

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Bow School District		*
	Complainant	*
	v.	*
Bow Education Association, NEA-NH		*
	Respondent	*
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		CASE No. T-0265-14
Bow Education Association, NEA-NH		*
	Counter-Complainant	*
	v.	*
Bow School District		*
	Counter- Respondent	*
<hr/>		*
		CASE No. T-0265-15
		*
		DECISION No. 2003-023
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PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

These parties have filed what amount to counter-complaints. The Bow School District (hereinafter referred to as the "District") filed a complaint with the Public Employee Labor Relations Board (PELRB) on January 29, 2003 alleging that the "Bow Educational Support Staff / NEA-NH/NEA" (hereinafter referred to as the "Association") has improperly filed for arbitration of an alleged grievance. The underlying grievance initiated by the Association alleged that a school principal's communication indicating that she planned to randomly use multiple administrators to participate in teachers' performance observations. The Association alleged that such an action would violate a

provision of the parties' collective bargaining agreement (CBA) regarding teacher evaluation and past practice. The District denied to process the grievance and alleges that the Association has committed an unfair labor practice by filing a demand for arbitration. The District's position is that the grievances that have been filed are not arbitrable because the teachers lack standing, and alternatively that if multiple administrators were used in the observation process it is not prohibited by the terms of the parties' CBA and is a matter within the scope of the managerial policy contained within that agreement. As relief, the District seek a cease and desist order from the PELRB. The District also sought a temporary order to stop the arbitration process.

The Association filed its answer to the District's complaint on February 10, 2003. The focus of their objection is their assertion that the event giving rise to the grievances was the notice issued by the principal of her intent to undertake a procedure which the Association whether or not the practice of multiple observers of the grievants' performance took place. Further, the Association asserts in its answer that as the terms of the parties' CBA limits the ability to file grievances only to individual unit members and not the Association. Therefore, the Association asserts that to permit a management practice that would allow management to issue communications to individuals of alleged unilateral actions and recant those proposed changes, upon the filing of a grievance by an individual, would defeat the individual's right to grieve and create in management an unfettered right to change terms of the CBA at will. Their own complaint was filed on February 19, 2003. It alleged the commission of unfair labor practices by the District for refusing to process the grievances that were filed in connection with the same principal's notice regarding multiple observers. The Association asks that the PELRB find the underlying grievances arbitrable.

The District filed its answer to the Association's complaint on March 6, 2003 in which it asserts that since the teachers who filed the grievances were not observed by multiple administrators, they were not aggrieved, suffered no injury in fact and therefore they lacked standing to file grievances. They reiterate their request for PELRB relief in the form of a cease and desist order.

A pre-hearing conference was conducted on March 3, 2003 at which both parties were represented by counsel. With agreement of the parties, the Hearing Officer indicated that he would order the consolidation of the parties' complaints, Case No. T-0265-14 and Case No. T-0265-15, for the purposes of the pre-hearing conference and for the final evidentiary hearing before the PELRB. The Hearing Officer inquired of the parties as to the probabilities of settlement and both indicated after private discussions between the representatives that the probability of settlement was low.

PARTICIPATING REPRESENTATIVES

For the District: Thomas T. Barry, Esq.

For the Association: Steven Sacks, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the individual teachers have standing to file a grievance based upon the e-mail distributed by the principal of the Bow Elementary School to teachers on October 2, 2002 involving "teacher observations"?
2. Whether the grievances of the teachers are arbitrable?
3. Whether the actions of the District in refusing to process the grievances at the Superintendent and School Board level constitute a failure to bargain in good faith or constituted restraint, coercion, or interference with its employees in the exercise of their rights in violation of RSA 273-A:5, I (a), (e), (g) and (h)?
4. Whether a change in "past practice" is grievable?

WITNESSES

For the District (Complainant and Counter-Respondent):

1. Patricia Bechard
2. Diane Gerhardt
3. Elaine Meilcarz
4. Deborah Gibbens
5. Ralph J. Minichiello
6. Donna Girard
7. James Vulgamore
8. Robert H. Wester, Jr.

For the Association (Respondent and Counter-Complainant)

1. Patricia Bechard
2. Diane Gerhardt
3. Elaine Meilcarz
4. James Vulgamore

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits

1. Master Agreement by and between the Bow School Board and the Bow Education Association for the period of July 1, 2000 through June 30, 2003.
2. October 2, 2002 e-mail from Deborah Gibbens to Bow Elementary School Teachers.
3. October 21, 2002 grievances of (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz, submitted to Principal Deborah Gibbens.
4. October 29, 2002 decision of the Principal concerning the grievances of (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz
5. November 5, 2002 grievances of (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz, submitted to Superintendent Ralph J. Minichiello.
6. November 18, 2002 letters from Superintendent Minichiello to (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz.
7. November 26, 2002 grievances from the Bow Education Association referred to the Bow School Board, dated November 26, 2002 of (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz.
8. December 9, 2002 letters from Robert H. Wester, Jr., Chair of the Board School Board, to (a) Patricia Bechard, (b) Diane Gerhardt, and (c) Elaine Meilcarz.
9. (a) November 15, 2002 Observation Report of Diane Gerhardt; (b) November 19, 2002 Observation Report of Patricia Bechard; and (c) December 6, 2002 Observation Report of Elaine Meilcarz.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this

order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

STIPULATION OF FACTS

1. The Bow Education Association ("Association") and the Bow School District ("District") entered into a Collective Bargaining Agreement ("CBA") for the period of July 1, 2000 through June 30, 2003.
2. On October 2, 2002 Deborah Gibbens, Bow Elementary School Principal, distributed an e-mail dated October 2, 2002.
3. On October 29, 2002 Principal Gibbens denied each grievance.
4. On November 8, 2002, District Superintendent Ralph J. Minichiello received a grievance and request for hearing from three teachers employed by the District: Patricia Bechard, Diane Gerhardt and Elaine Meilcarz.
5. Superintendent Minichiello responded to the grievances by letter dated November 18, 2002.
6. On November 26, 2002 the Association referred the grievance to the Bow School Board.
7. The Bow School Board voted to deny the teachers requested hearings.
8. On January 10, 2003 the Association filed a demand for arbitration with the American Arbitration Association on the consolidated evaluation grievances of the three teachers.
9. Diane Gerhardt was observed on November 15, 2002; Patricia Bechard was observed on November 19, 2002; and Elaine Meilcarz was observed on December 6, 2002.

LENGTH OF HEARING

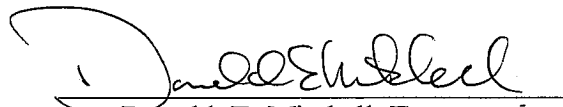
The time being set aside for the consolidated hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

DECISION

1. Case T-0265-14 and Case No. T-0265-15 are consolidated for hearing before the PELRB.
2. Counsel for the District shall draft a document for submission to the PELRB on or about March 14 that shall include a facts and exhibits to which the parties have stipulated.
3. The parties shall exchange any outstanding documents reasonably requested by the opposing party no later than January 17, 2003. In the event that either party has a good faith belief that he has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of his reasons for not providing the document to the requesting party.
4. Not later than five (5) days before the scheduled date of the evidentiary hearing, as required by Rule Pub 203.01(b), the party representatives shall exchange any modifications to their Exhibit List and final Witness List. At the same time, each shall deliver or a copy of their respective lists to the PELRB.
5. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
6. The presentation of the District's cases shall precede the presentation of the Association's cases.
7. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled date of the hearing as appears below.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted on both of the above referenced cases at the Office of the Public Employee Labor Relations Board in Concord on Thursday, May 8, 2003 beginning at 9:30 A. M.

Signed this 21st day of March 2003


Donald E. Mitchell, Esq.
Hearings Officer

Distribution:
Thomas T. Barry, Esq
Steven Sacks, Esq.