

NH Supreme Court affirmed this decision on December 21, 1993, Slip. Op. No. 91-480.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HINSDALE SCHOOL BOARD :
: Petitioner :
v. :
HINSDALE FEDERATION OF TEACHERS/ :
NEA-NEW HAMPSHIRE :
Respondent :

CASE NO. T-0386:4
DECISION NO. 91-49

HINSDALE FEDERATION OF TEACHERS/ :
NEA-NEW HAMPSHIRE :
Petitioner :
v. :
HINSDALE SCHOOL BOARD :
Respondent :

COUNTER-CHARGES

APPEARANCES

Representing Hinsdale School Board:

Bradley F. Kidder, Esq., Counsel

Representing Hinsdale Federation of Teachers:

James F. Allmendinger, Esq., Counsel

Also in attendance:

- Harry S. Gale, Jr., Consultant
- Mary E. Gaul, UniServ Director, NEA
- Lynne E. Pomfrey, H.F.T.
- Linda DeLong, H.F.T.
- Patricia Haselton, H.F.T.
- Karen Greer, H.F.T.
- Mary Martin, H.F.T.
- Cecilia B. Hoyer, H.F.T.
- Frederick Wolfe, H.F.T.
- Ann L. Hill, Teacher, Hinsdale
- Michael Abbott, Hinsdale High School
- William Wheeler, S.A.U. #38
- A. Nelson, H.F.T.

BACKGROUND

The Hinsdale School Board (Board) filed unfair labor practice charges against the Hinsdale Federation of Teachers, NEA-New Hampshire (Federation) for alleged concerted job action "working to conscience" encouraged and fostered by its affiliate, harassment, threats and coercion of certain teachers in connection with compensation issues surrounding their performance as department heads and a breach of the collective bargaining agreement, all in violation of RSA 273-A.

The Federation denied having taken action which would result in the refusal of teachers to perform any duties which are covered by the classroom teaching contract or the CBA. The Federation merely asked its members to "consider" not volunteering to take on new responsibilities which are not expressly covered by the terms of the individual classroom teaching contract. It had not set forth any penalty or punishment for any member who decided to volunteer. It also denied all charges of threat, harassment or coercion of any kind.

The Federation filed counter-charges against the Board and its agents for prohibiting a teacher from calling members of the Federation at the High School or discussing any business matters of the Federation with them, and threatening her with punitive action if she called the High School. Such action on the part of the High School Principal they alleged interfered with the internal administration of the employee organization and breached the CBA and the "Discrimination Clause" therein. In addition, the Federation alleged that the Principal dealt directly with a member of the Federation rather than the certified representative as required by law.

The Board in answer to the counter-charges denied all charges.

A hearing on all charges was held on April 23, 1991 in the School Cafeteria in Hinsdale with all parties represented.

Upon request of the parties, all witnesses were sequestered.

FINDINGS OF FACT

1. In January 1990, the parties negotiated and ratified a 3-year agreement and the Board submitted the economic impact of that agreement to a specially called school district meeting on February 5, 1990 at which time the voters refused to fund the agreement.
2. Subsequent to the action at the special meeting, the settlement was again presented at the annual district meeting in March and cost items were rejected and a lesser sum of money was appropriated for the contract settlement.
3. In March 1990, the Federation held a meeting at which time they voted to "Work to Conscience", synonymous to "Work to Rule".
4. Negotiations continued and eventually resulted in a 2-year agreement which was accepted by the membership at its August 1990 meeting. Agreement was signed by both the Federation and the School Board on September 12, 1990 thereby binding the parties through June 30, 1991.

5. The Hinsdale Federation of Teachers, NEA-New Hampshire is the recognized agent of the teachers in the Hinsdale School District for purposes of collective bargaining and settlement of grievances.
6. The Federation's affiliate, NEA-New Hampshire, which is comprised of various member teacher associations throughout the State of New Hampshire assist the associations in negotiations, advises them in various troubled areas, etc.
7. There was no evidence to prove that the UniServ Director, NEA-NH, took any action that led to teachers engaging in partial work stoppage in the form of "Work to Conscience" policy implemented by the Hinsdale Federation of Teachers or encouraging the members to not honoring all their contractual commitments.
8. Teachers are "professionals" which mean they are not engaged in a 9 to 5 type job. Past practice in the Hinsdale School District was that teachers performed all voluntary services, for which they were not compensated, such as: holding evening parent conferences, chaperoning field trips, PTA committee work, dances, recognition nights, awards nights, etc. All services rendered in the past which are a part of the teachers professional duties and they do not have the option to refuse to participate in such duties.
9. Volunteer services are an integral part of a sound educational program and an inseparable part of a teacher's duties and have been past practice on a regular basis as part of their jobs. A contract cannot be expected to cover the minutiae of duties which a teacher is expected to perform.
10. Withholding of "any" services which have been defined in the contract as well as those which have been established and understood through past practices of the parties is a form of job action.
11. In all matters of negotiations, the public employer must deal directly with the certified agent and not through any individual member.

DECISION AND ORDER

Now therefore, based on the foregoing findings of fact and the foregoing reasons, it is hereby ORDERED:

- A. The decision to withhold the volunteer duties well understood and established through past practice was a concerted action on the part of the teachers, as evidenced by the "Work to Conscience" guidelines posted by the Federation concerning their participation as advisors to the Drama Club, Junior Class, Future Business Leaders of America, Home Ec's Club, Granite State Challenge, Math Counts, Language Club and English and Science Department chairs constitutes an illegal action and a violation of RSA 273-A.
- B. The Federation is hereby ordered to cease and desist from further participation in such job action.

- C. The Public Employer and its Agents, in all Federation business matters, MUST deal directly with the certified representative and not with individual teachers, particularly when negotiations are ongoing.
- D. Charges of harassment, coercion, or threats were not persuasive and are hereby DISMISSED.

Signed this 1st day of August, 1991.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members E. Vincent Hall and Richard W. Roulx present and voting.