



NH Supreme Court affirmed this decision on February 20, 1985, NH Supreme Court Case No. 85-584.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

White Mountains Education Association, NEA/NH

v.

White Mountains Regional School Board

Case No. M-0523:3

Decision No. 84-05

APPEARANCES

PELRB: Robert E. Craig, Chairman presiding. Members Seymour Osman and James C. Anderson. Also present, Evelyn C. LeBrun, Executive Director.

ASSOCIATION: John Fessenden, UniServ Director

SCHOOL BOARD: Bradley F. Kidder, Esq., William H. McCann, Jr., Business Administrator

BACKGROUND

The White Mountains Education Association, NEA/NH (Association), Affiliate #2, cooks and related workers, filed unfair labor practice charges against the White Mountains Regional School Board (Board) on December 14, 1982. The Association charged that the Board violated RSA-A:5 I (c) (e) in that the Board issued individual contracts changing working conditions without negotiation with the recognized bargaining unit representative. In addition, charged the Association, the management has instituted the use of time sheets as of September 1, 1982, but has never negotiated over this change.

In its answer, the Board denied any breach of 273-A:5. The Board admitted issuing individual contracts but pointed out that this has never been the subject of negotiation despite the fact that the current negotiated agreement was effective beginning July 1, 1981, and that the issuance of such contracts is within the "managerial prerogative" of the School Board. The Board further argued that the contract reserved the rights of the School Board to "adopt and implement any rule or regulation" in that negotiation so long as the collective contract is not violated.

In addition, the Board argued that the introduction of the time sheets was to insure the efficient operation of the hot lunch program and is in accordance with the collective bargaining agreement Article IV, Section D, reserving authority to the School District over matter pertaining to the efficiency of the operations.

A hearing was held in the PELRB office in Concord on December 1, 1983 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing, management pointed out that the issuing of individual contracts began in August of 1980; was not included in the negotiations for the collective contract bargaining in July of 1981; and the new collective contract changed the section labeled "salary" to one labeled "wages" and also included a management rights and a "zipper" clause for the first time. Management further pointed out that the introduction of the time slips was recommended by the auditor and did not change the amount of work time, pay, etc.

The Union argued that the contracts called for annual employment and any change in that must be negotiated.

Management argued that the new contract was negotiated, containing management rights "wages" not salaries, and management clause meant that Association waived mandatory negotiation since had negotiated this away.

Language in the new contract, Article XVI, Section D provides:

"generally this policy stipulates (or past practice has been) that employees work 180 days/year, during school year, usually at 6 hours per day"

DECISION

The PELRB finds that the management rights clause does not override Article XVI, Section D and further that the institution of time slips is within the "managerial prerogative" of the employer, therefore, the School Board is guilty of a violation of RSA 273-A:5 I (e) and is ordered to return to the use of individual contracts in use prior to July 1981.


Robert E. Craig, Chairman

Signed this 12th day of January 1984.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman and James C. Anderson present and voting. Also present, Evelyn C. LeBrun, Executive Director.