rulings of law:

1-8 granted;
9-12 granted, exceptions found above;
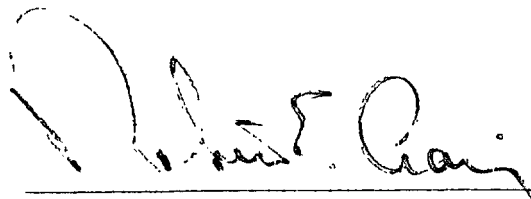13-16 granted

RULINGS OF LAW

The language of the contract is not crystal clear as to whether "child rearing" leave can be combined with "sick leave" in some fashion. What is clear is that provision for "child rearing" leave is made and in separate sections "sick leave" provisions are made, including a "sick leave bank", a mechanism for accumulating sick days against a prolonged illness, as well as the accrual of 15 sick days per annum to a maximum of 125 days.

It is clear to PELRB that the provisions for sick leave days per year, and the accumulation in various forms of these sick days constitute a benefit under the contract and is a form of compensation under the contract which the employee has earned by virtue of continued satisfactory employment. As such, this benefit should be available when the employee needs it, regardless of whether the employee is or is not on "child rearing" or other leave status. The accumulation of earned benefits serves to "vest" those benefits to the employee, for their use, when they need and can justifiably claim they are provided in the contract.

DECISION AND ORDER

The Litchfield School Board is guilty of an unfair labor practice under RSA 273-A: 5, I, (h) (i) in unilaterally adopting its interpretation of the contract provisions and denying Mrs. Chiocca her right to accumulated sick leave under her master contract, and

The Litchfield School Board is ordered to pay Mrs. Chiocca sick pay for that period of time for which she has been certified by her medical doctor as sick, and otherwise make her whole.

ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 17th day of July, 1986

By unanimous vote. Chairman Robert E. Craig presiding. Members James Anderson, Seymour Osman and Richard Roulx present and voting. Also present, Evelyn C. LeBrun, Executive Director.