Appeal to NH Supreme Court withdrawn on July 8, 1985, NH Supreme Court Case No. 84-497.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAVERHILL COOPERATIVE EDUCATION ASSOCIATION, NEA-NEW HAMPSHIRE

Complainant

v.

HAVERHILL COOPERATIVE SCHOOL DISTRICT

Respondent

CASE NOS. T-0232:9
T-0232:10

DECISION NO. 84-64

APPEARANCES

Representing Public Employee Labor Relations Board

Robert E. Craig, Chairman. Members Richard W. Roulx and James C. Anderson present and voting. Bradford E. Cook, Esq. Counsel and Evelyn C. LeBrun, Executive Director.

Representing Haverhill Cooperative Education Association, NEA-New Hampshire

James Allmendinger, Esq., NEA-New Hampshire
Jean Kornfeld, Esq., NEA-New Hampshire
John Fessenden, UniServ Director

Representing Haverhill Cooperative School District

David L. Harrigan, Esq.
James L. Burke, Esq.
Susanne A. Price, Legal Assistant

Witnesses (In order of appearance)

John Fessenden
Mary McKelvie
Elizabeth Hinman
Barbara Krulewitz
Lloyd Steeves
Barry LeBarron
Irving Fountain
Jane Tuttle Stimpson
Rae Fountain
Norman Mullen, Superintendent
Donald Evans, Principal, High School
Howard Evans, Principal, Jr. High
Allan Page, School Board Member
Harry Haskins, Assistant Superintendent

BACKGROUND

These two cases, brought by the Haverhill Cooperative Education Association, NEA-New Hampshire against the Haverhill Cooperative School District, makes allegations that two teachers in the Woodsville Junior High School, Irving Fountain and Barry LeBarron, were not re-nominated as teachers for the 1984-1985 school year because of activities engaged in by them as members and officers in the Haverhill Cooperative Education Association. It is alleged that these actions by the school district violated RSA 273-A:5 I (a), (c) and (d). Those sections read as follows:

> "I. It shall be a prohibited practice for any public employer:
>
> (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;...
>
> (c) To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization;...
>
> (d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition or given information or testimony under this chapter;..."

A full day hearing on the charges was held in Woodsville, New Hampshire, August 21, 1984 commencing at 10:00 a.m. and concluding at approximately 7:00 p.m.

Briefly, the charges alleged that in case T-0232:9, are that Barry LeBarron, a shop teacher in the Junior High School, became President and chief negotiator for the union at approximately the beginning of the 1983-1984 school year at a time when the employer and employee organization failed to reach agreement on a contract for that school year. Testimony stated that Mr. LeBarron had not been active in the association prior to that time and became active, vocal and involved in the negotiations, was elected President when the previous President resigned her position, and thereafter was visible and known to the administration as part of the union activities. It was also stated that he had involvement in and was partially responsible for an increased sense of awareness among the teachers of association activities and unity among the teachers concerning negotiations and relations with the administration. Testimony revealed that he was a competent teacher, his evaluations indicated no particular problems with his teaching ability and his peers felt he was an asset to the school and the students. The unfair labor practice charge states that the reason for the failure to renominate him for the 1984-1985 year was his union activities. The employer responded by stating that the number of students in his subject area had decreased so that the need for two industrial arts teachers in the district was eliminated and one would suffice. Therefore, the response to the charges by the employer is that he was discharged through a reduction in force and his union activities, as well. Mr. Fountain was not involved in the union until the beginning of the 1983-1984 school year when he too became involved when no contract was agreed upon between the administration and the teachers. He was elected Vice-President of the union and, according to testimony, was partially responsible for increased unity among the teachers and the heightened awareness of their union's activities. Mr. Fountain's evaluations as a teacher rate him to be an "average" teacher, although testimony by his peers show him to be popular and demonstrate the belief that he was training students well and helping student and staff morale. Evaluations by the Assistant Superintendent of Schools, whose testimony indicated had not regularly reviewed teachers in the school, show deficiences in his teaching ability. It is the position of the Association that Fountain was not renominated for 1984-1985 because of his union activities and it is

the position of his school district that the failure to renominate was due to the evaluations of Fountain as an average teacher which were especially relevant since had he been renominated for the 1984-1985 school year, he would have received "tenure".

FINDINGS OF FACT AND RULINGS OF LAW

First, the Board would note that it received two separate and distinct unfair labor practice charges, one involving each of the teachers. Although the parties consented to a joint hearing of the charges, the Board has considered the testimony as to each case separately and makes its rulings on each after separate consideration.

Second, the Board would point out that certain additional information was submitted to the Board after the hearing. Under ground rules set forth by the Board and its counsel after hearing, all such information was to have been received by Monday, August 27, 1984. By telephone request, this date was extended until Tuesday, the 28th. Certain additional information in writing was received after that date and has not been reviewed or considered by the Board in reaching this decision.

I. Barry LeBarron. On the basis of testimony, review of the records and materials supplied to the Board, the Board finds the charges pertaining to Barry LeBarron's non-renomination are a violation of RSA 273-A:5 I (a) and (c). Specifically, the Board finds that the only credible explanation for the non-renewal of Mr. LeBarron was his union activity. Frankly, the Board cannot believe or give credence to the explanations and rationale given by the employer for the non-renomination of LeBarron for several reasons.

As background, it should be noted that there was extensive testimony of the general anti-union feeling by the Superintendent of Schools. Several teachers testified that advice was given to new teachers in the school district that they should not become active in the association prior to receiving tenure and one school board member was quoted as having given that advice to Mr. LeBarron. In addition, there was testimony about remarks by the Superintendent of Schools alleging that upon finding that LeBarron had become active in the Association, said he "did not wish to keep his job very long." It is apparent to the Board that the general atmosphere set by the administration and opinion of the Superintendent is anti-union. However, absent specific circumstances applying to a particular case, the general feeling is not enough to support an unfair labor practice charge. In the case of Barry LeBarron, the Board believes specific evidence exists.

Specifically, the evaluations by the principal and other teachers of Mr. LeBarron's work was that he was a good teacher, good with students, a leader and valuable asset to the teaching staff. The explanation by the Superintendent of Schools that Mr. LeBarron's non-renomination was due to a reduction in force is not supported by the facts. While there apparently had been some discussion of the need for two shop teachers for some time, there was also a specific, school board adopted policy on reduction in force. No action under such a policy was taken in the case of the alleged desire to eliminate Mr. LeBarron's job. Indeed, immediately after notifying Mr. LeBarron that he would not be renominated, the Superintendent of Schools wrote out and asked for publication of an advertisement advertising Mr. LeBarron's job. The Superintendent even became angry when told the following week that the advertisement had not run. The employer's explanation that this ad was a mistake is not credible in the view of the Board. Mr. LeBarron was President of the union and a negotiator who ingendered spirit and unity among the teachers. At a school board meeting on January 4, 1984, there was discussion between Superintendent Mullen and certain school board members when discussing personnel actions in which the question was asked whether the Superintendent was "going to take care of that bad blood, aren't you?" and he answered, "always have".

(Tape of January 4, 1984, School Board Executive Session). In the context of the conversation and circumstances surrounding employer/employee relations, the only explanation for that is that the Superintendent was intending to eliminate union activists from his teaching staff. Finally, the Assistant Superintendent of Schools, Mr. Haskins, who had not visited the school in which Mr. LeBarron taught for some years, "coincidentally" visited the school after the teachers commenced their union activities to evaluate Mr. LeBarron (and Mr. Fountain and certain other teachers). The explanation for this evaluation that it was just by coincidence is not believeable. The fact that the only subject in which Mr. LeBarron was evaluated was not his primary subject of teaching adds further to the conclusion that this evaluation was a pretext.

In summary, the Board cannot give credit to the explanation by the employer in this case of the reasons for non-renomination of Barry LeBarron as a teacher and finds that the only explanation under the full set of circumstances is that he was not re-nominated because of his union activity.

II. As to Irving Fountain, the Board has evaluated the testimony concerning his non-renomination, as well. First, it seems more than coincidental that both the new President and new Vice-President of the union were not renominated at the same time. However, this coincidence, if explained by other evidence would not be enough to make a finding of unfair labor practice. The Board believes that additional evidence, coupled with its inability to believe the explanations given by the employer, support the charges as to Mr. Fountain, as well.

The evidence showed that Mr. Fountain had not been involved in union activities prior to the 1984-1985 school year. Upon becoming frustrated with the failure of the teachers and administration to reach an agreement on a contract, however, he became involved, gave speeches on at least one occasion, which had an effect of unifying teachers and getting them more involved and was elected Vice-President of the union as part of the "new blood" in that organization. The administration was obviously aware of who did what and on what occasions and under what circumstances since testimony indicated that several of the spouses and/or friends of the chief administrators were at the union meetings as members of the faculty. Mr. Fountain was evaluated by the Assistant Superintendent of Schools for the first time after his union activity commenced, as well. In addition, he was evaluated in the subject which was not his principal subject. While there were certain faults found with his teaching, these were inconsistent with the evaluations made by the principal of the school on various occasions. It is not this Board's job to evaluate a teacher's performance or give weight to evaluations. Indeed, it is not the Board's job to tell School Districts which teachers they should hire or not hire. The only job of the Board is to insure that actions on employment issues are not taken as a pretext in order to eliminate the jobs of those involved in activity protected under RSA 273-A. The evidence in this case supports the conclusion that reliance upon evaluations in this matter is a pretext. Indeed, the Superintendent of Schools cited the prospects for continued employment by Mr. Fountain as "excellent" during the year prior when Fountain was attempting to get a mortgage.

Taken as a whole, the testimony concerning Mr. Fountain forces the Board to conclude that he was not renominated because of his union activity as well. As stated above, this is based in large part on the inability of the Board to believe the explanation given by the School Board or its witnesses in connection with this matter. It is within the province of the finder of fact to believe or not believe witnesses.

The Board wishes to stress again that it is not undertaking a hearing on the qualifications of either teacher or substituting its evaluation of their ability for that of employer. Other than issues which arise solely under RSA 273-A, the

Board will not review personnel decisions. It is apparent that neither teacher under these circumstances is entitled to a hearing under RSA 189:14-a and even if one were available to them, it would not be by this Board. Because the Board is constrained to find that the only credible reasons for non-renomination of the two teachers in this case was their union activities, the Board issues the order set forth hereafter. It should be made clear that the order should not be read to order either teacher to work for the employer if that teacher does not wish to do so. However, the terms of the order do set forth the requirement that both teachers be offered contracts for the 1984-1985 school year on the terms set forth in the order.

DECISION AND ORDER

Having found the charges substantiated in both cases, the PELRB orders the following action:

1. The employer is hereby ordered to renominate, reelect and re-employ both Barry LeBarron and Irving Fountain to their position with no loss in pay, benefits, seniority or changes in schedule or working conditions retroactive to the beginning of the 1984-1985 school year.
2. The employer is hereby ordered to execute and offer to each teacher the contract he would have received for the 1984-1985 school year and offer same to each teacher.
3. The employer shall remove all letters, notes and evaluations placed in the teachers' file during the 1983-1984 school year made by the Principal or Assistant Superintendent of Schools.
4. The employer is hereby ordered to cease and desist from any and all actions to interfere with the operations or free discussions between the employee organizations or its members, including threats or surveillance.
5. This order shall be effective and all actions required hereunder shall commence on the first regular school day following the date hereof but not later than September 4, 1984.

Robert E. Craig

ROBERT E. CRAIG, Chairman

By unanimous vote. Chairman Robert E. Craig presiding. Members James C. Anderson and Richard W. Roulx present and voting. Also present, Evelyn C. LeBrun, Executive Director and Bradford E. Cook, Esq., Counsel.

Original Decision and Order given August 30, 1984.

September 10, 1984.