



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD SCHOOL DISTRICT

Complainant

v.

CONCORD EDUCATION ASSOCIATION/NEA-
NEW HAMPSHIRE

Respondent

CASE NO. T-0220:16

DECISION NO. 89-70

Representing Concord School District:

Edward M. Kaplan, Esq., Counsel

Representing Concord Education Association/NEA-NH:

James Allmendinger, Esq., Counsel NEA-NH

Also appearing:

Mark E. Beauvais, Supt., Concord School District
Wally Cumings, UniServ Director NEA-NH
Stacey Peters, NEA-NH
Sandra Sweatt, C.E.A.
Joyce Read, C.E.A.
Christopher MacLeod, C.E.A.
Jim Welch, C.E.A.
Lionel E. DeLacey, C.E.A.
Arthur Sweatt

BACKGROUND

On March 22, 1989, the Concord School District (District) filed an improper labor practice charge against the Concord Education Association/NEA-NH (Association) charging the Association with filing a grievance on behalf of Sandra Y. Sweatt, a teacher at the Walker Elementary School, who allegedly used improper physical force in disciplining a student, and further that Sweatt was first suspended then discharged in accordance with RSA 189:3 and the action taken against Sweatt was not a grievable issue under their existing collective bargaining agreement. The remedy requested, an order from this Board directing the Association to cease and desist pursuance of the grievance.

By way of answer to the District's charge the Association cites the agreement (contract) between the parties covering the period of 1987-1990 specifically section IV dealing with Grievance Procedures which process culminates in its resolution by an arbitrator which is binding on the parties and further refers to the provision in the contract "F" entitled Discharge, Discipline or Reprisal:

"No certified employee will
be discharged or reprimanded
except for just cause, as long
as these provisions does not
violate state tenure law."

The Association further responds to the charge that grieving the issue is grievable and the agreement provides for both grievance procedures and arbitration of said grievance and filed counter charges of unfair labor practice against the District for failure to process a grievance thereby denying Sweatt her rights to the process contained in the CBA.

Hearing in this matter was conducted May 4, 1989 at the Board's office in Concord, New Hampshire.

In opening statements Atty. Kaplan for the District motioned to stay the hearing pending possible decision in cases before the Supreme Court (Westmoreland Case). The motion was neither granted nor denied but the Board stated it would take due notice of any court decision which might affect this case. Atty. Kaplan then requested the Board limit testimony only to the issue of arbitrability. The Association wanted to arbitrate two matters, "suspension and eventual non-renewal of contract and discharge."

Board member Anderson stated his reading of the tenure law to cover three levels of action, dismissal, non-renewal and non-reelection and believed the issues were addressed in Section 1 of the bargaining law 273-A.

Witness Mark Beauvais, Superintendent of Schools testified as to his experience with teacher non-renewals, discharge and grievance procedure and his negotiating history for the District but never recalled any negotiations covering non-renewals and responded to Member Anderson's questions regarding the contract language dealing with discipline and discharge and the difference in RSA-189 which deals with dismissal and discharge.

Witness Lionel DeLacey recited the history of his long experience in negotiating for the teachers specifically V Section F dealing with just cause provisions negotiated in 1977 and 1978 and continued in succeeding contracts. His interpretations of the word discipline in the present contract includes any form of discipline:

"Dismissal happens generally
during the school year and
non-renewal happens at end
of school year."

Witness Waldo Cumings Regional Director NEA/NH testified as the co-chair of negotiations with the District with specific reference to grievance procedure language and his understanding that non-renewal was part of the grievance procedure and his version of an arbitration proceeding responsibility to look beyond the language for intent of the parties. The cases of Brown v. School Board and the Watson case were cited.

In closing statements Atty. Kaplan for the District stated that the District objected to an arbitrator making a decision to relieve a teacher whose behavior might at some time injure a child, question of liability and that he felt that the Department of Education should deal with such cases not an arbitrator.

FINDINGS OF FACT

1. The CBA contains Section IV entitled Grievance Procedure as follows:

A "grievance" is a claim based upon the interpretation, meaning or application of any of the provisions of this Agreement. Only claims based upon the interpretation, meaning or application of any of the provisions of this Agreement shall constitute grievances under this Article.
2. The above section of the CBA clearly states that any claim must be based on interpretation or application of some contract provisions.
3. Clearly the CBA in existence deals with Discharge, Discipline or Reprisal. (Paragraph F page 21)
4. The Association considers the action by the District with respect to Sandra Sweatt as grievable.
5. The Westmoreland case cannot serve as a guide in this case as this case involved a tenured teacher and the Westmoreland case involved a non-tenured teacher.
6. The question of disciplinary action taken within the terms of the CBA, whether justified or not should be first explored thru the grievance procedure.
7. RSA-189 deals directly with circumstances of non-renewal and dismissal of a teacher.
8. The District offers to process the grievance with respect to the limited issues of Mrs. Sweatt's discharge for the remainder of the 1988-89 School year, however, the question in this case is broader than specified and involves the question of interpretation of whether actions are disciplinary within the meaning of the CBA.
9. The parties interests can best be served by strict application of the grievance procedure.

ORDER

PELRB finds NO unfair labor practice by either party, however, the parties are ordered to process this case in accordance with the CBA grievance procedure.

Signed this 19th day of October, 1989.


EDWARD J. HASELTINE
Chairman

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