



amending her performance review and terminating her after the organizational campaign started. The District filed its answer on February 10, 2000. After a request by the parties to continue an April hearing date, this matter was scheduled for a pre-hearing conference on April 4, 2000, which, in turn, caused this matter to be set for hearing by the PELRB on May 25, 2000. At the conclusion of the hearing, the parties agreed to file post-hearing memoranda, both of which were received on June 9, 2000 and after which the record was closed.

FINDINGS OF FACT

1. The Concord School District, in its role as operator of a public school transportation system and by virtue of its employing bus drivers to operate that system, is a "public employer" within the meaning of RSA 273-A:1X.
2. The United Professional Bus Drivers of Concord, UAW Local 2232 (Union) is the duly certified bargaining agent for the public school bus drivers employed by the Concord School District.
3. The Union filed a Petition for Certification on December 7, 1999 after which the parties agreed on the composition of the bargaining unit on January 6, 2000. The Union became the certified bargaining agent as the result of an election held on February 16, 2000, with a certification and order to negotiate having been issued on February 22, 2000.
4. Kathleen Hill was hired by the Concord School District on or about March 31, 1999. (Union Exhibit No. 1.) The District provided additional training to enable her to upgrade her license to CDL Class B. On April 14, 1999 she transferred to the Merrimack School District. The bus operations of both districts are managed by David Hardy. (Union Exhibit No. 2.) On June 3, 1999, Hardy favorably evaluated Hill as "satisfactory" (Union Exhibit No. 7) and subsequently transferred her back to the Concord School District as a driver in August of 1999 (Union Exhibit No. 3).
5. Hill testified that meetings pertaining to organizing a union started after September 1, 1999, as evidenced by notes of such a meeting held on October 6, 1999 (Union Exhibit No. 9). Hill, who considers herself an "activist," said she was treated "fine" until October 6, 1999. She cited two examples of deterioration in the manner in which she was treated. First,

she felt she was identified as an activist in Union Exhibit No. 9 which was posted and circulated. Second, she claims she was followed on her routes by Hardy, that he stood in proximity to her so that he could overhear her telephone calls and that her work hours were reduced which, in turn, reduced her "take home" pay (Union Exhibit No. 6 and testimony of Beverly Kimball).

6. Hardy reviewed Hill's performance most favorably on December 1, 1999 (District Exhibit No. 2 and Attachment D to ULP) and concurrently gave her a 180-day employment contract with a starting date of November 1, 1999 (Union Exhibit No. 4). Hill did not sign this contract because she considered its starting date to be inaccurate and because she had questions about her seniority dating back to March of 1999. She was to have discussed this with Hardy during this week, but he was sick or otherwise unavailable. She asked for, and was given, a copy of the contract to take with her. She was asked again on December 6, 1999 to sign an employment contract and did not, as verified by Lisa Lacey.
7. According to Hill, by December 13, 1999, she still had not signed the employment contract. On that same day she saw her bus run (No. 18) posted as being available. (District Exhibit No. 3.) She asked Hardy why the run was posted. He told her there was no employee of the District driving the run, i.e., since Hill had not signed the contract, she was not an employee. Thereupon, Hill signed and dated the contract, with the words "I signed agreement under duress" under her signature because she never had an opportunity to pose her questions to Hardy. Hardy said he could not accept it that way. Hill then crumpled the "duress" contract into a ball, told Hardy she would sign a new clean contract, but was never given another copy to sign. Hardy worked her shifts for the District on December 13, 14 and 15. She was terminated at the end of her work day on December 15, 1999. (District Exhibit No. 4).
8. Also on December 15, 1999, Hardy redid Hill's performance evaluation so that she did not meet standards in two categories and needed improvement in one. (District Exhibit No. 5.) Likewise, on that same date Hardy along with Peter Mullin, Karen Daley,

Lisa Lacey and Susan Power, all of the Transportation Department, signed a file memo which read:

It is our consensus that by Kathy Hill's own actions concluding with her signing of a contract "under duress" that she is not employable by the Concord School District Transportation Department and will not be offered a contract at the completion of her probationary period.

District Exhibit No. 1

In Hill's termination letter, Hardy concluded:

Over the past three weeks it has become evident to this office by your failure to sign your employee contract and with your eventual signing under duress, that you have real reservations about working for the Concord School District Transportation Department. This office believes that it is important that both the District and employee be satisfied with each other upon completion of the probationary period. This said, I feel that it is in the best interest of both parties that a contract not be issued.

District Exhibit No. 4

9. Doug Howard, a driver who testified for the Union, was also hired in March of 1999. He received a contract, similar to that presented to Hill, shortly after he was hired, estimated to have been within ninety days of his date of hire. Howard attended the October 6, 1999 organizational meeting. He described himself, Hill and two others as "activists." Hill was unadulterated employment agreement. Contrary to Hill's assertions about her own situation, Howard said that the District has made extra work and extra income available to him despite his union activity. He understood that he must sign an employment agreement (Union Exhibit No. 4) in order to be considered employee of the District. Howard said that, after October 6, 1999, "the whole atmosphere had changed... [Hardy] started to clamp down on everybody." But, as for the consistency of the practice of offering employment arguments, Howard said that Debbie Pattern and William St. Laurent, both of whom were hired in September of 1999, were offered their contracts the same time as Hill, on or about December 1, 1999.

10. David Hardy is the Transportation Director for both the Concord and Merrimack Valley school districts. He testified that he did not learn about the organizational campaign until mid-November. He did not recall being given Union Exhibit No. 9 but did make an on-premises room available for an employee meeting. On December 1st, Hardy told Hill her probation had ended and gave her a copy of her employment agreement. He remembered Hill saying that she wanted to review the document before she signed it. On December 6, 1999, Hardy met with Hill and Lacey at which time he reminded Hill that she was not an employee yet because she had not signed her agreement. Hill left that meeting without signing that document. On December 13th, Lacey reminded Hardy that Hill still had not signed her agreement. Hardy told Lacey to post Hill's route as vacant and available. When Hill inquired as to why her route was posted, he told her because no District "employee" was driving the route. Hill then signed the contract and left it in the proximity of Hardy's office. Hardy later noticed the "duress" statement, called Hill back and told her that added language was unacceptable. Hill then crumpled the document (Finding No. 7), asked for another contract, and was told to come back mid-day. Meanwhile, Hardy called Assistant Superintendent for Transportation, Robert Prohol, and asked him if he would accept the "under duress" language or offer Hill another contract and received a negative response to both. Hardy then decided not to issue another contract to Hill and revised her evaluation, as dated December 15, 1999 (District Exhibit No. 5), because of the problems with Hill's employment contract and because of her behavior.
11. As Assistant Superintendent for Transportation, Robert Prohl heard Hill's grievance about not being offered a new, "clean" contract between December 13-15, 1999. When Prohol met with Hill about the grievance on December 20, 1999, Hill mentioned the unfairness of not being offered a contract and of not being able to discuss what it meant with Hardy. She mentioned nothing about anti-union animus, nor did she mention any complaints about a reduction in hours or about Hardy's proximity to her during the telephone conversation.

DECISION AND ORDER

We dismiss the Union's alleged violations of RSA 273-A:5 I (d) and (e) because the (d) violation was not established vis-a vis any of Hill's activities relating to a complaint, affidavit, petition or having given information or testimony under RSA 273-A, and because the (e) violation could not have occurred until such time as the District was under an obligation to bargain. That occurred with the certification issued on February 22, 2000.

The remainder of the allegations concern violations of RSA 273-A:5 I (a), (b) and (c) which, basically, protect employees in their exercise of rights associated with "concerted activity" relating to organizational activities, union administration and discrimination in hiring and employment practices. A violation of these rights does not turn on the employer's motive but, rather, on whether the employer's conduct may reasonably be said to have interfered "with the free exercise of [protected] employee rights." The Developing Labor Law, 3rd. Ed., p. 76, quoting from American Freightways Company, 124 NLRB 146, 147 (1959).

According to the record before us, Hill's activity was not "protected" or "concerted" within the intended protections of RSA 273-A:5 I (a), (b), and (c). Instead, the testimony established that her main concern, both with Hardy and with Prohl, was the issue of being offered another "clean" employment agreement and an opportunity to discuss its contents with Hardy. These were individual concerns with no outward appearance of being undertaken on behalf of a group of employees or on behalf of the organizational effort generally. Neither of the other two union witnesses testified, or so much as suggested, that the discipline imposed on Hill discouraged either their membership or their participation in the Union or that their fellow workers were so influenced.

We cannot find the requisite nexus between Hill's discharge and the protected activities of RSA 273-A:5 I. Her discharge, for all intents and purposes being for cause, would have occurred regardless of whether she had been a self-described "activist." None of the other three employees identified as activists was adversely impacted in their employment relationship as the result of their participation in the UAW organizational campaign. Had Hill's discharge been plead as a "mixed motive" case, it would have failed for three reasons. First, there was no showing that protected activity was a motivating factor under Wright Line, 251 NLRB 1083 (1980) and, second, by virtue of its treatment of other employees, the employer has convinced us that Hill would have been discharged in any event, regardless of the asserted shield of protected activity, for her repeated failure to sign her employment agreement over a two week period. Third and finally, as noted in the prior paragraph, there is considerable doubt

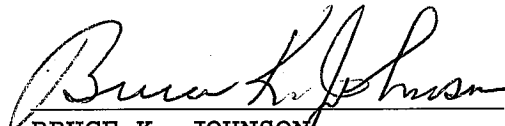
that Hill's activities would fall under the veil of being "protected" in the first instance. See, for example, Meyers Industries, 281 NLRB 882 (1986) where NLRB precedent has established that individual employees must act "with or on the authority of" their fellow workers and not solely on their own behalf in order to engage in concerted activity." The Developing Labor Law, 3rd. Ed., p. 141.

Notwithstanding the foregoing assessment, we find the District's actions, by and through its employee(s), resulting in the after-the-fact revision of Hill's performance report, to have been extremely ill advised, superfluous and without justification or foundation in that it appears to have been done on December 15, 1999, some two days after the *de facto* decision had been made not to offer her a new or "clean" contract. Hill's employment history is what it is. An after-the-fact attempt to punish her or to justify her not being awarded an employment agreement, or both, is inappropriate, not controlling on these proceedings and should be expunged from her employment records along with the equally meaningless District Exhibit No. 1 of the same date. These documents (District Exhibit Nos. 1 and 5), however, do not rise to the level of a statutory violation such as to be an unfair labor practice under RSA 273-A:5 I (a), (b) or (c).

The ULP is DISMISSED.

So ordered.

Signed this 17th day of July, 2000.

  
BRUCE K. JOHNSON  
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding.  
Members Richard Roulx and E. Vincent Hall present and voting.