

NH Supreme Court declined appeal of this decision on April 30, 1991, NH Supreme Court Case No. 91-097.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

FALL MOUNTAIN REGIONAL SCHOOL DISTRICT

Complainant

v.

FALL MOUNTAIN REGIONAL TEACHERS ASSOCIATION/NEA-NEW HAMPSHIRE

Respondent

CASE NO. T-0227:10

DECISION NO. 90-127

APPEARANCES

Representing Fall Mountain Regional School District:

Thomas T. Barry, Esq., Counsel

Representing Fall Mountain Regional Teachers Association/NEA-NH:

Mary E. Gaul, UniServ Director

Also appearing:

Carmella M. Tsetsi, School District
Donald Wetmore, Superintendent
Maurice C. Lacroix, School District
Elizabeth C. Sayre, F.M.T.A.
Bill Hollis, F.M.T.A.

BACKGROUND

On June 6, 1990 the Fall Mountain Regional School District (District) by counsel Douglas S. Hatfield, filed an unfair labor practice complaint against the Fall Mountain Teachers Association/NEA-NH (Association) stating that the School Board had acted pursuant to its authority under RSA 189:14 and the collective bargaining agreement between the parties to non-renew a probationary staff person and to protect the rights of the teacher did not give a reason for non-renewal.

The Association has filed a grievance claiming the non-renewal was disciplinary action and therefore required just cause under the provisions of the CBA.

The District advised the Association that it would not accept the grievance as the non-renewal was not covered by the grievance procedure and was a right of the School Board. The Association persisted in its grievance procedure having filed a request with the American Arbitration Association for the appointment of an arbitrator and further referenced the case of Murray v. Nashua School District.

Relief requested a Cease and Desist order from pursuing the Arbitration demand in connection with the non-renewal of Elizabeth Sayre pending a determination by PELRB of this unfair labor practice and the actions of the Association be found to be a ULP.

The Association by its UniServ Director, Mary E. Gaul, responded, vigorously, denying all charges stating that the contract called for advisory arbitration and permits the arbitrator the scope to interpret and apply the provisions of the agreement and further there are no provisions in the agreement that restrict the grievance procedure and further that third year teacher, Elizabeth Sayre was non-renewed and cites the agreement provision that says no teacher shall be disciplined without just cause. Further that her non-renewal was the result of animosity by one of her four supervisors, (Teacher Sayre is an itinerant art teacher in four different schools in the Region) and further the association takes exception to the District's refusal to move to the contractually required arbitration step because Ms. Sayre is a probationary teacher and further takes exception to the District's interpretation of the Westmoreland case and referred to the Supreme Courts Decision, (Appeal of City of Nashua when the Court said "the Court affirmed the Labor Boards operating principal that if there is a colorable claim to arbitration and it cannot be said with absolute certainty that arbitration is forbidden by the contract, the question of substantial arbitrability belongs in front of an arbitrator" and further claims the case before us is colorable and further states the District attempts to hide behind the fact that it was protecting the rights of the teacher by not giving reasons for non-renewal when in fact she was given grounds verbally and at least by one school board member. Further there is a requirement that non-renewed teachers whose job performance is judged to have inadequacies must receive intensive assistance before non-renewal or dismissal is instituted. There is no distinction between probationary and non-probationary teachers and further requests dismissal of the ULP and an order to arbitrate the case.

Hearing in this matter was held on August 14, 1990 at the PELRB office in Concord, New Hampshire.

In opening statements, Thomas Barry, Esq. representing Fall Mountain School District, indicated the central issue in this case was similar to the Westmoreland Case, whether the parties grievance procedure could be utilized in the case of a non-renewal of a teacher who is also non-tenured without the School Board giving a reason for such non-renewal. It was Attorney's Barry's position that the Westmoreland case should be decisive in the case before us.

Witnesses were presented on behalf of the School District. Members of the negotiating team who testified that the issue of grievability for non-tenure teacher never had been the subject of negotiations. And further that the School Board had never waived its rights as to renewability of non-tenure teachers.

Attorney Barry indicated that Elizabeth Sayres the teacher in question as far as the School Board was concerned has been an overall good teacher. However, it was the School Boards position not to renew this non-tenured teacher. Dr. Donald Wetmore, Superintendent of Schools had recommended that Elizabeth Sayres contract be renewed, however, the School Board elected not to concur with the Superintendents decision and did deny renewal of her contract.

It was the School Boards position that teacher Sayre was not a good fit for the general overall educational program in existence in Fall Mountain Region.

Chairman of the negotiating committee for the School Board testified that a meeting of March 26, 1990 voted on the Superintendents recommendation to renew and voted in the negative.

Witness Carmella Tsetsi, a School Board member for 2½ years, and now Chairman testified at length regarding the subject matter of non-renewal of non-tenured teachers.

It was the School Boards position that the using of the grievance procedure concerning evaluations of the non-renewed teacher, Elizabeth Sayre, was a subterfuge in an attempt to secure a decision not otherwise warranted. Teacher Elizabeth Sayre testified as to her employment in the District and her technical background and educational experience. Stated she was employed as a part time teacher in various schools in the arts dicipline. She further testified as to the observation conducted by her superiors, the principals of the schools and the evaluations she had received and indicated that she had never discussed with her superiors any difficiencies and indicated that in one instance that Kathy Holt, who was an observer and evaluator in March, refused to discuss the evaluation with her. Kathy Holt stated that the Attorney for the School Board advised them not to discuss any reasons for the poor evaluation as it did not effect the School Boards decision as to non-renewal.

At this point observation forms and evaluation forms where submitted as exhibits and generally the evaluations where good with exception of one or two areas which in two evaluations appeared to have a negative implication. Teacher Sayres further testified that she filed a grievance along with NEA and she felt that the non-renewal action taken was of a disciplinary nature and further questioned certain of the evaluations.

Testimony was further offered that observations do not go in personnel files and only evaluations forms become an official part of the personnel record. Evidence indicated that there was certain negative evaluations in 1987 and 1988 indicated that after discussions certain evaluations had been changed.

Exhibits indicated that an evaluation conducted by a Martin Mahoney on Elizabeth Sayre had been reviewed by Elizabeth Sayres in person having indicated her exceptions to the ratings contained in the official form. The observation reports submitted as exhibits indicated a lack of maintaining appropriate students records and did not in certain circumstances direct and supervise the work of the aides effectively.

Exhibits indicate that the majority of the observation reports had been reviewed as evidence by Elizabeth Sayres signature. Certain testimony was offered that certain changes had been made in negative evaluations from positive to negative after discussion by several of the interested parties in Fall Mountain School District.

Mary Gaul representing the Fall Mountain Teachers Association offered testimony at length that the evaluation and observation reports were flawed and that there appeared to be some personal bias behind the non-renewal of teacher Elizabeth Sayre and that such non-renewal was taken as disciplinary action against teacher Sayres. And extensively questioned witnesses for the School Board as to their procedures and actions with respect to Elizabeth Sayres.

After examining all the exhibits and oral testimony offered in this case, this Board makes the following findings and are offered in response to the parties requests for findings.

FINDING OF FACT

1. A contract exists between the Fall Mountain Teachers Association and the Fall Mountain Regional School Board, such contract contains a grievance procedure which defines a grievance as "all alleged violations misapplication with respect to one or more public

employees or any provision of this agreement." The contract provides for advisory arbitration in cases resulting from a grievance procedure. Arbitrators process certain authority to interpret and apply the provisions of an agreement.

2. The contract does not make distinction between non-tenured teachers and tenured teachers with respect to their access to the grievance procedure.
3. Elizabeth Sayre was a third year teacher employed by the Fall Mountain School District and was not renewed for the 1989-90 school year.
4. Evidence indicated at the hearing that Elizabeth Sayre had generally been an acceptable teacher in the system and no basic derogatory remarks had been made other than two exceptions raised concerning record keeping and supervision of aides.
5. The Superintendent did in fact submit Elizabeth Sayres nomination to the School Board for renewal, such renewal was denied by the School Board, which is within the Boards rights under RSA 189:14.
6. Evidence presented did not support the teachers position that the non-renewal was taken as disciplinary action as evidenced by the Superintendent's recommendation for renewal.
7. Evidence indicated that principals of at least two of the schools had discussions not contained in the observation or evaluation reports with teacher Sayres with respect to her duty assignments as a teacher. None of which appear to be other than Elizabeth Sayres was an acceptable teacher and performed her teaching duties appropriately.
8. The complainant bears the burden of providing evidence that the School Boards action in non-renewal was disciplinary in nature. Considering the Superintendents action and recommendation and the observation and evaluation reports the evidence offered is not sufficiently persuasive for the Board to find the non-renewal was for disciplinary reasons.

ORDER OF THE BOARD

PELRB DENIES the petitioners request for a Cease and Desist Order and finds no unfair labor practice on the part of the School District.

Signed this 12th day of December, 1990.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Daniel Toomey present and voting.