



NH Supreme Court affirmed this decision on October 16, 1995, Slip Op. No. 94-460.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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ROBERT GALLAGHER AND THE	:
WAKEFIELD EDUCATION ASSOCIATION,	:
NEA-NEW HAMPSHIRE	:
	:
Complainant	:
	:
v.	:
	:
WAKEFIELD SCHOOL DISTRICT	:
	:
Respondent	:
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CASE NO. T-0356:3
DECISION NO. 94-38

APPEARANCES

Representing Robert Gallagher and Wakefield Education Association:

Steven Sacks, Esq.

Representing Wakefield School District:

Bradley F. Kidder, Esq.

Also appearing:

- Sheldon Damon, Wakefield School District
- Bob Price
- Emelie Grondin, Wakefield Education Association
- Joy Johnson, Wakefield Education Association
- Bob Gallagher, Wakefield Education Association
- James L. Burke, Wakefield School District

BACKGROUND

Robert Gallagher (Gallagher) and the Wakefield Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Wakefield School District on December 27, 1993, alleging violations of RSA 273-A:5 I (h) relating to breach of contract and dismissal without just cause. The District filed its answer on January 11, 1994 after which this case was heard by the PELRB on March 17, 1994. Filing of post hearing memoranda was completed on April 4, 1994.

FINDINGS OF FACT

1. The Wakefield School District is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Wakefield Education Association is the duly certified bargaining agent for teachers and other employees of the District. Robert Gallagher was formerly a member of that bargaining unit.
3. The District and the Association are or have been parties to a collective bargaining agreement (CBA), the terms of which covered Gallagher.
4. Following a hearing on December 2, 1991, the District dismissed Gallagher. Gallagher subsequently claimed this dismissal was without "just cause" and, thus, violated Article 6.2 of the CBA.
5. Article 17.8 of the CBA provided that if the parties to the CBA cannot agree to submit a grievance dispute for settlement under the rules of the American Arbitration Association, "then the dispute may be submitted to the Carroll County Superior Court in accordance with RSA 273-A:15."
6. By letter of December 24, 1991, counsel for the District indicated that the District did not wish to proceed to binding arbitration and that Gallagher could submit this matter to Superior Court per the CBA and RSA 273-A:15.
7. Thereafter, Gallagher filed a Petition for Declaratory Judgment in Superior Court on April 15, 1992. The District responded by filing an answer and motion to dismiss on August 4, 1992 which, inter alia, objected to the Court's jurisdiction. On December 23, 1992, the Superior Court granted the District's motion to dismiss. The Association entered an appeal to the New Hampshire Supreme Court on January 25, 1993.
8. On June 18, 1993, the Association filed ULP charges against the District for violations of RSA 273-A:5 I (a), (b), (e), (g) and (h). Case No. T-0356:2. The District filed an answer on July 2, 1993 which claimed, inter alia, that the ULP charges had not been timely filed under RSA 273-A:6. Notwithstanding the Association's assertion that its filing of charges was within six (6) months of the Superior Court ruling on December 23, 1992, the PELRB determined that Case No. T-0356:2 had not been timely filed under RSA 273-A:6 VII. Decision No. 93-91 (July 12, 1993).

9. The Association filed for rehearing on July 26, 1993. The District filed objections thereto on August 10, 1993. The PELRB denied the motion for rehearing on September 3, 1993. (Decision No. 93-117)
10. The Association then appealed PELRB Decision Nos. 93-91 and 93-117 to the Supreme Court on October 4, 1993.
11. On or about October 25, 1993, counsel for the District filed a Motion for Summary Disposition with the Supreme Court seeking to have the Association's/Appellants' appeal declined. The Association filed an objection to this motion on or about November 4, 1993.
12. On November 17, 1993 the Supreme Court entered an order summarily affirming the Superior Court decision (Finding No. 7) in accordance with Rule 25 (I) (a). By declining to hear and appeal of the Superior Court action, the Superior Court ruling as to its lack of jurisdiction to hear this matter remains undisturbed.
13. The Association sought reconsideration of this action on or about November 30, 1993. On or about December 8, 1993, counsel for the District filed an Objection to Motion for Reconsideration with the Supreme Court.
14. On December 27, 1993, the Supreme Court denied the Association's/Appellant's appeal from the decision of the PELRB, Docket No. 93-657, noting that the District's Motion for Summary Disposition was moot.
15. On December 27, 1993, the Association filed the instant complaint with the PELRB, seeking to have the PELRB hear Gallagher's case on the merits, in accordance with what it perceived to be the directive of the Superior Court, undisturbed by the action taken by the Supreme Court, above, namely, that "because [the Association] claim[s] that the District committed an unfair labor practice, their appropriate avenue of relief is to file a complaint with the PELRB pursuant to RSA 273-A:6." Carroll County, Docket No. 92-E-045 dated December 23, 1992. This course of action is now challenged by the District.

DECISION AND ORDER

Counsel for the District argued at hearing and by brief that this case should be disposed of under the doctrine of res judicata, namely, that an issue or cause of action involving the same parties which has been litigated to a final judgment in a prior legal proceeding cannot be relitigated in a later proceeding involving

those same parties. Further, "cause of action" has been defined to mean "the right to recover, regardless of the theory of recovery. A theory of recovery therefore must be pleaded, or be subject to bar." Eastern Marine Const. Corp. v. First Southern Leasing, 129 N.H. 270, 274 (1987).

These principles, coupled with the District's six points of comparison between the June 18, 1993 (Finding No. 8) and the December 27, 1993 (Finding No. 14) ULPs cause us to concur. District Brief, p. 7. Specifically, (1) the parties are identical, (2) the subject matter is identical, i.e., Gallagher's dismissal, (3) the alleged contract violations are identical, i.e., Article 6.2, (4) the alleged statutory violations both refer to RSA 273-A:5 I (h), and (5) both complaints seek to have the District found "guilty of an unfair labor practice." Given that our Supreme Court has elected to follow what they have called a "modern view" of "cause of action," to incorporate "all theories on which relief could be claimed on the basis of the factual transaction in question," we believe the District is correct in asserting the need for this case to be dismissed under res judicata. Eastern Marine, supra, at 274-275.

The ULP is hereby DISMISSED.

So ordered.

Signed this 21st day of April, 1994.


EDWARD J. HASELTINE
Chairman

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