



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON EDUCATION ASSOCIATION

Complainant

v.

LEBANON SCHOOL BOARD

Respondent

CASE NO. T-0240:11

DECISION NO. 87-32

APPEARANCES

Representing the Lebanon Education Association:

John Fessenden, UniServ Director

Representing the Lebanon School Board:

Daniel Whitaker, Superintendent

Also Appearing

James Allmendinger, Esq.

BACKGROUND

The Lebanon Education Association ("Association") requested a declaratory judgement of PELRB on December 17, 1986. The specific case includes the filing of a grievance, as specified by the collective bargaining agreement, which grievance eventually was brought to the Lebanon School Board ("Board"). The Board refused to hear the grievance in executive session, saying that the grievance was brought by the Association and not by an individual and would be properly heard in open session. The Association disputes this and agrees that it had a right to have the grievance heard in executive session because:

- (a) RSA 273-A requires negotiations in private and since RSA 273-A requires a "workable grievance procedure" this is protected by law;
- (b) Article II of the collective bargaining agreement protects the individual from..."intolerance, restraint, or coercion by the Board"....;
- (c) Article VII, "Teacher's Rights" stipulates the agreement contract be applied so as to deprive employees of "advantages" previously enjoyed;
- (d) A "past precedent" has been established since all of the five (5) previous grievances have been heard by the Board in executive session;

- (e) The Board is making a grievance procedure unworkable, contrary to the requirement of RSA 273-A;
- (f) in addition, the Association claims that "chaos will result" if the Board can pick and chose which grievance they will hold open to the public

The Lebanon School Board, on December 21, 1986, joined the Association in requesting a declaratory judgement regarding grievance processing and N.H. RSA 91-A, the so-called "right to know" law. The School Board argues that:

- (1) Grievance processing is not collective bargaining and therefore, not automatically exempt from the requirements of N.H. RSA 91-A;
- (2) Grievance processing which involves named individuals whose interests might be harmed may request executive session utilizing exemptions under N.H. RSA 91-A:3, II;
- (3) Provisions of a collective bargaining agreement negotiated under RSA 273-A cannot be construed as superceeding the public interest under RSA 91-A;
- (4) In the present case, the grievance filed by the Association involves no individuals but rather a public issue discussed in a fact-finder's report (the so-called lengthening of the school day);
- (5) The School Board is required by RSA 91-A to hear evidence and reach decisions in open session unless an exemption is warranted under the defined conditions in RSA 91-A:3,II

A hearing was held on February 19, 1987 at PELRB's office in Concord, N.H. with all parties represented.

FINDING OF FACT

- (1) A grievance was filed by the Association's negotiations team, Spokesperson Chris Mayer, and the grievance was properly processed to the School Board level.
- (2) At the School Board level, the Association requested an executive session but the School Board declined the request on advice of Counsel relative to the requirements of RSA 91-A
- (3) In five (5) previous grievances, all involving individuals, the School Board had permitted an executive session.
- (4) The grievance in case here involves a dispute over recent action taken by the School Board to lengthen the student's day (not the teacher's) in conformity with new State guidelines. The dispute centers on contract language requiring the teachers to be present at school during certain hours and new arrangements for students and teachers during those hours.

RULINGS OF LAW

- (1) The central question which the Association argues is that the grievance process is part of the "negotiations" between the parties and as such should be held to be excluded from the requirements of RSA 91-A and conducted in executive or closed session. We do not concur. While it is true that the parties

may negotiate over a grievance, unlike the negotiations surrounding a new contract, they are not required to do so. Indeed, even the most "workable" of grievance procedures anticipates obstinacy and refers grievances to an outside arbitrator for a binding resolution of a contract interpretation dispute. To do otherwise is to give either side a virtual veto over the interpretation of the contract they have already agreed to. If either side felt that the contract negotiations, resulting in a signed agreement, did not go the way they had hoped, under the "grievance is negotiation" principle, they would only have to raise or implement their interpretation to force the other side to re-open negotiations (on that issue) on an already signed contract. We concur with the Association that grievance hearings are part of the collective bargaining process but they are not necessarily "negotiations" per se. The act recognized stages in the collective bargaining process, such as, requiring good faith bargaining for a contract, mediation and factfinding as impasse resolution mechanisms and requires a "workable" grievance procedure in the finished contract to resolve disputes arising under the contract.

- (2) The above should not be construed to mean that we are opening the collective bargaining negotiations to the public. We are not. These matters have been amply addressed elsewhere. We are here confining our findings to the case at hand and specifically, the grievance process and the requirements of RSA 273-A as they interact with the requirements of RSA 91-A.
- (3) Insofar as all previous grievances at the School Board level were heard in executive session, it is clear that a "past practice" has been established and normally should not be disturbed. However, RSA 91-A appears to require the meeting to be open since it does not fit any of the stipulated exceptions, not being an individual's grievance nor a negotiating session; further, interpretation of RSA 91-A, "Right-to-Know" statute is not within PELRB's jurisdiction.

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

Granted - #1, 2, 7, 8, 11.

Denied - #3, 4, 5, 6, 9, 10, 12.

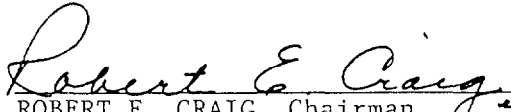
And supplemental request for findings:

#1 and 2 are granted; #3 is denied and #4 is neither granted nor denied.

DECISION AND ORDER

1. The School Board may conduct its hearing on the instant grievance in an open hearing, abiding by the requirements of RSA 91-A and will not be in violation of RSA 273-A because such a hearing will not be considered automatically "negotiating" under either statute. If "negotiating" does commence then, the session should become closed unless both parties agree to have it open.

2. The School Board is not guilty of a violation of RSA 273-A and the complaint is dismissed.


ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 12th day of May 1987.

Chairman Robert E. Craig presiding. Members Richard Roulx and Daniel Toomey present and voting. Also present Evelyn C. LeBrun, Executive Director.