State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EDUCATION ASSOCIATION OF PITTSFIELD, NEA-NEW HAMPSHIRE	:	
Complainant	:	
v.	:	CASE NO. T-0250:17
PITTSFIELD SCHOOL DISTRICT	:	DECISION NO. 2000-003
Respondent	:	

APPEARANCES

Representing Education Association of Pittsfield, NEA-NH:

Janet Paddleford, UniServ Director

Representing Pittsfield School District:

Jay Boynton, Esq.

Also appearing:

Noel DeSousa, Pittsfield School District
Mark Jarvi, Pittsfield School District
John Douglass, Pittsfield School District
Wayne Petrovek, Pittsfield Education Association
Hugh Sanborn, Pittsfield Education Association
Paul C. Moccia, Pittsfield School District

BACKGROUND

The Education Association of Pittsfield, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges on July 30, 1999 against the Pittsfield School District (District) alleging violations of RSA 273-A:5 I (a), (b), (c), (d), (g) and (h) resulting from coercing employees in the exercise of their rights under Chapter RSA 273-A, displaying anti-union animus and adversely evaluating and disciplining the president of its local association, Wayne Petrovek. The Pittsfield School District (District) filed its answer on August 12, 1999 and a supplemental answer on September 10, 1999. After

continuances sought by and granted to the parties in September and October, this matter was heard by the PELRB on November 16, 1999, at which time the parties agreed to submit the case on the record and to file written arguments to be postmarked on or before November 29, 1999. Written arguments for both parties were received on November 30, 1999 at which time the record was closed.

FINDINGS OF FACT

1. The Pittsfield School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:I X.

2. The Education Association of Pittsfield NEA-New Hampshire is the duly certified bargaining agent for teachers and certain other personnel employed by the District.

3. The Association and the Pittsfield School Board are parties to a collective bargaining agreement (CBA) for the period September 1, 1997 through August 31, 2000. Article VIII of that agreement is entitled "Employee Evaluation." It is detailed and, in Sections 8.1 through 8.9 thereof, provides as follows:

> 8.1 Observation of work performance of an employee certified to be represented by the Association will be conducted openly. Formal observation sessions shall be with the full knowledge of the employee. All other observations of the employee's work performance which are to be made part of his file will be made known to the employee.
>
> 8.2 An employee shall be given a copy of any evaluation report prepared by his evaluators before or during any conference held with him to discuss it. If the employee is dissatisfied with this evaluation conference, he may request additional conference time.
>
> 8.3 The importance and value of a procedure for assisting and evaluating the progress and success for both newly employed and experienced personnel for the purpose of improving instruction is recognized.
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> 8.4 No written evaluation report shall be placed in the employee's file or otherwise acted upon without affording the employee an opportunity for a prior conference thereon. The employee shall sign such report in acknowledgment that

the employee has read it, but in no way to indicate agreement with the contents thereof.

8.5 Those comments or reports regarding an employee made to any member of the administration by a parent, student or other person which are used in evaluating an employee shall have been promptly investigated as to their accuracy. An employee shall be given, to the extent practicable, an opportunity to respond to and meet with a person making derogatory or degrading comment or report for purpose of rebuttal. Where such opportunity cannot practically be afforded, the record thereof shall be so noted and the comment or report given such minimal weight, if any, as the circumstances accord.

8.6 The employee shall acknowledge that he has had the opportunity to review such comment or report by affixing his signature to the copy to be filed, with the expressed understanding that such signature in no way indicates agreement with the contents thereof. The employee shall also have the right to submit a written answer to such comment or report or to any material filed in his personal file and his answer shall be reviewed and commented upon in writing by the Superintendent or his designee and both answer and comment thereon attached to the file copy.

8.7 All documents shall be filed, signature notwithstanding, and such action shall be so indicated by the employee's supervisor. The Association shall be informed if any such employee has refused to sign derogatory or evaluation material that is being placed in his file.

8.8 Each employee shall be entitled to knowledge of and access to supervisory records and reports of his competence, personal character and efficiency as are maintained in his personal file in evaluation of his performance as an employee of the District.

8.9 In the event the Board removes from the teacher's file any materials, a dated notation shall be placed in the file stating what materials have been removed.

This is the same language which appeared in the parties' 1995-1997 CBA, which was the subject of our findings in Decision No. 97-071 to which reference is hereby made. Decision No. 97-071 was appealed to and accepted for hearing by the New Hampshire Supreme Court

under Docket 97-738. To our knowledge, there has been no application for or action taken to grant interim relief from any of the remedies ordered therein pending adjudication by the court.

4. After the closing of the record in the proceedings on November 30, 1999, but before the issuance of this decision, the Supreme Court issued its decision in Docket No. 97-738 on December 28, 1999, the contents of which are incorporated herein by reference.

5. During the 1998-99 school year, Petrovek was the subject of observation reports on November 5, 1998 (Association No. 5; District Exhibit page 13), January 26, 1999 without a pre-conference or post-conference date indicated (Association Exhibit No. 6; District Exhibit page 19) and a summative evaluation report dated March 15, 1999 by the principal (Association Exhibit No. 13; District Exhibit page 38). 38). All of the foregoing evaluation reports, summative or otherwise, were conducted under an evaluation procedure unilaterally implemented mid-term to the immediately prior CBA in 1995-97 and for which a cease and desist order issued from this Board in Decision No. 1997-071 on August 1, 1997. The summative report, containing neither a report date nor a conference date, was critical of Petrovek. It was followed by a plan of assistance (Association Exhibit No. 20) dated June 2, 1999 which cited four deficiences and contained a six-step plan of improvement, not withstanding the positive aspects of Association Exhibit No. 5. The first of the four stated deficiences concerned Petrovek's inability to communicate and his missing a certain parent conference when he was sick (as referenced, and/or criticized in Association Exhibit Nos. 2, 6) and another when he was involved in coaching duties on October 7, 1998 (referenced in Association Exhibit Nos. 3, 4 and a "matter of remediation" in Association Exhibit Nos. 13 and 20). By function or annotation, it appears that all of the foregoing critical documents were sent to Petrovek's employee file. Communications difficulties between Petrovek and Principal DeSousa are evident from DeSousa's rescheduling a follow-up report meeting simultaneously with a meeting when Petrovek was to meet with the Superintendent on Association business (Association Exhibit Nos. 8 and 9).

DECISION AND ORDER

We are mindful of the cases cited in the exhibits and memoranda of the parties, inclusive of Gilmanton Education Association, Decision

No. 91-102 (December 16, 1991); Carolyn Bailey/Milton Education Association, Decision No. 94-106 (December 14, 1994); Fall Mountain Regional Teachers Association, Decision No. 97-078 (August 27, 1997); Concord Education Association, Decision No. 90-27 (April 11, 1990) with RSA 541 appeal denied on November 9, 1990, and Appeal of White Mountains Education Association, 125 N.H. 771 (December 31, 1984), and find them to be informative, helpful and insightful as to issues of remedy. Nevertheless, the facts of the case before us have been distilled through our Decision No. 1997-071 (August 1, 1997) and the court's ruling in Appeal of Pittsfield School District, as issued December 28, 1999. We rely on these two decisions involving the same two parties and, essentially, the same two protagonists, in order to arrive at our decision for the acts complained of during the 1998-99 school year.

From all evidence before us, it appears that the parties are operating under the same contract language pertaining to evaluations as was unilaterally implemented under the 1995-97 CBA. (Finding No. 3.) Our decision in the 1997 Education Association of Pittsfield case (Decision No. 97-71, August 1, 1997) noted, at Finding No. 5 thereof, that the contents, requirements and forms associated with the unilaterally implemented 1996 evaluation plan were "not similar to either the contract provisions (see Finding No. 3, above) or [to] the 1981 evaluation plan," a finding echoed by the Supreme Court on page 2 of its Decision 28, 1999 slip opinion. Thus, the circumstances remain unchanged, with the exception that the managerial conduct which is the subject of the instant ULP occurred in SY 1998-99 rather than in SY 1996-97. We conclude that these actions complained of in SY 1998-99 are as objectionable, as tainted and as much of a ULP as was the conduct found to have been improper in 1996-97, for the same reasons then cited by this board and, subsequently, by the court.

We also note that the Supreme Court performed a "negotiability test" under Appeal of State, 138 N.H. 716 (1994), disallowed the District's argument that the negotiability of such evaluations, under the facts of this case, was a prohibited subject of bargaining, and rejected the notion that the managerial exclusion language of RSA 273-A:1 XI applied to the circumstances of the teacher evaluation process as used in Pittsfield.

Based on the foregoing, we find the District's conduct, by and through its agents and employees, to have been violative of RSA 273-A:5 I (h) as a breach of contract, RSA 273-A:5 I (g) for unilaterally implementing and interpreting a plan of evaluation without negotiations thereon as required by RSA 273-A:3 and RSA 273-A:5 I (a) for restraining, coercing and interfering with employees, notably Petrovek, in the exercise of his rights under Chapter 273-A generally, as evidenced by memoranda between the principal and Petrovek as referenced in our findings above. We direct the District to cause its agents and employees to CEASE and DESIST from these actions forthwith and to cause all material referenced in our findings, most

particularly Finding No. 5, which is derogatory to Petrovek to be expunged, by both form and reference, from his personnel file. Should there be any differences of opinion between the parties as to any material which is or is not derogatory to Petrovek, the matter shall be grieved, starting at the Superintendent's level up to and including arbitration, under the provisions of Article VI of the parties' current CBA which defines "grievances" as "violations, misinterpretations or misapplications" of the contract. Any grievance so filed within thirty (30) days of the date of this decision shall be deemed to have been timely filed within the meaning of Article 6.1 of the CBA.

So ordered.

Signed this 12th day of January, 2000

Bruce K. Johnson

BRUCE K. JOHNSON
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members Richard Roulx and Richard Molan present and voting.