

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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MARLOW SCHOOL DISTRICT	:	
	:	
Complainant	:	
	:	CASE NO. T-0405:1
v.	:	
	:	DECISION NO. 1998-111
MARLOW EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE	:	
	:	
Respondent	:	
	:	

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APPEARANCES

Representing Marlow School District:

Benjamin Larkin, Esq., Counsel

Representing Marlow Education Association/NEA-NH:

James Allmendinger, Esq., Counsel

Also appearing:

Arthur E. Andreasen, III, Marlow School Board  
 Thomas J. Kane, S.A.U. #29  
 Mary Gaul, UniServ Director, NEA-NH  
 Brett Pickering, NEA-NH  
 Richard Brewer, Marlow School District

BACKGROUND

On September 25, 1998, the Marlow School District filed a petition to modify its teachers' bargaining unit by deleting the position of teaching principal. On October 3, 1998, the Marlow Education Association filed its objections. A hearing was held before the undersigned hearing officer on November 13, 1998, at the conclusion of which the record was closed.

FINDINGS OF FACT

1. The Marlow School District (District) employs teachers, administrators and other personnel in the operation of its school and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Marlow Education Association (MEA) is the duly certified exclusive bargaining agent for teachers and certain others who are employed by the Marlow School District. The District consists of one school housed in one building. There is one bargaining unit for all teaching related employees at this facility.
3. The District and the Association are parties to a collective bargaining agreement signed September 25, 1996, which continues in force and effect through June 30, 1999.
4. Richard W. Brewer is certified by the New Hampshire Department of Education as a teacher. He is not certified as an administrator. He teaches the fifth and sixth grades on a full-time basis. He is given an extra stipend to carry out the duties of principal which include meeting with parents, discipline, some teacher observations and paperwork. He does not evaluate his fellow teachers. It is contrary to the master contract for him to do so. (Joint Exhibit No. 1, Article 6). Mr. Brewer attempted evaluations at the insistence of the School Board in the 1995-96 school year but the teaching staff did not cooperate.
5. Richard Brewer was hired into the position of "teaching principal" and has continued so for approaching thirteen years. It was he who initiated the formation of the bargaining unit by contacting Mary E. Gaul, Uni-Serv Director for NEA. Mr. Brewer served as President of the MEA in 1992 and 1993 at which time he also served on the bargaining team. At that time, the Marlow School District belonged to SAU #60.
6. For about four years, the Marlow School District has been a member of SAU #29, along with Keene and five

towns. Brewer is the only "teaching principal" in the SAU. Other principals oversee their buildings and carry out supervisory functions including evaluations.

7. Arthur Andreason, III, has served as member of the Marlow School Board for more than four years. He testified that Marlow's one school building houses kindergarten through grade six. There are four full-time teachers and several part-time teachers. Andreason testified that they count on Brewer to keep them informed of issues that are raised in the school. They would expect to continue the employ of a teaching principal if the position were removed from the bargaining unit. Brewer would be given a special contract. The School District cannot afford to hire a full-time principal.
8. Thomas J. Kane is the Assistant Superintendent for Towns in School District #29. He works out of the SAU office in Keene. One of the deficiencies in the present arrangement with Marlow is the absence of an administrator on site who can evaluate teachers at the Marlow School. He testified that Richard Brewer does class and teacher scheduling. He is involved with committees on budgeting. Mr. Brewer and Mr. Kane have worked together on hiring. His hiring recommendations are considered and usually followed by the SAU. If there were the need for discipline among the staff, Mr. Brewer would bring the problem to Mr. Kane's attention. Much preparation for decision making is done by committees of which Mr. Brewer is the head. Mr. Kane feels that the Principal in Marlow should be more than a manager. What is needed is an educational leader. Mr. Kane will do teacher evaluations this year but feels that they would better be performed by someone who is based at the Marlow School.
9. Mr. Brewer feels comfortable as a bargaining unit member. He experiences no division of loyalty and believes he has an excellent relationship with the staff. The School District stresses a collaborative team approach to problem solving and the staff members are supportive of one another. Mr. Brewer did not attend the Summer Team Training for SAU principals

because it required five days of workshops beyond the 185 days of work called for in his teachers' contract. Mr. Brewer testified that he feared that, should this position be removed from the bargaining unit, he would be forced to meet additional qualifications, such as obtaining a second Masters' Degree, to be certified as a principal.

10. Mr. Brewer testified that he is not involved in policy making. Staff meetings at the Marlow School operate by consensus and much work is done by committees. Policy level decisions are the province of the SAU. The SAU employs a Personnel Director who works in Keene. No personnel files are kept at the Marlow school. Interviews for hiring new staff members in Marlow were done this year by committee. Brewer's recommendations on hiring are not always followed by the SAU. He observes fellow teachers but he does not perform evaluations based on the observations.
11. Two articles of the CBA require evaluation of teachers by an administrator with principal's certification or better. These are Article VI, Evaluation and Personnel Files, and Article X, Employee Discipline. The School District has not adopted job descriptions for the positions of teacher or teaching principal.

#### DECISION AND ORDER

RSA 273-A:8 places questions regarding the composition of public employee bargaining units within the jurisdiction of the Public Employee Labor Relations Board. It is an exclusive authority to both certify and modify such bargaining units. Appeal of Somersworth School District, 142 NH (June 3, 1998) citing Appeal of Londonderry School District, 142 NH 667, 682 (March 23, 1998). Regulation Pub 302.05 sets down considerations governing the modification process. They include change of circumstances and error *ab initio*.

The Marlow School District faces a conundrum. For financial reasons, it must retain a principal who is a full-time teacher (Finding No. 7), yet, SAU #29 requires an administrator with an appropriate credential, not a teaching certificate, to conduct evaluations (Findings of Fact No. 5 and 10). What is desired by Mr. Kane is a principal in the Marlow School who will act as a

representative of SAU #29. He desires an educational leader. The School District is seeking the PELRB's assent to impose on the current teaching principal duties and authority incompatible with the collective bargaining agreement.

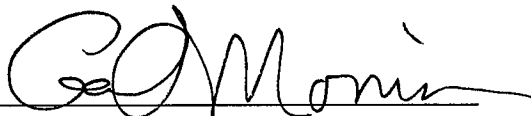
Yet, no reason satisfying the regulation, Pub 302.05, has been given to open to modification this settled bargaining unit. The change desired amounts to grafting of incompatible duties to a position that has operated successfully within the bargaining unit since its formation. This is a change sought imposed which is beyond the legislative mandate of RSA 273-A:8; not a change already accomplished. Town of Belmont v. AFSCME Council #93, Decision No. 1995-068 (1995).

Mr. Brewer, a teaching principal carrying out the duties he has always performed, is appropriately within the bargaining unit. This position is clearly that of a working supervisor with a community of interest shared with bargaining unit members, not altered by the conflict that may accompany the significant exercise of supervisory authority. This position is the epitome of the working supervisor carrying out supervisory authority in accordance with professional norms referred to as the exception in Appeal of East Derry Fire Precinct, 131 NH 607 at 611 (1993).

Therefore, the request for modification of the bargaining unit at the Marlow School is denied.

So ordered.

Signed this 31st day of December, 1998.



GAIL MORRISON  
Hearing Officer