



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DERRY COOPERATIVE SCHOOL DISTRICT #1 and
WILLIAM A. BOYCE, in his capacity as School
Board Chairman

Complainants

and

DERRY EDUCATION ASSOCIATION, NEA-New
Hampshire and Kathryn Nichol, in her
capacity as President

Respondents

CASE NO. T-0233:7

DECISION NO. 82-08

APPEARANCES

Representing the Complainants, Derry Cooperative School District #1:

Robert P. Leslie, Esq., Counsel
William A. Boyce, Chairman
Barbara Yelland, School Board Member
David M. Brown, Superintendent

Representing the Respondents, Derry Education Association:

Gerry Roethel, UniServ Director, Region IV, NEA-NH
Ron Dion, DEA
Alice Shields, DEA
Kimber Hamlin, DEA
Joey Nichol, DEA
Gary Grant, DEA
Francine Bogumil, DEA
Maureen E. Kelley, DEA
Judi Pendergast, DEA

BACKGROUND

This matter came before the Public Employee Labor Relations Board (Board) on the School District's allegation that the Association (DEA) had refused to negotiate in good faith. DEA responded by denying the charge and essentially counter-claiming that the District was guilty of that offense.

Based on the Board's finding that neither party to this dispute had acted in bad faith, the Board treated these pleadings as a request for a declaratory judgment as to the appropriate subjects of bargaining between these parties at the present time.

FINDING OF FACTS

-- The outstanding agreement between these two parties contains a reopener clause in Article 2-03, which is the subject of the dispute:

"Should either party desire to negotiate a new salary, insurance, co-curricular activities, or teacher improvement schedule during the term of this contract, such party shall, by October 15 prior to the next fiscal year, present such proposal in writing. The other party shall present a written proposal by November 1 of the same year. Negotiations on these proposals shall start by November 15 of the same year."

-- Pursuant to this Article, the DEA presented a proposal to the District which included demands covering new salary schedule, insurance, co-curricular activities, teacher improvement, sabbatical leave, sick leave reimbursements, representation fee, retirement fund, longevity bonus, extra pay for extra duty, salary-department heads/teaching assistant principals, and quarterly cost of living adjustment. The District refused to bargain with DEA about all of these subjects, indicating that the first four were properly subject to the reopener, and further agreeing to discuss a quarterly cost of living adjustment, without admitting that it is subject to the reopener.

-- The dispute then centered around the remaining seven subjects proposed by DEA for negotiation. At the time of hearing, DEA indicated that it was withdrawing its request to discuss retirement fund and representation fee, and thus left five disputed areas for the Board to address.

-- In deciding which of these five topics are properly within the scope of the reopener clause, the Board has considered the fact that certain of them are specifically set forth as separate articles in the current contract, while the four topics specifically referred to in the reopener clause are contained in separate articles in the same contract. Thus it is the opinion of the Board that the subjects of sabbatical leave, sick leave reimbursement, and longevity bonus are not subject to the reopened because of their separate treatment in the contract and lack of designation in the language of the reopener article.

-- The two subjects of extra pay for extra duty and salary for department heads/teaching assistant principals, however, stand on a different footing. It cannot be denied that these two subjects are related to salaries and there are no other specific articles in the outstanding contract governing these two topics. Thus, it is the opinion of the Board that these two subjects are properly within the scope of the reopener clause.

DECISION AND ORDER

In summary, the Board finds that,

1. Of the five remaining disputed subjects, two; i.e., extra pay for extra duty and salaries for department heads/teaching assistant principals are within the reopener, and the remaining three, sabbatical leave, sick leave and longevity bonus are not.
2. The parties are hereby directed to negotiate in accordance with this opinion.

Russell F. Hilliard

RUSSELL F. HILLIARD, ESQ., Board Member
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 18th day of February, 1982

By unanimous vote. Chairman Robert E. Craig presiding. Members Hilliard, Osman and Grieco present and voting. Also present, Executive Director LeBrun

