



NH Supreme Court reversed this decision on August 9, 1989, Slip Opinion No. 88-213, 132 N.H. 103 (1989).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

 WESTMORELAND SCHOOL BOARD

 Complainant

 v.

 WESTMORELAND TEACHERS ASSOCIATION, NEA-NH

 Respondent

CASE NO. T-0320:1

DECISION NO. 88-04

APPEARANCES

Representing Westmoreland School Board:

Douglas S. Hatfield, Esq., Counsel
 Patricia J. Trow, Personnel Director
 Robert Moore, Sr., Former School Board Member
 Hugh Watson, Superintendent

Representing Westmoreland Teachers Association, NEA-NH:

Mary E. Gaul, UniServ Director
 Kathleen Hanson, Grievant

BACKGROUND

Prohibitive Practice Charges were filed by the Westmoreland School District (District) against the Westmoreland Teachers Association (Association) alleging that the request for arbitration under the grievance procedure was inappropriate and that the non-renewal of teacher, Kathy Hanson, a non-tenured teacher, was covered under RSA 189:14-a and not arbitrable. Details of the charge filed July 6, 1987 state that Kathy Hanson would not be renominated for a new contract in the succeeding year; that she had not taught in the Westmoreland School District for three consecutive years, and had not taught more than three years in another school.

The position of the District is that the alleged unfair practice charge is not taken pursuant to the collective bargaining agreement, but under the provisions of RSA 189:14-a and that this action "is not subject to the grievance procedure set forth in the collective bargaining agreement."

On April 15, 1987, Kathy Hanson and the Westmoreland Teachers Association filed a grievance alleging that Kathy Hanson's non-renewal constituted discipline without just cause and was a violation of Article 16 of the collective bargaining agreement and past practice. The remedy sought in this case is a PELRB ruling that the non-renewal is covered by RSA 189:14-a, not subject to the grievance procedure and not a disciplinary action.

The District, by its attorney, Douglas Hatfield, Jr., represented to the Board in great length and detail that the non-renewal of Kathy Hanson's contract was not under any set of circumstances subject to the grievance procedure, but was taken in accordance with the District's right under Chapter 189:14-a, that a probationary teacher is not entitled to a hearing under the state's statutes and, that Article 16 of the existing collective bargaining agreement governs disciplinary action; Section 16.1 defines discipline as

"Whenever an employee violates any of the Board's regulations, he may be subject to official disciplinary action up to and including discharge. An employee shall not be disciplined except for just cause. Just cause shall mean that the evidence supports the disciplinary action."

In addition, Article 9 of said collective bargaining agreement defines a grievance as

"A grievance is a claim based upon an alleged violation of or variation of or from the provisions of this contract or the interpretation or application thereof..."

The District indicated that prior non-renewals of probationary teachers have never been challenged by the Association under the discipline article of the collective bargaining agreement and none have ever resorted to the grievance procedure.

The District argued at some length on the definitions of discipline with respect to its plain and ordinary meaning and cited several cases covering the issue, specifically Appeal of Berlin Board of Education 120 NH 226, 413 A. 2d 312 (1980).

Counsel for the District stated that that the subject teacher non-renewals was a subject of negotiations for possible inclusion in the language of the contract but was never accepted.

The District stated that non-renewability was not incorporated in the contract because it was covered by 189:14-a. The Association by its, UniServ Director, Mary E. Gaul agreed that it had been on the table for negotiations but never incorporated in the contract language but argued that the District had committed an unfair labor practice specifically under RSA 273-A:5 (e), (g), (h) by refusing to respond to a grievance submitted to it in accordance with the terms and conditions of the collective bargaining agreement. The Association further alleged that the fact that the District failed to process the grievance, claiming its non-arbitrability under 189:14-a, was an unfair practice, and that the grievance filed by the Association involved an interpretation of the contract language.

The Association admits that management's rights are served by RSA Chapter 189:14-a wherein it states that a teacher may be non-renewed during the probationary period. The remedy sought by the Association is adherence to the Grievance Procedure, Article 9, of the existing contract (9.1) which specifically states that a grievance may be based upon the interpretation or application of the contract language.

Grievance procedure outlines the various steps to be taken whenever a grievance is filed. It is interesting to note that both parties in this case agree that 189:14-a conveys the right of management (School District) to terminate a probationary employee.

Findings of Fact and Rulings of Law

District's requests:

- 1 - 7 Granted
- 8 Neither granted nor denied, subject to interpretation
- 9 Granted
- 10 Denied

Findings of Fact and Rulings of Law Cont.

Association's requests:

- 1 - 6 Granted
- 7 Granted - Procedure makes no reference to non-renewal
- 8 Granted
- 9 Granted - language does not include or exclude non-renewal
- 10 - 22 Granted

1. Evidence before PELRB did not indicate the non-renewal of Kathleen Hanson's Contract was disciplinary in nature.
2. The issue of non-renewal is not under the jurisdiction of 273-A and both parties agreed that its disposition under 189:14(a) was in order.
3. Issue before PELRB is whether or not the filing of a grievance by Kathleen Hanson was processed in accordance with the contract language.
4. PELRB finds the Westmoreland School District guilty of unfair labor practices under RSA 273-A:5 (e), (g), and (h) by refusing to process a grievance in accordance with the terms and conditions set forth in the collective bargaining agreement.

ORDER

The District is hereby ordered to process the grievance filed by Kathleen Hanson through the steps of the grievance procedure, Article 9 of the current agreement.

Signed this 1st day of February, 1988.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.