



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEWFOUND AREA TEACHERS ASSOCIATION,  
NEA-NEW HAMPSHIRE

Petitioner

v.

NEWFOUND SCHOOL BOARD

Respondent

CASE NO. T-0270:13

DECISION NO. 90-87

#### APPEARANCES

##### Representing the Newfound Area Teachers Association/NEA-NH:

Jan Paddleford Loto, UniServ Director

##### Representing Newfound School Board:

Gary W. Wulf, Consultant

##### Also in attendance:

George A. Corrette, Superintendent  
Robert B. Simpson, Administrator S.D.  
Wally Cumings, NEA-NH  
Nils Larson, School Board  
William McLane, N.A.T.A.

#### BACKGROUND

On October 13, 1989, the Newfound Area Teachers Association/NEA-NH (NATA), filed unfair labor practice charges against the Newfound School Board (Board) for refusing to bargain in good faith by unilaterally establishing and implementing a "no smoking" policy which changed terms and conditions of employment while negotiations were ongoing with the exclusive representative.

Hearing was held on February 22, 1990 at the PELRB office in Concord, New Hampshire.

#### FINDINGS OF FACT

1. The parties had been engaged in negotiations for over a year and were awaiting factfinding.
2. Members had always been allowed to smoke in designated areas in prior years.

3. The subject of smoking was being negotiated by the parties during the Fall of 1988 and continued throughout the '88-'89 school year through impasse and during several mediation sessions.
4. On July 10, 1989, the Board unilaterally implemented a new "non-smoking" policy and refused to negotiate the issue further. The policy banned smoking in all district buildings, vehicles and facilities effective September 1, 1989.
5. RSA 155:45, V states: "Effectively segregate smoking" "means to designate areas where smoking is permitted and areas where smoking is prohibited so that smoke from the smoking areas does not cause harm, discomfort, or annoyance to persons in the no smoking areas."
6. The intent of the 1981 amendment is to protect public health and the environment by prohibiting smoking in enclosed public areas, except in designated smoking areas.

DECISION AND ORDER

PELRB finds the Board guilty of unfair labor practice for unilaterally changing an existing policy on smoking and ORDERS the parties to return to negotiations in an effort to reach agreement on a designated area.

Report of compliance to this order should be submitted in writing no later than October 15, 1990.

Signed this 11th day of September, 1990.

  
JACK BUCKLEY  
Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and James C. Anderson present and voting. (Vote taken prior to Mr. Anderson's resignation from the Board).



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DECISION NO. 90-87  
(Corrected)

#### DECISION AND ORDER

On September 11, 1990, Decision No. 90-87 was issued finding the Newfound School Board guilty of unfair labor practice for unilaterally changing an existing policy on smoking, ordering the parties to return to negotiations in an effort to reach agreement on a designated smoking area and ordering a report of compliance no later than October 15, 1990.

Subsequent to the issuance of Decision No. 90-87, the representative for the School Board filed a request for a 30-day extension on compliance in an effort to avoid the possibility that the matter could complicate the consideration of the current tentative agreement and also be more cost-effective for both parties relative to compliance.

Petitioner objected to the request for extension stating the matter could be prolonged as long as 1992 or later. In addition, Arbitrator David Randles found that the School Board had violated the CBA when it restricted the use of employees' planning time by prohibiting smoking during those planning periods.

Decision 90-87 was issued in error as a review of the taped hearing held February 22, 1990 revealed that upon motion by them PELRB member, James C. Anderson, PELRB unanimously dismissed the case pending a resolution of the grievance by Arbitrator David Randles under advisory arbitration.

The Association representative stated that the case dealt with a unilateral change in terms and conditions of employment in negotiations which was not the issue before the arbitrator. Issue being grieved was the planning time restriction not the smoking policy.

As Decision No. 90-87 was issued in error, it must be vacated, however, the Newfound Area Teachers Association is hereby granted reconsideration which will be scheduled at earliest possible date.

Signed this 6th day of November, 1990.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.