



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GOFFSTOWN EDUCATION ASSOCIATION	:	
NEA-NEW HAMPSHIRE	:	
	:	
Complaint	:	CASE NO. T-0288:9
	:	
	:	DECISION NO. 92-05
	:	
v.	:	
	:	
GOFFSTOWN SCHOOL BOARD	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing Goffstown Education Association, NEA-NH:

Marc Benson, UniServ Director

Representing Goffstown School Board

Edward Kaplan, Esq.

Also appearing:

William H. Marston, Goffstown School District
 Leon J. Cote, Goffstown School District
 Owen P. Conway, Goffstown School Board
 Virginia Sinclair, Mountain View Middle School
 Leslie Callahan, Maple Avenue Elementary School
 Joseph Panarese, Jr., Goffstown Education Association
 Leila Lavigne, Goffstown Education Association
 Jeanine Poole, Goffstown School Board

BACKGROUND

The Goffstown Education Association (Association) filed improper practice charges (ULP) against the Goffstown School Board (employer) on October 11, 1991, alleging violations of RSA A:5:I, (a), (e), and (g). The employer responded, through counsel, Edward M. Kaplan, Esq., by filing an answer on October 28, 1991. The case was set for hearing and heard by the Board at its offices in Concord, New Hampshire, on December 16, 1991.

The original unfair labor practice complaint charges that on and after September 3, 1991, certain sixth grade teachers of the employer have been required to work on-site from 8:00 a.m. to 2:52 p.m., a total of six hours and

fifty-two minutes per day. It further alleges that this is a unilateral and unnegotiated increase in hours resulting in the requirement of an additional fifty-two minutes being added to the on-site work day, it having been the practice that said sixth grade teachers previously worked a six hour day from 8:15 a.m. to 2:15 p.m.

In its answer and in argument before the Board, the employer denied the unfair labor charges and claimed (1) its actions were within the authority of the management clause (Article III) of the collective bargaining agreement, (2) its actions were necessitated as the result of the opening of a new middle school and its desire to put sixth, seventh and eighth grade teachers on the same schedule at that facility, (3) its actions with respect to sixth grade teachers permitted sixth grad pupils to be bussed with grades seven through twelve, (4) its changed school starting and ending times in 1983-84 and in 1985-86 (without changing the length of the work day) without complaint or grievance, and (5) that neither the collective bargaining agreement nor the individual teacher contracts makes reference to starting or stopping times or to length of work day, it having been the practice that administrator at the various schools have historically set the work day based on the educational program.

FINDINGS OF FACT

1. A collective bargaining agreement exist between the Goffstown School Board and the Goffstown Education Association for the period September 1, 1989, through August 31, 1991, and is applicable to the close of sixth grade teachers who are complainants in these proceedings.
2. Effective with the start of the 1991-1992 school year, sixth grade teachers unilaterally and without negotiations had their work day increased by fifty-two (52) minutes when the employer unilaterally changed that work day from 8:15 a.m. to 2:15 p.m. to 8:00 a.m. to 2:52 p.m.
3. For at least the prior thirteen (13) years, sixth grade teachers had a six hour work day.
4. The Management Clause (Article III) of the contract provides:

The Association agrees that, except as specifically and expressly abridged or limited by the provisions of this Agreement or any supplementary agreement that may hereafter be made, all of the rights, powers and authority of the Board and its agents to manage, direct or supervise all all of the operations of the Goffstown School District and its employees in all its phases and details shall be retained by and are vested solely, exclusively and without limitation in the Board and its agents and the the exercise of any such right or arbitration provisions of this Agreement.

5. The Negotiation Procedure Clause (Article II) of the contract provides, in pertinent part:

The Board agrees to enter into negotiations with the Association in accordance with the procedure set forth herein in a good-faith effort to reach agreement concerning teachers' wages, hours and

conditions of employment. Such negotiations will include any matters covered by this Agreement and any other matters which the parties mutually agree are negotiable or which are negotiable pursuant to the provisions of New Hampshire RSA 273-A.

6. Notwithstanding representations that prior changes in work hours had been made in the past without prompting objections, complaints or grievances from the Association, those changes did not result in an increase in the length of the work day in the magnitude described in this complaint. Factually, those changes typically represented a change in the start and stop times with little, if any, change in the length of the work day.
7. Neither start nor stop times nor length of the work day are set forth in the master agreement (contract) or in individual teacher contracts, these matters having been controlled by past practice and the needs of a particular building in the past.
8. Teachers' pay scales for teaching duties (as opposed to other types of extra or additional duties) do not and have not reflected an hourly rate of compensation. As the result of additional duties and/or activities it is possible that teachers in a given building will not be working the same schedule. Thus, all Middle School teachers are not necessarily on the same work schedule.
9. The length of the work day for sixth grade teachers was unilaterally changed so that sixth grade pupils could be bussed with grades seven through twelve. The length of the work day for fourth and fifth grade teachers at the Middle School was not changed.

DECISION AND ORDER

Nothing could be more fundamental to the employment relationship than the number of hours one is expected to labor to comply with the needs and expectations of the employer and to be compensated therefor. To have those hours lengthened unilaterally without either an agreement on the circumstances of that lengthening or compensation commensurate with such lengthening not only violates RSA 273-A:5, I (e) and (g) as alleged by the Association but also Article II of the contract cited above. By their contract (Article II), the parties have specifically obligated themselves to negotiate "...concerning teachers' wages, hours and conditions of employment." (Emphases added). Implicitly, then, any change in those hours must also be negotiated. Neither the master agreement nor the individual teacher contracts needs to set forth the exact length of the work day. Without advance notice of change and an opportunity to negotiate thereon, past practice (in this case, substantiated for some thirteen years) is sufficient to establish what the length of the work day was and what the employees' expectations might reasonably be. There is a clear obligation imposed by RSA 273-A:1 "requiring public employers to negotiate in good faith. RSA 273-A:1, XI goes so far as to define "terms and conditions of employment" as "wages, hours and other conditions of employment." (Emphasis added).

Consistent with these findings the employer is:


1. Found to have violated RSA 273-A:5, I, (e) and (g).

No violation is found relative to RSA 273-A:5, I (a).

2. Directed to enter into negotiations with the Association forthwith relative to the unilateral lengthening of the complaining employees work day with the objective of finding a mutually satisfactory result and to continue in this endeavor for a period of sixty (60) days from the date hereof.
3. If the parties are unable to negotiate a mutually satisfactory result within the foregoing sixty (60) day period, impacted teachers shall be compensated an additional nine-tenths (9/10th) of an hour for each day they work the additional fifty-two (52) minutes between the end of the expiration of the aforesaid sixty (60) days and end of the school year.

So ordered.

Signed this 23rd day of January , 1992.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting.