



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROCHESTER SCHOOL BOARD

Complainant

v.

ROCHESTER FEDERATION OF TEACHERS

Respondent

CASE NO. T-0338:11

DECISION NO. 90-101

APPEARANCES

Representing Rochester School Board:

Bradley F. Kidder, Esq., Counsel

Representing Rochester Federation of Teachers:

Emmanuel Krasner, Esq., Counsel

Also appearing:

Jerry Ashlock, N.H.F.T.

Sue Cushman, N.H.F.T.

Raymond Yeagley, Superintendent

Robert R. Tawney, Rochester Schools

Judy Ouellette, Rochester Schools

BACKGROUND

On July 10, 1989 the Rochester School Board petitioned PELRB to vacate the arbitrator's decision in which the arbitrator found the School Board had violated the agreement (CBA) currently in effect between the Rochester School Board and the Rochester Federation of Teachers, NEA-NH by not hiring substitute music and gym teachers on or after April 20, 1989 and by assigning regular teachers to fill in for their absence. The School Board states the arbitrator's decision was illegal, unlawful, arbitrary, unreasonable and capricious and an error of law against the weight of evidence and beyond the scope of the arbitrator's jurisdiction, authority and abuse of his discretion. The charge goes on to make reference to the arbitration clauses, the procedures followed by the parties leading up to the final decision of the arbitrator. The relief requested vacating and reversing the decision of the arbitrator, enjoining the enforcement of the decision or a trial de novo before the PELRB.

The Rochester Federation of Teachers by its attorney answered the charge stating its objection to the charge and further says the arbitrator's award was fair, just, reasonable and within the scope of the contract. The arbitrator's authority specifically answered the charges in detail and took exception to the alleged testimony presented in the hearing and since the arbitrator had awarded back pay to the teacher in this case, there was ample case support for the decision and cited PELRB Rochester School Board v. N.H. PELRB 119 N.H. 45 (1979) and Hudson Federation of Teachers v. Hudson School Board, PELRB 79-43 and further that the School Board was fully aware that back pay is an award available for breaching the CBA. (See case PELRB 199 NH 45 (1979) dealt specifically with the case at hand) The Federation moved to dismiss the case on the basis that PELRB had ruled that where the contract calls for binding arbitration and it does not provide for review by PELRB, the PELRB will not review such award which position was upheld by the N.H. Supreme Court in the appeal of the International Association of Firefighters 123 NH 404 (1983) and the case of Board of Trustees v. Keene State College 126 NH 339 (1985) where the Supreme Court held "the PELRB has no general authority to review an arbitration award absent some indications that the parties intended to reserve a right to administrative review of the award" (at 126 NH 342)

The issue in this case is brought forth because the School Board has allegedly forced regular teachers to fill in as substitutes for the music and gym teachers when the regular part-time music and gym teachers were absent and refused to pay them the regular teachers' pay and yet requiring them to do extra substitute duty. This issue was grieved and the case went to arbitration. The arbitrator found that the contract had been violated with respect to the hiring of substitutes, and awarded pay, over and above the regular teachers' pay to those teachers who had to fill in temporarily.

Hearing in this matter was held on September 21, 1989 at the PELRB office in Concord, New Hampshire. The Motion to Dismiss was accepted without ruling.

Counsel for the School Board argued at great length concerning the arbitrator's role and offered as evidence the contract in existence from September 1, 1986 to August 31, 1990 and attempted in some detail to indicate that the contractual language entered into by the parties did not provide the latitude for an arbitrator to make the findings and award which was made. He questioned the arbitrator's authority to award back pay and alleged that such award exceeded the arbitrator's authority and further argued that the assignment of regular teachers to fill in for the music and gym teachers who were absent was in response to emergency situation when no qualified substitutes could be found.

Counsel for the School Board again argued at great length concerning management rights conferred by RSA 273-A:1, XI, which states that management has authority to assign and direct its personnel. He further suggested that the temporary utilization of regular teachers as fill-in for teachers absent constitutes an emergency and was taken for good cause as referred in the CBA article VIII.A.2 and further alleges that the arbitrator cannot under any set of circumstances increase wages paid to teachers as compensation for working during the teachers' school day. He further argued that the contract deals specifically with substitutes and that when the arbitrator indicated that they should recruit from available sources, this decision infringes upon the managerial and administrative prerogative of the School Board and the Superintendent.

Counsel for the Rochester Federation of Teachers argued that the contract was entered into by the parties mutually and contained sections specifically dealing with the procedures to be followed when absences exists with the regular teachers and cited certain other cases where this Board had made rulings and Supreme Court rulings pertinent to the case referred to above, more particularly the Hudson case and the Westmoreland case where the decisions indicated that the arbitrator has a right to fashion the remedy as long as it is in compliance with the language of the contract.

Below are quoted the specific sections of the contract pertinent to the issues before us. Article VII, paragraph E deals with substitute teachers as follows:

"The Board agrees to continue its practice of providing substitutes for teachers absent for a full day or days. No teacher will be compelled to substitute for a colleague that is expected to be absent for a full day, except in an emergency."

Article 9 IX. Contains language dealing with a grievance procedure and in detail outlines the steps to be followed whenever a grievance is filed. The Contract language dealing with arbitration with specific reference to the arbitration panel reads as follows:

Arbitration panel shall be appointed, "consisting of one representative selected by the Federation, one representative selected by the School Board, and an impartial chairperson mutually chosen by the two representatives."

Article 10 again dealing with the subject, grievance procedure, paragraph 4 of the grievance procedure reads as follows:

"The decision of the Arbitration Panel shall be final and binding. Both parties agree that the Arbitration Panel's decision shall not represent a precedent."

Paragraph 5 states as follows:

"Both parties agree that the Arbitration Panel shall be prohibited from modifying or adding to this agreement."

this is the section which the School Board allege limits the authority of the arbitrator.

FINDINGS OF FACT

1. The parties mutually entered into the contract covering the period September 1, 1986 through August 31, 1990.
2. The contract language sets forth the procedure to be followed in the handling of a grievance with the last step of the procedure being placed in the hands of an Arbitration Panel whose decision is final and binding.

3. In accordance with the procedure negotiated in the contract, a three-member board of arbitrators was convened, appointed and duly heard this case and submitted its result, which constituted the decision.
4. We find the reliance on the emergency clause in this case was not supported by the evidence before us and is not relevant to the final outcome of the decision.
5. The process was followed exactly as is enumerated in the negotiated language of the contract, we find the decision of the Arbitration Panel is within its authority to award back pay.
6. This Board has always been reluctant to attempt in anyway to second-guess an arbitrator's decision where the findings of the arbitrator are final and binding by mutual agreement and will not do so in this case.
7. We find no violation of the language of the contract as alleged by the School Board and will not vacate the arbitrator's decision.

ORDER

The petition filed by the Rochester Federation of Teachers for dismissal of the complaint is granted. The case is hereby DISMISSED.

Signed this 9th day of October, 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.