



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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DAVID B. STAPLES

Complainant

v.

CONCORD EDUCATION ASSOCIATION/NEA-  
NEW HAMPSHIRE

Respondent

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CASE NO. T-0220:14

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CONCORD EDUCATION ASSOCIATION/NEA-  
NEW HAMPSHIRE

Complainant

v.

CONCORD SCHOOL DISTRICT (DAVID B.  
STAPLES)

Respondent

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CASE NO. T-0220:15

DECISION NO. 89-08

### APPEARANCES

#### Representing Concord Education Association/NEA-New Hampshire:

James Allmendinger, Esq., Counsel  
Waldo Cumings, UniServ Director

#### Representing David B. Staples:

James E. Morris, Esq., Counsel  
David B. Staples

#### Representing Concord School District:

Edward M. Kaplan, Esq., Counsel  
Mark Beauvais, Superintendent

#### Also appearing:

Cynthia LaPrad  
Ed Matava  
Joyce Read  
Jim Welch  
L. DeLacey  
Fred P. Place  
Priscilla Giles

### BACKGROUND

On October 4, 1988, David B. Staples a retired teacher of the Concord School System brought before the PELRB (Board) a complaint against the Concord Education Association (Association) for failing to adequately represent him with respect to the payment of certain separation benefits due an employee upon the completion of 20 years of teaching in the Concord School System.

The Concord Education Association on October 21, 1988 filed unfair labor practices against the Concord School District (District) alleging that if anyone was involved with any monetary payments with respect to the Staples' case, it would be the District and as such it should be named as a respondent. By mutual consent, the parties agreed to have the charges heard as a consolidated case.

Hearing in this matter began on November 29, and continued on December 1, 1988 at the offices of the PELRB in Concord, New Hampshire.

In opening statements Atty. Allmendinger, on behalf of the Association, concluded that the focus of the case was the interpretation of the language which specifically refers to "completion of 20 years of service" prior to the payment of certain benefits. He stated that both the Association and the District were clear in what they had negotiated in the contract and that there could be no misinterpretation of the language negotiated and duly signed.

Atty. Kaplan for the District indicated that they agreed with the opening statement of Atty. Allmendinger that as the case evolved around the interpretation of a section of the contract that dealt with certain benefits upon retirement.

Witness David Staples testified that he had been a elementary counselor for 31 years, the last 20 years spent in the Concord school system; testified as to his involvement as chairperson of the labor negotiating committee and on the sub-committee involved with fringe benefits for a period of three years. He indicated that he had talked to Mark Beauvais, Superintendent of Schools, that he probably would consider retiring after the '86-'87 school year because of certain medical problems but that his health had stabilized and he had decided not to retire at that specific time. After he had reviewed the newly negotiated contract it meant substantially more to him at the expiration of 20 years. On February 1st, he was assigned to the Kimball School under the principal Ken Cogswell. He advised principal Cogswell that he was thinking of retiring, Mr. Cogswell advised him that if he was, he would like to know about it because his wife was interested in pursuing the vacancy created by his retirement. The date of March 1 of the new year appeared to be important because it was that time that the teachers received their contracts and had to reply either in the affirmative or negative as to whether or not they would accept the contract for the ensuing year. Sometime late in February Mr. Staples' began to make inquiries of various people as to the language of the contract and benefits that would accrue to him upon retirement. During this period of time Mr. Staples' had discussions with Mr. Waldo Cumings, NEA UniServ Director for that area. When reduced to its simplest form, according to witness Staples' the issue in this case is really the interpretation of certain contract language which was negotiated between the District and the Association for a three (3) year period from 1987 to 1990. The particular section in controversy is that dealing with separation benefits. Said paragraph is contained on page 7 of the existing contract under the subtitle "E" Separation Benefit quoted as follows;

"the District will pay certified personnel who terminate employment voluntarily, are laid off or die based upon the following schedule: after five (5) complete years to twenty (20) complete years of actual teaching in Concord, 35% of unused sick leave. After twenty (20) complete years of actual teaching in Concord 40% of the unused sick leave."

Mr. Staples' had completed his 20th year in June of 1988. An interpretation of the above Separation Benefit to mean that after twenty (20) complete years of teaching he would be entitled to 40% of his unused sick leave, versus the 35% set forth in the second sentence of the Separation Benefit paragraph. The Separation Benefit paragraph goes on to specify the per diem rate of pay under certain circumstances of unused sick leave.

During the course of the hearing much testimony was offered with respect to certain advice received by Mr. Staples' from varying principals, administrative personnel in the District and the Superintendent with respect to the interpretation of the particular separation benefit.

The real issue again was down to interpretation of whether or not a person has to complete more than 20 years of service in order to receive the 40% of the unused sick leave or whether it stops at 20 years.

During this period, Mr. Staples' attempted to file a grievance with respect to the interpretation of the language and the grievance was denied by the Association saying that they had agreed upon the interpretation of the language and therefore would not pursue the grievance.

Testimony in this case revealed that Mr. Staples' had been advised on several occasions by different individuals both in the union and in the administrative offices of the school district that in order to qualify for the 40% of the unused sick leave, that he would have to start his teaching in the 21st year. There was however, no requirement that a 21st year be completed in order to qualify for this benefit, but the interpretation placed upon it by the Association and the District was this had to be done. Mr. Staples' indicated that he could not in good conscience sign a contract for the succeeding year in order to meet the 21st year requirement as interpreted by the Association and would let his letter of retirement submitted on February 16, 1988 stand.

Testimony established definite facts that Mr. Staples' had received several interpretations as to the 20 year clause in the agreement. Some indicating that once the 20 years was completed he would be entitled to 40% of the unused sick leave and others indicated that he should at least accept it and sign the contract for his 21st teaching year and then offer his letter of retirement. It appears that Mr. Staples' was adequately informed of the situation with respect to his entitlement by both the District and the Association and further evidence indicated that because of his past activities as a member of the negotiating committee and as an active participant in the Association's business, that he should be familiar with the language of the contract and had been unwilling to accept the interpretations that he received both from the Association and the superintendent. Staples' again stated that the Association had disposed of a grievance filed by him and the reason for the non-pursuit was not available to him.

Waldo Cumings of NEA-New Hampshire testified as to several conversations he had with Mr. Staples' concerning his potential retirement letter and some of the activities that he had discussed with his headquarters, NEA-NH, more specifically with its Atty. James Allmendinger. Much evidence was presented at the hearing by representatives of the Association and the District as to the negotiating process and the discussions that had been taken place between the parties at the table.

In the final analysis both the district through its Attorney, Mr. Kaplan, and the Association through its Attorney, James Allmendinger, indicated that the subject of 20 year retirement requirement was specifically understood by the parties without any question; i.e., that for a person in order to participate in the 40% of the unused sick leave in accordance with the language of the contract must be employed in the 21st year. This evidence was totally substantiated and it was generally known by members of the negotiating committee of which Mr. Staples' had been a participant and others that such was a requirement.

Testimony further indicated that there had been some problem in the transcription of the negotiated contract and the end result of the final printed circulated contract. The error was not of such importance as to influence the conclusion that all parties participating knew the intent and the obvious results of the negotiations. The Association had advised Mr. Staples' of its position in this matter as had the administrative personnel of the District. While on reading the language of the third sentence in paragraph E, page 7 of the master contract entitled "Separation Benefit" which reads;

"after twenty complete years of actual teaching in  
Concord, 40% of the unused sick leave can be  
interpreted in more than one way",

however, this Board places great reliance upon the testimony of the witnesses as to the intent of the negotiation and the end result of the contract language.

This is one case before this Board where the parties to the negotiations are in total agreement as to the meaning of the language entered into by the parties and this Board further places great reliance upon this testimony and the participants in the negotiations in making its final decision in this matter.

#### FINDINGS OF FACT

After reviewing the testimony at great length and considering the two cases as a consolidated case and reviewing the exhibits presented, this Board makes the following findings of fact of its own;

1. The parties negotiating the existing contract were in agreement as to the meaning of the language contained in Paragraph "E", page 7 dealing with separation benefits.
2. Mr. Staples' was adequately advised by both the Association and District as to the requirements and options open to him before and after submitting his letter of retirement.
3. More caution should be taken by the parties in future contracts dealing with separation benefits so as to be more specific.

ASSOCIATION'S REQUESTS FOR FINDINGS:

#1,2,3,4,5,6,7 Granted.

#8 Granted, with qualification, Mr. Cumings indicated to Mr. Staples' he thought Staples' had a good case.

#9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32 Granted.

#33 Granted in part. Denied in part. The process of grievance may depend on contract negotiated language.

#34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52 Granted.

#53,54 See decision.

#55,56,57,58,59,60,61 Granted.

#62 See decision.

ORDER

PELRB hereby dismisses the unfair labor practice charge by Mr. Staples' against the Concord Education Association/NEA-New Hampshire.

PELRB hereby dismisses the unfair labor practice charge against the Concord School District.

Signed this 24th day of February, 1989.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard E. Molan, Esq. and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.