

NH Supreme Court affirmed this decision on October 18, 1994, Supreme Court No. 93-177.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GORHAM SCHOOL BOARD	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. T-0276:7
	:	
ANTHONY RENES and GORHAM	:	
TEACHERS ASSOCIATION/NEA-NH	:	DECISION NO. 92-83
	:	
Respondent	:	
	:	

APPEARANCES

Representing Gorham School Board:

Bradley F. Kidder, Esq., Counsel

Representing Anthony Renes & Gorham Teachers Assoc.:

James F. Allmendinger, Esq.

Also appearing:

Robert Bellavance, Supt.
 Brian Sullivan, UniServ Director NEA
 John Fessenden, UniServ Director NEA
 Anthony J. Renes, G.T.A.
 Jean Palm, G.T.A.

BACKGROUND

On February 1, 1991, the Gorham School Board (Board) filed unfair labor practice (ULP) charges against Anthony J. Renes (Renes) and the Gorham Teachers Association (Association) alleging that a request for arbitration by Renes and the Association constituted a breach of the collective bargaining agreement (CBA) and, thus, constituted a ULP under RSA 273-A:5 II (f). Renes and the Association filed an answer on February 15, 1991. This matter was heard by the PELRB on September 26, 1991 and December 10, 1991.

FINDINGS OF FACT

1. The Gorham School Board (Board) is a public employer of teachers and other employees as defined by RSA 273-A:1 XI.
2. The Gorham Teachers' Association (Association) is the duly certified bargaining agent of teachers, including Renes, employed by the Board.
3. On March 26, 1990 Renes was offered a teaching contract for the 1990-91 school year with eight specific performance conditions attached thereto, at "Item O". Another provision of that contract ("Item N") provided that an "individual's failure return the contract by Friday, April 6, 1990 at 4:00 p.m. to his/her respective principal shall invalidate the contract offer and shall result in the position being declared vacant and open to other applicants." Item N was not exclusive to Renes's contract. The annual compensation figure for the proposed 1990-91 school year was identical to that which was paid to Renes for the 1989-90 school year; it contained no step increase. That step was intentionally denied for lack of satisfactory performance by letter of March 23, 1991.
4. On March 30, 1990, Renes requested an extension of time in which to return his contract so that he might discuss the conditions noted at "Item O" and the lack of a step increase with Association representatives. On April 2, 1990 the Superintendent of Schools granted Renes, and, subsequently all other unit members, an extension until April 13, 1990. (Assn. Ex. No. 7)
5. Renes did not return his contract on or before April 13, 1990, i.e., not until April 18, 1990. He was advised by letters dated April 17, 1990 and May 11, 1990 that his failure to return the signed contract within the approved extended time limits constituted a failure to accept the offer, that the position was vacant, and that the position was available for application by him and/or other qualified candidates. The vacancy was formally posted June 14, 1990. (Assn. Ex. No. 9) Two other teachers who neglected to return their contracts by the deadline were called and reminded to do so by a secretary. Renes received no such reminder.
6. On April 2, 1990 (between the request for an extension and the expiration of the granted

extension), the Association filed a grievance on behalf of Renes grieving the fact that his annual step or increment had been withheld in the proposed 1990-91 contract as well as the imposition of the eight special conditions at "Item O".

7. By memorandum dated May 7, 1990, the Superintendent of Schools reviewed the grievance as well as positions explained by Renes and UniServ Director Fessenden. He denied the grievance.
8. On September 6, 1990, Renes filed a second grievance claiming that he was denied a 1990-91 contract "in violation of the contract and past practice."
9. On September 20, 1990 NEA-New Hampshire counsel, James Allmendinger, sent a new (third) grievance document of the same date, to Board counsel, Brad Kidder, claiming "Renes has been denied his livelihood without just cause." On September 24, 1990 Kidder wrote Allmendinger inquiring as to the specific provisions of the contract alleged to have been violated. Allmendinger responded to Kidder by letter of October 2, 1990. Kidder then wrote to Allmendinger on October 11, 1990 saying "Renes is not an employee of the district [therefore] he does not have access to our grievance procedure or any alleged grievances which were not filed as of the date his employment ceased. October 31, 1990, Allmendinger advised Kidder and the Gorham School Board of the Association's desire to proceed to arbitration. Allmendinger then filed a Demand for Arbitration dated December 3, 1990, with the American Arbitration Association.
10. January 2, 1991, the Superintendent of Schools advised the American Arbitration Association "that the issue in question is not arbitrable...[and] we do not accept your jurisdiction in this matter..." January 30, 1991, Kidder wrote to the American Arbitration Association advising that the instant charge had been filed against Renes and the Association and asking that the arbitration be held in abeyance until the PELRB shall have rendered a decision. A Motion to Cease and Desist was filed by Kidder with the PELRB on February 27, 1991, with objections thereto being filed by the Association on March 7, 1991.
11. February 15, 1991, a labor supervisor at the American Arbitration Association advised the

parties that it would proceed "with further administration of this case unless both parties advise us to the contrary or the moving party is enjoined by a court of proper jurisdiction." A hearing date of September 6, 1991, before Arbitrator Irvings, was set by AAA notice of May 7, 1991. According to Arbitrator Irvings's bill for a late postponement, the September 6, 1991 arbitration hearing did not occur. (Assn Ex. No. 10).

12. The proposed contract for the 1990-91 school year was not the first time Renes had been denied an increment. A similar situation occurred in 1989-90 when Renes received no increment, This prompted "discussions" between UniServ Director Fessenden and the Superintendent and Attorney Kidder in the spring of 1989 and 1990. These discussions caused Renes's 1989-90 contract to be held until June of 1989 before it was due to be returned, even though this was later than the due date for other teachers. Discussions between Fessenden and the Superintendent concerning Renes in the spring of 1990 did not conclude until June 10th or 12th. When those produced no resolution, the vacancy notice (Assn. Ex. No. 9) was posted on June 14, 1990.
13. Renes was aware of the on-going discussions between Fessenden and Kidder and/or the Superintendent in the spring of 1990, therefore, he thought that his contract was not due until there was some resolution from those discussions. Fessenden testified that he felt the April 13, 1990 deadline did not apply to Renes under the circumstances of the continuing discussions he told Renes, "I'm working with [the Superintendent so] you might just as well hang on to the contract."
14. Renes is a tenured teacher. He has had no RSA 189:14 hearing notwithstanding his first unemployment report showed he was discharged for poor performance. See also Superintendent's letter of March 23, 1990. The unemployment documents have since been changed to "failure to return contract."

After examining the record in this case, we affirm the Board's allegation that the Association improperly requested arbitration on behalf of Renes, thus constituting a ULP under RSA 273-A:5 II (f). Renes was a long term employee of the Board. He knew the practice regarding the return of individual contracts and he consciously and knowingly failed to do so on or before the appointed date of April 13, 1990. This was his option; he cannot now put the responsibility for that action (or inaction, as the case may be) on the employer. The extension to April 13 was originally granted to

Renes and subsequently to all unit members. When the extension was broadened to all unit members, an additional extension was not sought for or granted to Renes. He had no basis to believe the time limit did not apply to him. Had he been concerned about the eight extra conditions referenced in his individual contract, Renes could have returned the signed document subject to further discussion or negotiation about those conditions or with a disclaimer that return of the signed document did not waive any rights to proceed to arbitration. He did neither. Finally, whatever characterization Uniserv Director Fessenden may have given to the circumstances and/or believed of the April 13, 1990 deadline, these characterization or beliefs cannot be attributed to the employer since Fessenden had no authority to act on its behalf.

ORDER

We find that:

1. The Gorham Teachers Association, NEA-NH committed an unfair labor practice when it attempted to pursue to arbitration three grievances on behalf of Anthony Renes after Renes failed to return his individual teaching contract to the employer on or before the April 13, 1990 deadline.
2. The Gorham Teachers Association, NEA-NH is directed to cease and desist from further pursuit of this matter as a grievance.

So ordered.

Signed this 25th day of May, 1992.


EDWARD J. HASELTINE
Chairman