



NH Supreme Court declined appeal of this decision on July 14, 1993, Slip Op. No. 93-177.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GORHAM SCHOOL BOARD

Complainant

v.

GORHAM TEACHERS ASSOCIATION/
NEA-NH and ANTHONY RENES

Respondent

CASE NO. T-0276:7

DECISION NO. 92-183

APPEARANCES

Representing Gorham School Board:

Bradley F. Kidder, Esq., Counsel

Representing Gorham Teachers Association/NEA-NH:

James F. Allmendinger, Esq., Counsel

Also appearing:

Robert Bellavance

Anthony Renes

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 parties' collective bargaining agreement (CBA) and was 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 26th and December 10th, 1991 with a decision (Decision No. 92-83) issuing on May 25, 1982. Renes and the Association filed a Motion for Rehearing on June 15, 1992. The Board filed an Objection to Motion for Rehearing on June 16, 1992 with the result that the PELRB granted the Motion for Rehearing on July 27, 1992 (Decision No. 92-127). The case was

then heard on rehearing by the undersigned hearing officer on October 1, 1992.

FINDINGS OF FACT

1. No testimony or evidence was offered on rehearing to warrant reversal or modification in the PELRB's findings of fact in Decision No. 92-83. Therefore, findings numbered one through fourteen, inclusive, in Decision No. 92-83 are hereby reaffirmed and incorporated by reference.
2. Special reaffirmance is given to the fact that Renes did not return his teaching contract before the deadline set by the Board, thus making this case one of an offer made by the Board and not accepted by the employee, rather than a case of disciplinary discharge.
3. A teacher's acceptance or non-acceptance of a teaching contract is not a "violation, misinterpretation or misapplication" under Article XIX of the CBA; therefore, it is not properly the subject of a grievance under that contract.
4. Arbitration sought by the Association on behalf of Renes would be meaningless because the later two grievances were filed after Renes had declined to return his 1990-91 teaching contract within the time frames set by the Board and after the expiration of his 1989-90 teaching contract. The first grievance, filed on April 2, 1990, is moot because the relief requested related to conditions which would have been placed on the teaching contract Renes would have had for the 1990-91 school year had he signed and returned it within the time limits set by the Board. Since he did not, he cannot now complain about and arbitrate those conditions as they might have applied to a teaching contract which he did not accept.

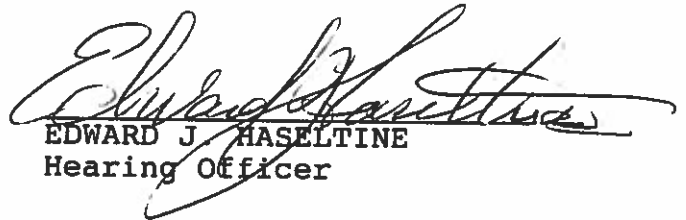
DECISION AND ORDER

The findings and conclusions of Decision No. 92-83 are affirmed. In the rehearing process, the Association had the burden of convincing the Hearing Officer that the PELRB erred in its earlier decision (No. 92-83) issued on May 25, 1992 or that additional evidence has become available warranting a modification

or reversal of that decision. It failed to do either. Based on the analysis in Decision No. 92-83, the lack of new evidence, and the inappropriateness of proceeding to the arbitration process, as discussed in Findings No. 3 and 4 above, the PELRB's prior finding that the Association improperly requested arbitration on behalf of Renes is also affirmed along with the determination that this action constituted a ULP under RSA 273-A:5 II (f). The PELRB's prior order directing the Association to cease and desist from further pursuit of this matter as a grievance is reiterated and affirmed.

So ordered.

Signed this 14th day of December, 1992.


EDWARD J. HASELTINE
Hearing Officer