



NH Supreme Court declined appeal of this decision on November 17, 1993, Supreme Court No. 93-441.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF	:	
NEW HAMPSHIRE, SEIU, LOCAL 1984	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. S-0384:4
	:	
STATE OF NEW HAMPSHIRE	:	DECISION NO. 93-41
	:	
Respondent	:	
	:	

APPEARANCES

Representing State Employees' Association:

Thomas Hardiman, Director of Operations SEA
Stephen J. McCormack, Field Representative

Representing State of New Hampshire:

Thomas F. Manning, Chief Negotiator

Also appearing:

Myron Goretzky
Sarah Sawyer

BACKGROUND

The State Employees Association of New Hampshire, SEIU, Local 1984 (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire (State) on December 16, 1992 alleging that an arbitrator's award was violative of the collective bargaining agreement (CBA), and thus a ULP under RSA 273-A:5 I (a), (g) and (h), because it failed to limit the State's ability to assign work to an instructional employee to those subjects for which he was originally recruited and hired at the New Hampshire Technical Institute (NHTI) for the 1986-87 academic year. The State filed its answer on December 31, 1992 after which this case was heard by the PELRB on March 25, 1993.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of academic instructors and other personnel employed by the NHTI, as defined by RSA 273-A:1 X.
2. The State Employees Association of New Hampshire is the duly certified bargaining agent for academic instructors and other personnel employed by the State at the NHTI.
3. In 1986, NHTI advertised a ten month instructor/ professor position in [American] history, Economics and Ethical Issues for the 1986-87 academic year. That position was accepted and filled by Myron Goretzky.
4. Goretzky was asked to teach Sociology in the 1988 spring semester and was subsequently excused therefrom by the Dean of Academic Affairs because of a lack of preparation time. On September 14, 1988, Goretzky agreed to teach Sociology in the 1989 spring semester if he had first been assigned courses within what he called his "contractual responsibilities," namely Economics, The United States in the Twentieth Century, and Contemporary Ethical Issues. This apparently did not occur because on November 20, 1988, Goretzky filed a grievance claiming his "contract" and the terms of the recruiting advertisement had been breached by an involuntary assignment to teach Sociology.
5. The Goretzky grievance proceeded to arbitration on April 5, 1989, resulting in an award by the late Milton Nadworny on April 26, 1989 in which Nadworny noted that, "The President of the Institute denied the grievance on December 1 [1988], citing Article II, Sections 2.1 and 2.1.2 of the Agreement, and pointing out that since Goretzky was qualified to teach Sociology [which Goretzky himself asserted] and had 'only 11 hours of Economics' assigned for the Spring, so the additional five hours of Sociology was justified." (Emphasis added.) Nadworny's Award found the grievance to be arbitrable and set forth three standards on which to evaluate the merits of this case.
6. Section 2.1 of the CBA reserves unto the State the right to manage, direct and control its operations to the extent not limited by law, regulations or provisions of the CBA. Section 2.1.2 of the CBA recites and preserves the rights of "appointing,

promoting, transferring, assigning, demoting, suspending and discharging employees."

7. The Goretzky case proceeded to hearing on the merits on May 27, 1992 before arbitrator John McCrory. Mindful of the Nadworny "standards," McCrory issued an award on June 26, 1992 which (a) rejected the employer's argument that it had the unequivocal right to assign courses, (b) found that the discussions surrounding the grievant's being hired did not, taken alone, "establish a commitment, or a vested right, that they are the only courses that he might reasonably be asked to teach during his tenure with NHTI" and (c) denied the grievance. The Union has now appealed the McCrory award to the PELRB, claiming it violates the CBA and exceeded the authority conferred on the arbitrator under Article XIV of the CBA.

DECISION AND ORDER

The State's authority to transfer under Article II and Article II, Section 1.2 is clear and unambiguous. To be sure, as suggested by Arbitrator McCrory, that right or authority cannot be abused or exercised in an "unequivocal," arbitrary or capricious manner. It was not. There is no evidence that the assignment of a Sociology course was beyond the grievant's capabilities or for purposes other than those stated in Article II of the CBA. The grievant appears to have been qualified to teach Sociology, both from the observations of Arbitrator Nadworny and from the absence of any dispute relative to those findings which might have been made by the Union on behalf of the grievant. This Board has found that "failing a representation and proof that the arbitration proceedings were unfair or irregular...the objective of encouraging the voluntary settlement of labor disputes will be best served by recognition of an arbitrator's award." AFSCME, Local 3438 v. Sullivan County Nursing Home, Decision No. 92-156 (October 7, 1992). The Union has failed to show sufficient grounds for this Board to consider reversal under the Sullivan County case, supra. Accordingly, the charges of ULP are DISMISSED.

So ordered.

Signed this 2nd day of April, 1993.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and Arthur Blanchette present and voting.