



NH Supreme Court affirmed in part, reversed in part this decision on March 2, 1999, Slip Op. No. 97-024, Appeal of Lisbon Regional School District, 143 NH 390 (1999).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LISBON TEACHERS ASSOCIATION,	:	
NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	CASE NO. T-0273:10
	:	
v.	:	DECISION NO. 96-090
	:	
LISBON REGIONAL SCHOOL	:	
DISTRICT	:	
	:	
Respondent	:	

APPEARANCES

Representing Lisbon Teachers Association, NEA-NH:

James Allmendinger, Esq.

Representing Lisbon Regional School District:

Bradley F. Kidder, Esq.

Also appearing:

Steve Sexton, Lisbon Principal
 Robert P. Horan, Lisbon Superintendent
 Elaine French, Lisbon Teacher
 Brian Sullivan, NEA-New Hampshire
 Seymour Osman, Observer

BACKGROUND

The Lisbon Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Lisbon Regional School District (District) on May 31, 1996 alleging violations and refusal to bargain resulting from the non-renewal of a twenty-year teacher. The District filed its answer on June 7, 1996. This matter was then heard by the PELRB on September 12, 1996 after an intervening continuance sought by and granted to the parties for an earlier hearing scheduled for July 25, 1996.

FINDINGS AND FACT

1. The Lisbon Regional School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 IX.
2. The Lisbon Teachers Association, NEA-New Hampshire is the duly certified bargaining agent for teachers and other certified professional personnel employed by the District.
3. The Association and the District are parties to a collective bargaining agreement (CBA) for the period September 1, 1995 to September 1, 1996. Article XIII of the CBA is entitled "Fair Treatment" and provides:

With the exception of a reduction in force, teachers have a reasonable expectation of continued employment provided that their services are competent, efficient, and satisfactory. With the exception of the provisions of RSA 189:14A as they apply to probationary teachers, no teacher shall be discharged, suspended, punished or penalized, without a supportive statement of facts. All information forming the basis for any such action shall be made available to the teacher.
4. Article III of the CBA contains a grievance procedure and defines a grievance as a "claim ... by a teacher ... that there has been a violation or inequitable application of any of the provisions of the [CBA]." It further provides that appeals beyond the School Board may be pursued "pursuant to RSA 273-A." This case is presented to the PELRB as the last step of that process as indicated in the last paragraph of the Association's attachment to the ULP.
5. On January 31, 1995, Superintendent Robert Horan wrote to teacher Elaine French telling her that her position as a home economics teacher was being reduced to a 4/7th position for School Year 1995-96 (Board Exhibit No. 5). He also advised her of RSA 189:14-a rights as the result of not being renominated or reelected. French had taught more than three (3) years in the District, namely, since 1991 (Board Exhibit No. 2.) On February 10, 1995, Horan wrote French telling her she would be his nominee for the 4/7th position (Board Exhibit No. 7). On February 23, 1995, Assistant Superintendent Thibodeau wrote French to say that the reduction from full time to 4/7th time was caused by lack of enroll-

ment. (Board Exhibit No. 9.) Meanwhile, French sought and was granted a hearing before the Lisbon Regional School Board on March 8, 1995. According to French's employment history, she had been teaching, and desired to continue to teach, both home economics and health classes to maintain a full teaching load. French has New Hampshire teacher certification in home economics, (0900) but not health education which she has taught both in this District and elsewhere. Witnesses represented to the PELRB that French could continue to teach health education in Lisbon without certification so long as this constituted less than half of her teaching load.

7. The Lisbon Regional School Board issued its decision in this matter on March 14, 1995. It found that student needs could "be properly and adequately met by reducing Home Economics to 4/7ths." The Board, in reaching this decision, cited testimony from Horan and Principal Sexton that "they think they should do what they can to obtain a certified Health teacher to teach those important courses, and they intend to do so. The reduction of Ms. French's Home Economics position to 4/7th is part of that effort." Upon learning this, French offered to become certified in health. The Board rejected this offer saying they wanted a fully certified teacher for School Year 95-96. On March 31, 1995, French signed a teacher contract for School Year 1995-96 as a 57% time Home Economics teacher.
8. On March 24, 1995, Uniserv Director Brian Sullivan wrote Horan saying, in pertinent part, "From the written decision of the Board we understand it is the intent... to hire a certified health instructor to teach the health courses. Ms. French taught during the 1994-95 school year. If the Board for any reason does not have a certified health instructor, it is our expectation that Ms. French will be asked to teach those classes next year." Horan did not reply to Sullivan. (Association Exhibit No. 2-a) On or about April 24, 1995, the District advertised for anticipated openings, including "Physical Education/Health Instructor - New Hampshire certification in both areas required" (Board Exhibit No. 12).
9. The District subsequently hired Derek Swenson as the Physical Education/Health teacher for School Year 95-96. Swenson's New Hampshire certification was for physical education only; he had 18 of the 30 credits required for health education. While she was not

accorded the same opportunity, French testified that Swenson was given one and a half years to obtain health certification and could not have obtained it before December of 1996. French had previous experience teaching health courses in Massachusetts before coming to New Hampshire; Swenson was "fresh out of college" and had no experience teaching any health curriculum. Swenson did apply for health certification under "Alternative III" but resigned from the District before obtaining this certification and before School Year 1996-97.

10. On July 8, 1995 French wrote Horan to inquire about what certification(s) the new hire, Swenson (not mentioned by name) held. After she received no answer, Sullivan wrote Horan on October 26, 1995, saying, in pertinent part, "Please accept this letter as a formal request ... for documentation that shows that [French's] successor in health education in Lisbon is certified in that area." When he did not receive a response, Sullivan wrote two additional follow-up requests to Horan on November 2, 1995 and January 8, 1996. (Association Exhibit Nos. 2b, 2c, 2d, and 2e.)
11. Sullivan testified that Horan did not convey Swenson's certification status to him until January of 1996. After French learned that Swenson did not possess the certifications sought in Board Exhibit No. 12, the job posting with the May 5, 1995, closing date, she filed a written grievance on March 18, 1996. (Association Exhibit No. 2-f.) under Article III (B) of the CBA. On March 22, 1996, Principal Stephen Sexton denied the grievance saying there was no contract violation and that it was not timely. French appealed to Horan on March 29, 1996. Her hearing before him occurred on April 30, 1996, the grievance was denied, and she was scheduled to meet with the Board on May 8, 1996. (Association Exhibit Nos. 2g, 2h, 2m and 2n.) The Board also denied the grievance, saying French's claim was "unsubstantiated" and that no violation of the contract occurred. The case then came to the PELRB by way of the ULP filed on May 31, 1996 as the last step in the parties' negotiated grievance procedure.
12. Sexton was the District representative responsible for visiting French's home economics and health classes. He never complained about her performance and gave her a positive written evaluation on

February 23, 1996 (Association Exhibit No. 3) in which no areas were checked "needs improvement." Both Sexton and Horan testified as to the sufficiency of French's performance at her non-retention hearing in March of 1995, according to the unrefuted testimony of French and Sullivan.

DECISION AND ORDER

The first issue which we address is the matter of timeliness which was asserted as a defense by the District. Sullivan was still inquiring about the certification status of Swenson as late as January 8, 1996. (Association Exhibit No. 2-e.) Sullivan testified that he did not know that Swenson did not possess the requisite certifications until January of 1996. The ULP was filed on May 31, 1996. We find that filing to have been timely under RSA 273-A:6 VII.

The District also argued that it had "final authority" under Article I C of the CBA to change the elements of the full-time position, involving both health and home economics courses, previously held by French and that its actions were in conformity with that contract provision. The Association agreed that the District could decide to hire a teacher certified in both health and physical education and further said that if it had done so, this grievance/ULP would not have arisen. In essence, then, it is not the District's inherent authority to decide to hire a certified teacher which precipitated this case, but the District's saying it was going to do so and then failing to do so to the detriment of French. Moreover, this position of the Association is borne out by its pleadings, namely, the grievance/ULP was not filed until the Association learned that Swenson did not have the credentials sought and advertised by the District.

Once informed of Swenson's credentials, or lack thereof, compared to those of French, the Association concluded that he was no more qualified or certified to teach health courses than she was. French had experience in teaching health courses; Swenson did not, although he had 18 credit hours in health education courses. Additionally, it appears that the District knew that Swenson was not certified in accordance with the requirements of the 1995 position vacancy announcements and, accordingly, extended to him an opportunity to obtain the certification after he was hired, as opportunity earlier denied to French.

We must evaluate this first situation against the language the parties have agreed to use in their CBA, specifically Article XIII. With specific reference to the sentence which reads "With the exception of a reduction in force, teachers have a reasonable expectation of continued employment provided their services are competent, efficient and satisfactory," we make three observations. First, the actions complained of did not result from a reduction in

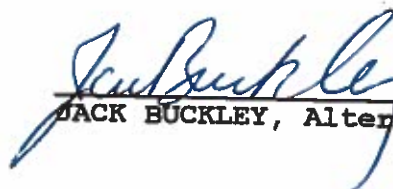
force because the same number of courses are being taught, as verified by Sullivan's testimony and by French's testimony that the two courses removed from her teaching schedule were given to another teacher who, like her, had no certification for the specific subject matter. Second, there is no evidence of any complaint, from Horan, Sexton or otherwise, about the competency, efficiency or satisfactory nature of French's abilities as a teacher. Third, based on the two foregoing observations and all else being equal or in favor of the position taken on behalf of French by the Association, she should have the contractually agreed to "reasonable expectation" of continued employment.

In addition to the foregoing considerations, French was not treated on an equal footing with Swenson. French, as a "tenure" teacher was "non-renewed," while Swenson, without contract protections as a tenured teacher, was accorded additional time to achieve certification, something requested by and denied to French. We believe that also to have been violative of the "reasonable expectation of continued employment" language of Article XIII.

For the foregoing reasons, we find the District's behavior to have been violative of RSA 273-A:5 I (h) and, thus, to have been an unfair labor practice. The District shall reinstate Elaine French forthwith to her full-time teaching position, inclusive of the levels of pay and benefits to which she would have been entitled had she started School Year 1996-97 in full-time status.

So ordered.

Signed this 18th day of October, 1996.


 JACK BUCKLEY, Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding.
 Members Richard Roulx and E. Vincent Hall present and voting.