

NH Supreme Court declined appeal of this decision on August 18, 1992, NH Supreme Court Case No. 92-248.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER EDUCATION ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

MANCHESTER BOARD OF SCHOOL
COMMITTEE

Respondent

CASE NO. T-0242:8

DECISION NO. 92-19

APPEARANCES

Representing Manchester Education Association:

Thomas Adams, NEA-New Hampshire

Representing Manchester Board of School Committee:

Carolyn Kirby, Esq.
David Hodgen

Also appearing:

Wendy J. Hankins, NEA-New Hampshire
Mary Beth Soterion
Kevin Soterion
Virginia Garland, NEA-New Hampshire
Leonard Bernard, City of Manchester
Gene Ross, City of Manchester

BACKGROUND

On April 17, 1991, the Manchester Education Association (Association) filed improper practice charges (ULP) against the Manchester Board of School Committee (Board) alleging a violation of RSA 273-A:5, I (no paragraph cited). The Board responded by filing an answer on May 2, 1991, denying any violations, seeking

dismissal of the complaint, and requesting compliance with Article XI B.1. of the parties' contract. The Association filed an amendment to its ULP on July 22, 1991, as well as a Request for Production of Documents by the Board. On July 31, 1991, the Board filed an Objection to Petitioner's Request for Production of Documents and an Objection to Complainant's Amendment to Unfair Labor Practice/Motion to Dismiss. The pleadings were completed with the Association's Objection to Boards Motion to Dismiss filed on August 12, 1991. This matter was scheduled for hearing and heard by the Board on August 14, 1991.

The Association's ULP, dated April 11, 1991, and filed April 17, 1991, alleged that the Board evaluated Mary Beth Soterion, a non-tenured teacher, on January 17, 1990, with the result that she received ratings of "professionally competent" in eighteen categories, "needs improvement in two categories (lesson planning and organization), and no "unsatisfactory" ratings. A written commentary attached to the evaluation sheet was positive with the exception that Soterion's lack of planning prompted a remark that she should continue her professional growth by making use of "specific planning techniques." By letter of March 6, 1990, Soterion was notified by the Superintendent of Schools that she would "not be renominated for the school year 1990-91" pursuant to RSA 189:14 (a). Citing to Article XV, A (4) of the contract, the Association claims there has been a breach of that agreement and therefore, a violation of RSA 273-A:5, I, [presumably] (h). By virtue of information asserted in the Association's Objection to the Respondent's Motion to Dismiss dated August 12, 1991 there is no issue as to Soterion's being a non-tenured teacher within the meaning of RSA 289:14 (a).

FINDINGS OF FACT

1. The Association is the duly recognized bargaining agent for all "certificated employees of the School System of Manchester." (Contract Article I, Sec. A)
2. The Board is the public employer as defined by RSA 273-A:1, X.
3. The parties entered into and signed a collective bargaining agreement on November 29, 1988, for the period July 1, 1988, to July 1, 1989, and pertinent at all times involving these proceedings.
4. Contract Article XI, B (1) provides in pertinent part:

The following terms and conditions shall apply with respect to the employment of each teacher. The contract shall be renewed annually,

automatically, during the period of said teacher's first three (3) years of continuous employment by said Board, unless the teacher has been notified, in writing, prior to March 15 that the contract will not be renewed for the following year. If a teacher receives a notice of non-renewal set forth in the preceding sentence, the parties agree that the teacher shall not be entitled to a statement of reasons relating to any such notice except as may be required by law.

5. Contract Article XV, A (4) provides in pertinent part:

If, after evaluation, deficiencies are observed in classroom management, instructional skills and/or professional preparation, such deficiencies shall immediately be brought to the attention of the teacher.

The teacher's immediate Supervisor, Principal, Superintendent, Assistant Superintendents and/or Teacher Consultant shall determine appropriate affirmative action designed to help correct such deficiencies and shall provide assistance to implement such action.

6. Mary Beth Soterion was a non-tenured teacher employed by the Board, was evaluated January 17, 1990, with the results noted herein, above, and was advised by letter dated March 6, 1990 (received on March 8, 1990) from Superintendent Eugene W. Ross that "pursuant to RSA 189:4 (A), you will not be renominated for the school year 1990-1991."
7. On April 12, 1990, Soterion filed a grievance claiming, "On March 8, 1990 the administration violated the spirit and intent of Article XV, 'Teacher Evaluation,' when it did not identify any fatal deficiencies and prescribed no action plan with supportive assistance to correct said deficiencies prior to non-renewing the grievant."
8. "Fatal deficiencies" is not a term found in Article XV A (4) of the contract.
9. There is no evidence that Soterion's non-renewal was caused by or the result of the evaluation of January 17, 1990.
10. The non-renewal of non-tenured teachers has been the subject of specific negotiations between the parties, more specifically referenced in Finding No. 4, above.

11. After reviewing the written commentary which accompanied Soterion's evaluation of January 17, 1990, we find no evidence of a violation of contract Article XV (4).
12. After reviewing the facts of this case and the contract, we find no evidence of a violation of contract Article XI B (1). Soterion was not given reasons for her non-renewal on March 6, 1990, nor was there any contractual obligation for such reason(s) or explanation(s) to be given.
13. RSA 189:14 (a) provides that teachers who have taught for three (3) consecutive years or more in the same school district and who have been notified of their intended non-renewal may seek "a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected." We find no entitlement thereunder requiring the Board to provide Soterion with the reasons why the employer chose not to renominate her in March of 1990.

DECISION AND ORDER

Despite voluminous filings in this case, it involves a simple issue: Was Soterion deprived of any contractually guaranteed rights [thus violative of RSA 273-A:5, I (h)] when the Board declined to process her grievance of April 12, 1990? We find that she as not.

Contract Article XV, A (4) speaks of deficiencies and of remedial or affirmative action. A reading of Soterion's evaluation of January 17, 1990, and the accompanying commentary suggest no unsatisfactory deficiencies and only two areas of needed improvement. Areas where improvement could be made were discussed and referenced for her benefit. Whether this commentary was in the form and style normally employed is beyond our consideration as there was no allegation that it was not. We find no violation of Article XV, A (4) and thus no violation of RSA 273-A:5, I (h).

We agree with Item 14 of the Board's response that "Soterion was simply non-renewed." This observation takes on added significance when one examines the chronology of events. Soterion was evaluated January 17, 1990, and elected neither to sign nor attach a statement to that evaluation. She received notice of the intent not to renominate on or about March 8, 1990. She did not file her grievance until April 12, 1990, almost three months after the evaluation and more than a month after her having received notice of non-renewal. While we have found no violation of contract Article XV, A (4), above, even if that were not the case,

one must question the value of the remedial or affirmative action referenced in that portion of the contract for a non-tenured teacher who has been non-renewed. The non-renewal decision is discretionary with the employer and from the record in this case, we find no way that process violated either contract Article XI, B (1) or RSA 189:14 (a).

The unfair labor practice should be and hereby is DISMISSED.
So ordered.

Signed this 20th day of February, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and Seymour Osman present and voting.