

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ALTON TEACHERS ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

ALTON SCHOOL BOARD

Respondent

CASE NO. T-0315:20

DECISION NO. 96-078

APPEARANCES

Representing Alton Teachers Association/NEA-NH:

Janet Paddleford, UniServ Director

Representing Alton School Board:

Bradley F. Kidder, Esq., Counsel

Also appearing:

Paul C. Moccia, Superintendent

Susan Blair, Alton Teachers Association

Nancy Merrill, Alton Teachers Association

W. Cumings, NEA-NH

Fred Seelig, Laconia Citizen

BACKGROUND

The Alton Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Alton School Board (Board) on May 21, 1996 alleging violations of RSA 273-A:5 I (a), (e) and (g) relative to the unilateral implementation of a teacher dress code, failure to bargain and retaliatory conduct. The Alton School Board filed its answer on June 3, 1996 after which this matter was heard by the PELRB on July 18, 1996.

FINDINGS OF FACT

1. The Alton School Board, through the Alton School District, is an employer of teachers and other personnel and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Alton Teachers Association is the duly certified bargaining agent for teachers and other personnel employed by the Board.
3. On April 29, 1996, the Alton School Board approved a dress code policy to be effective September 1, 1996. This followed the topic's being set for first reading at a Board meeting on February 12, 1996, being recorded in the minutes of that meeting, being an agenda item for the Board on March 4, 1996, being recorded in the minutes of that meeting and designated for further discussion, being a third reading agenda item for the Board meeting on March 11, 1996 and being tabled until March 25, 1996, being an agenda item for adoption for the Board on April 8, 1996, being recorded as a tie vote in the minutes of the April 8, 1996 meeting, being a fourth reading agenda item for the Board on April 29, 1996 and being adopted thereat by a 3 to 2 vote, effective September 1, 1996.
4. The dress code policy adopted April 29, 1996 provided:

It is the policy of the Alton School District to require the professional employees of the School District dress appropriately. Slacks, a shirt with a tie for male faculty members, slacks, dress, skirts and sweaters, blouse or culottes for female faculty members shall be considered appropriate. It will be the expectation of the School Board that the Professional Staff wear the appropriate attire that affects their position or assignment. Costumes representing holidays and special events are

acceptable when approved by the school administration using the Request for Field Trips form. T-shirts, faded, worn or torn [sic] pants are not acceptable. Clothes identifying drugs, alcohol, violence or a political nature, are not acceptable.

This prompted a letter from the Association President Sue Blair to Board Chairman Arnold Shibley on May 1, 1996 claiming this was a unilateral change in terms and conditions of employment and seeking a return to the status quo pending negotiations. Blair wrote Shibley again on March 9, 1996 saying, in part, "changes in the terms and conditions of employment are mandatory subjects of bargaining." At the public input portion of the Board meeting held on May 13, 1996, Blair, Barbara LaBarette and Carole Locke all made comments adverse to the implementation of the dress code, the unfavorable characterization it cast on the professional reputation of Alton teachers and the adverse discussion the dress code issue invoked with respect to one teacher negotiator. Those comments appear in the minutes of the Board meeting of May 13, 1996.

5. The issue of dress code is not addressed in the parties' collective bargaining agreement (CBA), nor is there any allegation that the newly adopted dress code violates the CBA. Conversely, the issue of dress code is addressed in the Teacher Handbook last adopted by staff on March 10, 1995 and by the Board on May 22, 1995. By content, it appears to apply to students, to wit:

DRESS CODE

Appropriate dress is of concern in establishing an environment for learning. Clothing which contains language or emblems which disrupt the educational process will not be allowed. It is the right of each individual to dress according to his personal preference provided that the execution of his right does not interfere

with the rights of others, cause disruption to the educational program or is considered a health and safety hazard. Students who arrive at school in inappropriate clothing will be given the option of removing or changing the objectionable garment or calling a parent/guardian for a change of clothing.

The following are not permitted: bare feet, excessively short skirts, mid-riff exposed blouses, any other mode of dress or article of clothing that is disruptive to the learning atmosphere of the school. Outer wear such as hats or winter coats should not be worn in the school. Vulgar or suggestive, obscene language or gestures or violence illustrated on clothing are not acceptable.

Hats are not to be worn inside the school building unless for a special event or occasion. Sunglasses, unless prescribed by an optometrist, are not be worn inside the building. Students who are unable or unwilling to comply with this rule may have their hats/sunglasses confiscated for safe keeping.

Students and parents with questions may reference Board Policy JFCA regarding appropriate dress.

6. Association witness Sue Blair testified that teachers started wearing T-shirts to school in September of 1995 which said, on the back, "It takes a whole community to educate a child." The teachers wore these shirts in showing of unity to support negotiations for a successor contract. They were never directed not to wear these shirts or to stop wearing them.
7. Association witness Nancy Merrill, a teacher for 22 years, testified that she attended a public session of the Board on April 29, 1996. She complained that the proposed code was vague and showed Board members several pieces of clothing to get clarification on what constituted a T-shirt, a blouse or an acceptable sweater. She

received no answer to her inquiries.

8. The Association's complaint claims that adoption of the new dress code policy was in retaliation for lawful organizing and bargaining by their negotiators and because of personal feelings by member(s) of management against a certain teacher negotiator.
9. The Board presented no witnesses but told the PELRB it was willing to negotiate the impact of this or any subsequent modifications to the dress code.

DECISION AND ORDER

Cases such as this one involving a teacher dress code must be assessed on an individual basis. Having done so, we find that no ULP was committed.

The "managerial policy" exclusion found in RSA 273-A:1 XI has been statutorily defined to include in its purpose the ability for the public to retain control of governmental functions. The governmental function in this case is the delivery of education services.

Before the bargaining law was passed (RSA 273-A, formerly Chapter 490 of the laws of 1975), in Bannister v. Paradis, 316 F. Supp 185 at 189 (1970), Judge Bownes wrote of a student dress code:

While the Court recognizes that school boards do have power to adopt reasonable restrictions on dress as part of its educational policy and as an educational device, the school board's power must be limited to that required by its function of administering public education.

In this case, the dress code was upon teachers, not students, its purpose was still the same, to set an appropriate example and to cause the wearing of clothes which would not distract from the educational process. While the Association made claims to the PELRB that the newly adopted teacher dress code was in retaliation for organizing and negotiating activities as well as for wearing the "It takes a whole community..." T-shirt in the fall of 1995, they have failed in their effort to establish a connection or nexus between the policy and these activities.

Therefore, they have failed to prevail in their RSA 273-A:5 1 (a) claim.


Unlike, Bannister, supra, the proscription in this case was on teachers, not students. Teachers serve not only as instructors but also as role models to whom students look for guidance, both academically and socially. We find there have been a rationale and business-related purpose for the dress code under these circumstances and, since the effective date was in the future, there was no infringement on the Association's freedom of association or speech. Bannister suggests that the Board, as promulgator of the code, bears the burden to show that the wearing of the prescribed clothing inhibits, or tends to inhibit, the educational process. We do not believe that this standard applies to teacher-employees as it would to student-consumers of educational services. The employee may choose to be employed and to be located elsewhere where the dress code does not apply; the students must attend school to avoid truancy and, thus, should not be captive audiences to messages unrelated to the education they have come to school to obtain.

We acknowledge the Board's willingness to negotiate the impact of implementing this dress code, upon a demand from the Association to do so. This may not always be the case, however, and is the reason that each case must be examined on an individual basis. We urge any further modifications in the dress code to be the product of a joint labor-management effort to determine what those changes might be.

The ULP is DISMISSED.

So ordered.

Signed this 25th day of September, 1996.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard W. Roulx and E. Vincent Hall present and voting.