



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE FEDERATION OF  
TEACHERS

Complainant:

v.

PROFILE FEDERATION OF TEACHERS and  
NEA-NEW HAMPSHIRE

Respondent

CASE NO. T-0373:4

DECISION NO. 90-76

#### APPEARANCES

##### Representing New Hampshire Federation of Teachers:

Emmanuel Krasner, Esq., Counsel

##### Representing Profile Federation of Teachers & NEA-New Hampshire:

James F. Allmendinger, Esq., Counsel

##### Also appearing:

Thomas O. Wood, AFT  
Edward Phaneuf, NHFT/AFT  
Peggy J. Fujawa, PFT  
Philip R. Fujawa, PFT  
Theodore G. Wells, Jr., NEA-NH  
S.M. Cushman, NHFT

#### BACKGROUND

On March 8, 1990, New Hampshire Federation of Teachers, AFT, filed an unfair labor practice against Profile Federation of Teachers and NEA-New Hampshire alleging that the Profile Federation of Teachers, NHFT, AFT is the certified bargaining agent for the teachers in the Profile School System; that they had completed negotiations for a new contract for the bargaining unit after going thru a costly mediation process, that after the new contract had been negotiated and after the window period for election for bargaining representative had passed, the Profile Federation of Teachers by letter of December 20, 1989 informed the New Hampshire Federation of Teachers AFT, that it would disaffiliate with the New Hampshire Federation of Teachers AFT if such was allowable by law and would enter into a service contract with the NEA-New Hampshire for assistance in acting and performing the duties of the bargaining representative. Such Action, they alleged, clearly contravened the statutory scheme provided for election of the collective bargaining

representative and such action violated the rights of the exclusive representative. They further stated that the action of the parties taken after the window period had closed and after negotiation for a new contract had been completed and agreement signed constituted an unfair labor practice under 273-A.

NEA-New Hampshire in its response basically admitted the facts of the case but denied that its action was in contravention of the statutory scheme and cited Rule Pub 301.05 which allows organizations to choose affiliates without resorting to a PELRB election; that the statute grants rights only to employee organization and not to statewide parent organization such as NHFT; that no specific ULP had been made under 273-A:5; and, requested a dismissal of the complaint or as an alternative, conduct a representative election pursuant to Pub. 301.05.

Hearing on this matter was held on May 3, 1990 at the PELRB office in Concord, New Hampshire.

Attorney Krasner for the complainant in opening statements cited Hinsdale and Dover cases, that proper action was not taken during the window period and that NEA had not exercised its rights at the proper times.

Attorney Allmendinger for NEA in his opening stated that they were seeking PELRB's approval for the change in affiliation. He also cited the Hinsdale and Dover case and stated that the teachers' vote for the change of affiliation was 18 to 2 in favor of the change and the next window period was 1-½ years away and the first possible time for an election would be in September 1991 and that there were no specific ULP violated and none cited in the filing.

Witness Edward Phaneuf, President of AFT testified as to the actions of his Executive board; the factfinding process preceeding the completion of the negotiations; the eventual signing of an agreement and the fact that AFT had not received any payment called for by the contract since January.

Witness Peggy Fujawa indicated a dissatisfisfaction among the teachers with the service of the AFT representative and that both representative of NEA and AFT had made presentations at the teachers' meeting prior to the 18 to 2 vote.

Witness Philip Fujawa, President of the Profile Teachers Association testified as to the last negotiations and agreement which had been approved May 9, 1989 between the Profile Teachers Association, NHFT, AFT and the Profile School District.

Witness Wells offered testimony that the teachers organization at the local level was intact and that the local association had the right to affiliate with any organization of its choice.

The issue presented to PELRB in this case is a simple one and clearly defines itself. Is a contract duly negotiated in good faith between the parties binding on those parties without charge during the life of the contract and can changes only be made in the certified representative at times specified by law or rule?

FINDINGS OF FACT

After considering the oral testimony and written exhibits, the Board makes the following findings:

1. The Profile Federation of Teachers NHFT/AFT, Local 4401, negotiated the existing bargaining agreement covering the period September 1, 1989 through August 31, 1992 and that a representative of AFT was a part of the negotiations.
2. A window period in which any parties could petition for a representative election in this case was from July 6, 1988 to September 4, 1988 no one filed for representation during that period.
3. AFT represented the certified bargaining unit by acting as Chief negotiator for the Profile Federation of Teachers.
4. The fact that the AFT representative negotiated the 3-yr contract for the Profile Federation of Teachers, at their request, is evidence that no change in affiliation was contemplated at that time.
5. Rule Pub 301.05 permits changes in affiliation under certain circumstances and in this case for NEA to hold that the Profile Federation of Teachers did negotiate the agreement independantly from AFT is not sustainable as the agreement reads;

"I. Recognition. A.

The Profile School Board recognizes the Profile Federation of Teachers, Local 4401, American Federation of Teachers, New Hampshire Federation of Teachers, AFL-CIO as the sole bargaining agent in accordance with the provisions of RSA 273, 273-A for all teachers, nurses, librarians, counselors of the Profile School District."

6. The employee organization in this case is the Profile Federation of Teachers Association, Local 4401, AFT, NHFT and as such is considered a party to the contract.
7. The subject of dues is an underlying issue in this case and must be dealt with in accordance with the language of the agreemeent and we hold that the Profile Federation of Teachers NHFT/AFT must dispose of this issue in accordance with established procedure in the agreement, specifically the Profile Federation of Teacher must have the concurrence of its affiliate before changes can be made.
8. Both organizations AFT and NEA claim close ties and association with locals when it appears to best suit their purposes depending upon the issues presented.

9. A change in affiliation can be made during the appropriate window period in accordance with RSA 273-A and under certain circumstances under the Board's Rules and Regulations.
10. The Board finds that an election is warranted in this case and it exercises its option to do so.

ORDER

- A. The parties are obligated to the contract as negotiated in all respects and the Profile Federation of Teachers, Local 4401, AFT, NHFT remains the exclusive representative pending the outcome of the PELRB election.
- B. In accordance with Pub. 301.01, PELRB orders that an election be held as expeditiously as possible to determine the wishes of the teachers in the Profile School District.

Signed this 22nd day of August, 1990.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.