State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONWAY ADMINISTRATORS ASSOCIATION/ TEAMSTERS LOCAL 633 of NH Complainant v. CONWAY SCHOOL DISTRICT Respondent	CASE NO. M-0622:4 DECISION NO. 93-33

APPEARANCES

Representing Conway Administrators Association/Teamsters:

Thomas D. Noonan, Business Agent

Representing Conway School District:

Jay C. Boynton, Esq., Counsel

Also appearing:

Harry Benson, Superintendent
Dick Mezquita, Interim Superintendent
Robert Cranage, Conway Administrators Assoc.
Edward Gallagher, Conway Administrators Assoc.
Tom Deans, Conway School Board

BACKGROUND

The Conway Administrators Association/Teamsters Local 633 of New Hampshire (Union) filed unfair labor practice (ULP) charges against the Conway School District (District) on September 16, 1992 alleging a violation of RSA 273-A:5 I (e) for unilateral changes in evaluation techniques and refusal to bargain. The District filed its answer on October 2, 1992. After two intervening continuances of earlier hearing dates, this matter was heard by the PELRB on March 4, 1993.

FINDINGS OF FACT

1. The Conway School District is a "public employer" of school administrators and other personnel as

defined by RSA 273-A:1 X.

2. The Conway Administrators Association, Teamsters Local 633 of New Hampshire, is the duly certified bargaining agent for school administrators employed by the District.

3. The Union was certified as bargaining agent on December 4, 1989. Notwithstanding the use of negotiations, mediation and fact finding, the parties have yet to conclude and ratify their first collective bargaining agreement (CBA).

4. A District policy relative to personnel matters has been in effect since September 22, 1988; however, it does not address the topic of personnel evaluations. Notwithstanding the fact that personnel evaluations were not addressed in the District's policies, staff evaluations have been conducted in a narrative (e.g., Gallagher evaluation of June 15, 1988) or goal-narrative (e.g., Gallagher evaluations of March 14, 1989, May 4, 1990 and for 1991-92) form for a number of years and pre-date the certification of the Union.

5. A Union proposal dating to 1990 proposed an evaluation article. The parties subsequently engaged in mediation and fact finding over several topics, inclusive of the topic of evaluations. The fact finder issued a report which included a recommendation on the topic of evaluations but did not include any recommendation to change the methodology of such evaluations except to recite timing and consultative rights. The fact finder's report was approved by the Union and rejected by the Conway School Board and subsequently by the voters at the District meeting in March of 1992 for reasons apparently unrelated to the evaluation issue. Thereafter, the Union gave notice of its desire to return to negotiations by a letter from Edward Gallagher to the School Board Chairman on April 27, 1992. That letter included a sentence reading, "It would be the [Union's] feeling that we would be back to ground zero and would begin again with ground rules and a mutual exchange of proposals..."

6. On April 16, 1992, the Conway School Board heard the Superintendent's recommendation pertaining to the Administrative Performance

Management System (APMS) which would change the manner, content and format of administrative evaluations. Minutes of that meeting reflect, "The board liked it and endorses it."

7. In the District's proposal of August 1, 1992, evaluation was addressed in one sentence providing only that "each administrator shall be evaluated once during the contract year, and more often at the discretion of the Superintendent." No changes in methodology were mentioned or proposed. In the Union's proposal of August 13, 1992 (memo from Gallagher to Supt. Benson) no reference was made to the topic of evaluations with the exception that the "Job Description" article proposed that every administrator "is entitled to have a job description....which defines the scope of the position...and establishes a basis by which objective evaluations can be made."

8. On August 5, 1992, Gallagher received a copy of the APMS from Lawrence Urda. That same day, Gallagher wrote the Superintendent saying that the Union believed that use of the APMS for the 1992-93 school year would "represent a significant change from past practice" and was "a unilateral change in working conditions during the negotiations process."

9. On August 11, 1992, Supt. Benson responded by letter to Gallagher, saying that he disagreed that the APMS was a significant change from prior practice and that it was subject to negotiations. Benson concluded, "As Superintendent, I hold that the selection of an evaluative instrument is a prerogative of management and is not subject to the bargaining process."

DECISION AND ORDER

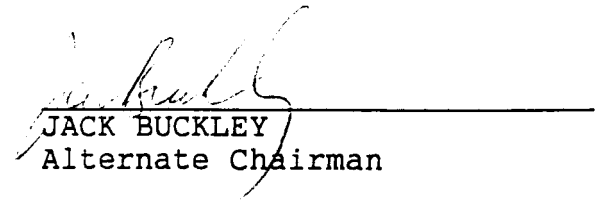
Since the parties have not agreed on any changes to the pre-existing evaluation practice for members of this particular bargaining unit, that former practice must remain in effect for the duration of negotiations, until the parties have agreed to the contrary as reflected either by a CBA or a side letter. For us to hold otherwise would be to encourage the lack of settlement so that one side might rely on that lack of settlement as rationale for the unilateral imposition of a new evaluation procedure. This would not only be contrary to our prior holdings relating to the status quo but also contrary to effective labor relations and the obligation to negotiate in good faith.

As for the District's contention that the use of the APMS was a management prerogative, we disagree under the facts of this case. In Laconia Association of Support Staff, Decision No. 84-78 (October 25, 1984), the PELRB said "evaluation of employees must be viewed as an exclusively managerial function involving the employer's control over the 'functions programs and methods of the public employer' [under] RSA 273-A:1 XI. However, insofar as this new managerial policy may impact other effects, either 'terms or conditions of employment,' these other effects (under RSA 273-A:1 XI) must be proper subjects of negotiation." This policy was established and more particularly articulated in Laconia Education Association, Decision No. 84-75 (October 12, 1984) when the PELRB said, "The evaluation policy and the conduct of the evaluation(s) are clearly rights which are contained in the phrase 'managerial policy within the exclusive prerogative of the public employer' but the impact of the policy and specifically the procedure are also clearly a mandatory subject of negotiation."

In this case, there is no question that management has the right to conduct evaluations of bargaining unit employees. This was preserved not only by the prior practice of the parties but also by the PELRB's decisions in the two Laconia cases referenced above. Once the District determined to conduct evaluations, it was obligated under the two Laconia decisions to bargain the impact and procedure of that process. Use of the APMS departed from the prior practice of the parties and, consequently, was a departure from the status quo during the bargaining process. The APMS utilized a different procedure and had a potentially different impact on employees than did the earlier narrative evaluation technique. Thus, there was not only an obligation to adhere to the status quo during bargaining but also an obligation to bargain over the impact and procedures of the evaluation process. Failure to have done so constitutes a ULP under RSA 273-A:5 I (e) and we so find.

By way of remedy we direct the District to CEASE and DESIST from using the APMS during the pendency of negotiations and to negotiate the procedure and impact of the APMS with the Union. The issue of whether to conduct evaluations remains within the managerial policy reserved to the public employer under RSA 273-A:1 XI.

So ordered.
Signed this 19th day of March ,1993.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Frances LeFavour and Richard E. Molan present and voting.