State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONSTANCE SCULLY Complainant v. MANCHESTER BOARD OF SCHOOL COMMITTEE and MANCHESTER EDUCATION ASSOCIATION, NEA/NEW HAMPSHIRE Respondent	CASE NO. T-0242:10 DECISION NO. 92-172

APPEARANCES

Representing Constance Scully:

Richard J. Joyal, Esq.

Representing Manchester Board of School Committee:

David A. Hodgen, Chief Negotiator

Representing Manchester Association, NEA-New Hampshire:

James F. Allmendinger, Esq.

Also appearing:

Constance Scully
Virginia Scully
Leonard Bernard, Manchester School District
Francis Harlan, Manchester Education Association
Joseph Morris, Manchester Education Association
Clare Flynn, Manchester Education Association
Monica Joyal
Thomas Adams, Manchester Education Association

BACKGROUND

On March 18, 1992, Constance Scully (Scully) filed unfair labor practice (ULP) charges against the Manchester Board of School Committee (Committee) and the Manchester Education Association (Association) alleging a violation of the collective bargaining agreement (CBA) as prohibited by RSA 273-A:5 I (h). The Committee filed its Answer on April 1, 1992 while the Association filed its Answer on April 2, 1992. This matter was heard by the PELRB on June 18, 1992 and August 6, 1992. The Association's post-hearing submittal were filed on September 2, 1992; the Committee's were filed on September 3, 1992. Scully's Requests for Findings were received at the conclusion of the second day of hearing on August 6, 1992.

FINDINGS OF FACT

1. The Manchester Board of School Committee is a "public employer" of teachers and other employees as defined RSA 273-A:1 X.

2. The Manchester Education Association is the duly certified bargaining agent of teachers and other employees of the Committee.

3. Scully has been employed by the Committee as an English teacher since 1978, initially at Central High School and subsequently at Hillside Junior High since the start of the 1991-92 school year when she was assigned there on an involuntary transfer.

4. The Committee and the Association are parties to a CBA for the period July 1, 1988 through July 1, 1991 and pertinent at all times in these proceedings. That CBA has specific provisions applying to Extended Leaves of Absence (Article XXI) and Involuntary Transfers (Article XIII). They say:

> EXTENDED LEAVES OF ABSENCE
>
> A. All benefits to which a teacher was entitled at the time the teacher's leave of absence commenced...will be restored to that teacher. Further, that teacher will be assigned to the same position held at the time said leave commenced, if available, or if not, to a substantially equivalent position; i.e., primary (K-3); intermediate (4-6); junior high (7 and 8); or senior high (9-12) and to teach the curriculum of that level and/or designated subject(s) within a department....

INVOLUNTARY TRANSFER

A. When a teacher is required and the teacher does not wish to accept the transfer voluntarily, the Superintendent may implement the change as an involuntary transfer. The teacher shall be notified as soon as practicable that a transfer is being considered and shall be notified of the reason for the transfer by the appropriate administrator(s) involved.

C. When an involuntary transfer is necessary, a teacher's area of competence and major or minor field of study will considered.

D. 1. Teachers being involuntarily transferred will be informed of appropriate vacancies known and existing at the time the transfer decision is being made. Teachers will be able to indicate their preference of assignment to the appropriate administrator involved and this preference will be given consideration.

2. A teacher being involuntarily transferred will be granted time to visit the new assignment prior to reassignment.

G. In the event that a teacher is to be transferred because of a reduction in the number of positions within a school, the teacher with the least City wide seniority, as defined in Article IX D., shall be transferred. The teacher shall be transferred to another position in that teacher's classification, if available, or if not, to a position for which the teacher is certified. If no position is available in the teacher's classification or certification, then the Superintendent shall utilize the provisions of Article IX. C. of this Agreement.

5. Barbara Barbour, a Central High English teacher, was on leave of absence for the 1990-91 school year. Under the provisions of Article XXI (J) of the CBA, teachers returning from leaves of absence must inform the Committee between January 1 and March 1 of their intent to return to teaching the following September.

6. On June 10, 1991, the Committee notified Scully by letter that a position in the English Department at Central High was being eliminated "due to a reduction in enrollment," that she was the teacher with the least city-wide seniority, and that another position was available at Hillside Junior High School.

7. On June 12, 1991, the Superintendent notified Scully by letter of Barbour's return, of this creating one more English teacher at Central High than could be supported by the enrollment, and of her reassignment to Hillside Junior High under Article XIII-G of the CBA. This followed a memo from Central's principal, William Burns, to Assistant Superintendent Bernard on June 11, 1991 stating that Scully wanted the record corrected to show that there was no planned reduction in staff at Central but, instead, a teacher returning from leave.

8. Sometime prior to June 19, 1991, Scully instituted grievance proceedings to complain about her being "bumped" while Barbour was being returned to Central when her position there, according to Scully, was no longer "available" within the meaning of Article XXI (A). On June 19, 1991, Thomas Adams, Jr. of the Association wrote Scully advising her that the Teacher Rights Committee (designated by the CBA to review and recommend or reject grievances) decided to refer her grievance to Level II without recommendation.

9. On June 24, 1991 Scully with the assistance of Adams, wrote Assistant Superintendent Bernard requesting a Level II grievance meeting. That meeting occurred June 25, 1991. On July 2, 1991, Bernard issued a letter to Scully denying her grievance and stating that notification prior to June 10, 1991 would have been impractical because "many [resignations] were [not] received [until] the months of May and June" and because her "involuntary transfer was necessary [since] the only opening was at Hillside Junior High School."

10. On July 9, 1991 Adams wrote Scully acknowledging receipt of her request for a Level III grievance meeting. The Teacher Rights Committee met July 10, 1991 to consider the grievance and rejected it saying that it "unanimously agreed that [Scully] [was] not improperly transferred under the terms of the Agreement." Conversely, that Committee was willing to explore using a mediator in an attempt to resolve Scully's grievance. Scully acknowledged this information by letter to Adams on July 15, 1991 and indicated her interest in exploring both mediation and an appeal to MEA President Frank Harlan.

11. Joseph Morris, past president of MEA, testified that "if available" under Article XXI (A) meant that the teacher returning from leave must have more seniority than the teacher being displaced within the same department. The "if available" language dates back

to the 1979-81 CBA and has remained essentially the same since the 1981-83 CBA.

12. The application of "if available" has been consistently applied by seniority, since approximately 1983, thus explaining testimony as to contrary interpretations applying prior to that time (Teachers Dugan, Joyal and Krolikowski). The current interpretation and application of the "if available" and "City wide seniorty" language is consistent with the reading of contract Articles XII and XXI by both the Association and the School Committee.

DECISION AND ORDER

At first blush, the "if available" language of Article XXI appears to conflict with the manner in which Scully's situation was handled on Barbour's return. There was no available position at Central High and, if both Barbour and Scully were to have remained there, Central would have been over-staffed with English teachers, i.e., it would have had more English teachers than the curriculum required. This would have been both impractical and contrary to the statutory rights reserved by the public employer in RSA 273-A:1 XI. The language of Article XXI, read without the benefit of the history and practice of the parties to the CBA, would further suggest that the returning teacher, if there were no position available, would then be the one assigned to the "substantially equivalent position" elsewhere. This analysis fails, however, once one hears the positions and interpretations offered by the parties to the CBA.

The Association and the Committee agree that the "if available" contingency is based on city-wide seniority, within the department, a practice which they have been following since 1983. Since this is their agreement and since that agreement is not contrary to any of the mandates found at RSA 173-A, the PELRB has no cause to disturb or overturn it. The parties know what the contract says, how they interpret it, and how it applies. It so happens that Scully feels disadvantaged by that interpretation and application. It may be unfortunate that this is the case; however, this is not cause to sustain her charge of a ULP. The interpretation is a permissible one under the contract and there is no indication that the contract has been prejudicially administered by either party to it.

As for the actions of the Association, the evidence shows that it dealt openly and even-handedly with Scully. It processed her grievance initially forwarding it to Level II and providing assistance from Adams in anticipation of the Level II meeting. It did not accept Scully's initiative to proceed to a Level III meeting, nor was it obligated to do so. Unions or employee organizations are under no obligation to go forward with each and

every grievance which may be put forward for their collective consideration. To do so would put an unreasonable burden on both the union and the employer, to say nothing of the financial implications on the organization if it had a perpetual mandate to go to arbitration with all grievances. For the Association to have breached its duty to Scully its actions must have been "arbitrary" or "perfunctory". [Vaca v. Sipes, 386 U.S. 171 at 191 (1967)]. Its conduct was neither.

The charge of unfair labor practices is DISMISSED as to all respondents.

So ordered.

Signed this 5th day of November, 1992.

EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting.