

HOOKSETT EDUCATION ASSOCIATION

Complainant

v.

HOOKSETT SCHOOL BOARD

Respondent

CASE NO. T-0235:1

DECISION 83-53

APPEARANCES

Representing Hooksett Education Association

Stephen Guberman, UniServ Director, Region IV

Representing Hooksett School Board

Robert Leslie, Esq., Counsel

Also in Attendance

Don Beaudette
Kathleen Lang
Sandra Papadeas

Barbara Blair
Carleen Bergquist
John Proctor

J. W. Carpenito
Susan J. Armstrong
Fred Reich

BACKGROUND

The Hooksett Education Association, NEA-NH ("Association") filed improper practice charges against the Hooksett School Board ("Board") on June 22, 1983. The Association charged the Board with unfair labor practice violating RSA 273-A:5 I (a) and (h) and also 273-A:4. Specifically, the Association argued that the collective bargaining agreement in force contained provisions guaranteeing "parental leave" for up to five working periods (Article XVI) and also guaranteeing the use of accumulative sick-leave should the teacher requesting the leave become "disabled prior to the commencement of said leave". The Association claims that these provisions were not fairly applied to Ms. Sandra Papadeas and when she tried to pursue her rights in the grievance procedures, the Board dismissed her grievance in spite of the contract and that therefore the grievance procedures are not "workable", constituting a violation of RSA 273-A:4.

The Board denied any violations of RSA 273-A and argued that Ms. Papadeas applied for parental leave to begin after her disability arising from childbirth was to end despite the fact that the contract provides (Article XVI) that parental leaves are to be without pay or any other cost to the School District, therefore, had Ms. Papadeas' request been granted, she would have been give a "partially paid maternity leave", contrary to the spirit, letter and intent of the contract."

A hearing was held at PELRB's Office in Concord on September 15, 1983 and continued on October 13, 1983 with all parties represented.

FINDINGS OF FACT

At the hearing on September 15, 1983, the Board's counsel moved to dismiss the portion of the complaint dealing with the question of the workability of the grievance procedures on the grounds that the complaint was untimely since the contract went into force on July 1, 1983, and that was when the complaint should have been filed; and under RSA 273-A:6 (VII) such a complaint must be filed within six months or be dismissed.

Argument over the question of "timeliness" was heard and the PELRB decided to grant the motion to dismiss the portion of the complaint dealing with the "workability of the grievance procedures".

At the hearing on October 13, 1983, testimony, exhibits and argument were received on the issue of violation of the contract under RSA 273-A (h).

The Chairperson of the Hooksett Teachers Association testified that it was her understanding that the changes in the present contract allowed any disability to be linked with parental leave. Cross examination revealed ambiguity over when a maternity leave started, particularly whether maternity leave had to start before the baby was born (contract does not specify).

The Assistant Superintendent of Schools testified to his understanding of the negotiating efforts and indicated that it was his understanding that the new "parental leave" section of the contract was to allow fathers (or married persons generally) to participate in childrearing and that the usual practice was for maternity leave to begin before the birth of the child.

RULINGS

Since the contract is not clear on when a maternity leave will commence, the question cannot be simply referred to past practice given the several recent changes in the contract, variously interpreted in the case at hand.

Given that the contract stipulates that "maternity leave" is one type of "parental leave" and that the "general provisions" governing disability (No. 11) are part of the provisions governing all parental leave, we cannot accept distinctions based solely on giving birth. Those rules applicable to "adoptive" parental leave or "childrearing" parental leave must also apply to "maternity leave" as simply one type of "parental leave" as outlined in the contract.

ORDER

1) We find the Hooksett School Board did violate RSA 273-A:5:I (h) in denying a parental leave to Ms. Papadeas as requested;

2) We order the Hooksett School Board to grant Ms. Papadeas a "parental leave" for the School Year 1983-84, as requested.



ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 8th day of November, 1983

By unanimous vote. Chairman, Robert E. Craig, presiding, members Robert Steele, Russell Verney. Also present, Executive Director, Evelyn C. LeBrun.