



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS, LOCAL 633 OF N.H./
HOPKINTON SCHOOL CUSTODIANS

Petitioner

v.

HOPKINTON SCHOOL DISTRICT

Respondent

CASE NO. M-0614:1

DECISION NO. 90-94

APPEARANCES

Representing Local 633, Teamsters:

Thomas D. Noonan, Business Agent

Representing Hopkinton School District

F. Donald Jones, Assistant Superintendent

Also in attendance:

Joseph Lucas, Night Custodial Leadman

Paul McGuire, Terminated custodian

John McGuire, Terminated custodian

BACKGROUND

This matter arises out of the Board's grant of a hearing de novo to the petitioner as a result of Hearing Officer's decision number 89-83 wherein the Hearing Officer dismissed the charge of prohibited practices. Paul McGuire and his son, John McGuire, were both employed by Hopkinton School Administrative Unit #24 as custodians. Paul McGuire worked at the Hopkinton School for a period of approximately 9½ months while John McGuire was employed at the Hopkinton High School for a month, where he was employed part time. Both employees were supervised by Thomas Brackett, the buildings and grounds supervisor.

Teamsters Local 633 filed unfair labor practice charges against the Hopkinton School District SAU #24 for terminating the two custodians allegedly for their union activity.

The District denied the charges stating the terminations were due to several reasons, specifically not reporting to work when scheduled, not calling in, leaving work early and unsatisfactory performance.

A hearing de novo was held by the Board which took the testimony of several witnesses including both McGuires on behalf of the Teamsters' charges. Both McGuires testified that they had been questioned on occasion by Mr. Brackett with respect to the probable outcome of the elections to be held on October 13 for union representation. The McGuires both indicated that they were noncommittal in their responses to Mr. Brackett. It was also testified to that Paul McGuire was active in the union campaign and was the union contact person for a period of time immediately preceding the election.

Testimony indicated that Paul McGuire had, up until the passage of the union election which was successful, been a productive and otherwise good employee. The School District alleged that nearly simultaneous with the union election, Mr. McGuire's work habits began to decline to the point where two weeks after the election he had failed to perform certain duties, thus creating a situation under which the District terminated Mr. McGuire.

John McGuire was terminated for his failure to report to work and for leaving work early. Mr. McGuire's testimony indicated that his work schedule, he believed, had been worked out with supervisors to accommodate the necessity for him to attend birthing classes with his expectant wife. He testified that he had reported to work on at least one occasion at the direction of his supervisor at which time no other employees ever presented themselves and he left work unable to gain access to the building.

The School District presented its allegations through its Assistant Superintendent who had no firsthand knowledge of any of these events.

FINDINGS OF FACT AND RULINGS OF LAW

1. Paul McGuire was employed by SAU #24 for approximately 9½ months during the course of which he performed his duties satisfactorily.
2. Paul McGuire was active in the union campaign for recognition, a fact known to SAU supervisors and was questioned about the election.
3. Paul McGuire testified that he had completed the duties assigned him and specifically with respect to the October weekend in question for which he was fired.
4. John McGuire was employed by the SAU #24 for approximately one month. The testimony indicated that the nature of the offenses of which John McGuire was accused had previously been countenanced by the School District for other employees and that the termination of John McGuire is inordinate in light of past practice.
5. John McGuire was questioned several times about the union election. The Board finds that the termination of John McGuire was a pretextual reason and that the chronology of events and their substance are far too coincidental to suggest to the Board that these terminations were but for union activity.
6. The Board further finds that based on the uncontroverted firsthand testimony at the hearing that Mr. Paul McGuire had conducted himself in a satisfactory manner at all times and that his termination was a pretextual reason for his union activity.
7. The Board notes that the testimony of the union's witnesses was uncontroverted at hearing inasmuch as the School District failed to present any witnesses with firsthand knowledge of the activities which were the subject of this complaint, therefore, the Board is unable to give any credence to the allegations set forth by the District's representative in the fact of what it believed to be credible witnesses on the

union's behalf.

ORDER

The Board finds the Hopkinton School SAU #24 to have committed unfair labor practices by the termination of Paul McGuire and John McGuire and orders their immediate reinstatement to their prior positions. The Board further orders that Paul McGuire and John McGuire be made whole with respect to their wages, benefits and seniority, less any income received in place of their regular earnings derived from these positions.

The parties are to report compliance to the Board within thirty (30) days. A copy of this decision shall be conspicuously posted in areas in which the employees work.

Signed this 14th day of September, 1990.


EDWARD J. HASELTINE, Chairman

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