



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Hillsboro-Deering Federation of Teachers, AFT
Local #2348, AFT-NH, AFL-CIO**

Complainant

Case No. E-0045-2

v.

Decision No. 2008-175

Hillsboro-Deering School District

Respondent

APPEARANCES

Representing the Complainant: Teresa D. Donovan, Esq., AFT-NH, AFL-CIO

Representing the Respondent: Melissa M. Hanlon, Esq., and Edward M. Kaplan, Esq.
Sulloway Hollis PLLC, Concord

BACKGROUND

Hillsboro-Deering Federation of Teachers, AFT Local #2348, AFT-NH, AFL-CIO (the "Union") filed an unfair labor practice complaint on April 7, 2008 based upon statements that middle school principal Richard Nannicelli made to bargaining unit members at the end of an April 1, 2008 faculty meeting. This meeting followed a Union vote of "no confidence" in school superintendent Dr. Barbara Baker. The Union claims that at the April 1, 2008 faculty meeting principal Nannicelli made statements that constitute coercion and interference with the Union in violation of RSA 273-A, I (a) to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter, (b) to dominate or to interfere in the formation or administration of any employee organization), and (g) to fail to comply with this chapter or any rule adopted under this chapter.

The Union has requested that the PELRB find that the conduct of principal Richard Nannicelli constitutes an Unfair Labor Practice in violation of RSA 273-A, I (a), (b) and (g) issue an order against Nannicelli to cease and desist from such prohibited practices and require the district to disseminate this decision to each bargaining unit member at the middle school. The Union also seeks reimbursement of legal fees and costs necessary to this action.

On April 21, 2008 the district filed its answer denying the Union's charges. The District acknowledges that principal Nannicelli addressed the Union's "no confidence vote" at the faculty meeting but disputes the Union's depiction of his remarks. The district says there was also discussion among the faculty at the April 1, 2008 meeting as to the specifics of the March 27, 2008 Union meeting at which the vote had been taken. The district contends that Principal

Nannicelli was simply exercising his free speech rights by expressing his personal view in support of Superintendent Baker. The district requests that the PELRB deny the unfair labor practice complaint and award the district its costs and expenses.

A pre-hearing conference was held on May 21, 2008 and an evidentiary hearing was conducted at the offices of the Public Employee Labor Relations Board in Concord on May 29, 2008. At the outset of the hearing, the parties were requested by the PELRB to recess and comply with a prior order to confer and draft for submission such facts as were not in dispute. A brief recess ensued and concluded with the parties submitting an agreed Joint Statement of Facts that the PELRB has incorporated below as Findings of Fact #1-#11. The PELRB granted the Union's motion for sequestration, over the objection of the District, and the potential witnesses were given instructions in conformance with sequestration and were excused from the hearing room. Mr. Nanacelli remained as the named respondent and the Union president, Diane Hines, was allowed to remain. Both parties were represented, presented testimony and other evidence and had the opportunity to cross-examine witnesses. At the conclusion of the evidence, counsel for both parties requested leave to submit post-hearing memoranda of law in lieu of oral closings. Their request was granted and the record was held open to allow submissions until June 27, 2008. Following the receipt of briefs the record was closed.

After considering all filings and evidence presented by the parties and giving appropriate weight to all exhibits and testimonial credibility, the PELRB finds as follows:

FINDINGS OF FACT

1. That the Hillsboro-Deering School District is a public employer in the State of New Hampshire.
2. That Richard Nannicelli is employed by the district as the principal at the Hillsboro-Deering Middle School.
3. That the Hillsboro-Deering Federation of Teachers, AFT Local #2348, AFT-NH, AFL-CIO is the exclusive bargaining agent for all full and part-time classroom teachers, librarians, guidance counselors and registered nurses in the Hillsboro-Deering School District who work one-half or more of the school day.
4. The Union's vote was communicated to the Hillsboro-Deering School Board members by email on Tuesday, April 1st at 7:32 am by HDFT President Diane Hines.
5. The HDFT press release was also provided with the email to school board members.
6. The Board Chairperson, Babette Haley, has requested on two (2) occasions, once on 4/1/08 at 9:08 am and again on 4/1/08 8:32 pm, to know specific numbers as to how many Union members attended and what percentage of the membership voted.

7. The HDFT President has responded without providing specific numbers in order to protect the interests of the members.
8. Bargaining unit employees are required to attend faculty meetings.
9. On Wednesday, April 2nd, there was a regularly scheduled faculty meeting at the Middle School which is a required meeting for bargaining unit members.
10. The faculty meetings are scheduled and conducted by the principal.
11. As a result of the meeting at least one member of the teaching staff has placed a letter in support of the superintendent and encouraged others to sign it.
12. The parties' collective bargaining agreement provides that bargaining unit members are required to attend faculty meetings as called by the principal for a period of one hour, normally concluding at 3:30PM.
13. With few exceptions all faculty were in attendance at the regularly scheduled meeting on Wednesday April 2, 2008 when Nannicelli introduced the topic of the previous vote of "no-confidence" issued by the system-wide Union membership against the Superintendent on March 27, 2008.

14. There is conflicting testimony as to the exact time Nannicelli initiated his remarks related to the “no-confidence” vote but the parties generally agree that it was the last topic discussed.
15. Nannicelli was the supervising authority of this meeting and in constructive control of its termination or adjournment.
16. Nannicelli understood that management/Union issues and administration/faculty issues should not be mixed at these mandatory meetings convened by him.
17. At the time Nannicelli made his remarks at the faculty meeting, not all members of the bargaining unit were aware of the “no-confidence” vote previously issued by the Union.
18. Witnesses had differing recollections of Nannicelli’s statements at the April 2, 2008 faculty meeting. However, the essence of Nannicelli’s remarks were that he had a serious topic to raise, that a vote of no confidence in the School Superintendent had been passed by the Union, that he supported the Superintendent, that he interpreted any vote of no confidence in the Superintendent to be a vote of no confidence in himself as an administrator, that he did not believe that “his” teachers were supportive of the no confidence vote, that there was an upcoming school board meeting that would consider the Union’s action, that he was going to attend and show support for the Superintendent and invited the faculty present to join him to demonstrate similar sentiment because he wanted the Superintendent to know how “his” teachers felt on the no confidence vote.

19. Some of the faculty present to hear Nannicelli's remarks felt they were inappropriate; some felt intimidated or that they were being coerced; and some did not feel intimidated or coerced.

20. Nannicelli testified that he believed his comments to be benign until he witnessed the ensuing actions. He also testified that it is his philosophy that intimidation is a choice someone makes, *i.e.* to be intimidated by someone or something or not to be intimidated, and that his statements at the April 2, 2008 faculty meeting were not made for the purpose of intimidating or coercing anyone; he was simply stating his personal opinion.

21. Ms. Rhayna Teich, the widely recognized Union representative at the middle school, was present at this meeting and, upon understanding the substance of Nannicelli's meeting ending remarks, expressed her belief that his remarks were "inappropriate" for an administration/faculty meeting. However, the discussion of the Union vote of no confidence that Nannicelli had initiated continued among those present, including Nannicelli, until the sentiment expressed by Teich was echoed by at least one other person present, Pam Ross, and the discussion ebbed as another teacher made an announcement. The meeting then dissolved to an end.

22. At or about the time of Nannicelli's remarks, most faculty understood that management's consideration of which faculty members would be renewed for employment for the

ensuing year was imminent as such notices were traditionally distributed on or about April 15th of each year.

23. Following the April 2, 2008 faculty meeting and Nannicelli's remarks, William Harris, a non-tenured member of the faculty who was a friend of Nannicelli of some years and interacted socially with Nannicelli outside of the workplace. Ellen Mims is a fourth year teacher who had concluded that she agreed with the superintendent's approach to education after previously attending a conference with the school superintendent at which they discussed education while drinking wine together at night. Ms. Mims undertook certain actions supportive of the comments made by Nannicelli at the faculty meeting. These actions included Mims drafting a letter indicating support of the Superintendent in line with Nannicelli's request at the faculty meeting for faculty to show support of the Superintendent and both Harris and Mims asking that other faculty sign the letter petition and follow-up emails to those who had not participated in a later voting exercise.
24. Mims attended the school board meeting, read the support letter publicly before the school board and the superintendent and submitted it to the school board. Mims also had kept Nannicelli informed of her and Harris' actions by forwarding an email revealing a stream of several messages among Nannicelli's staff.
25. Mims and Harris discussed the issue further and strategized that they should conduct their own election among the faculty of the middle school. They prepared a ballot, planned to

conduct the vote at the next scheduled faculty meeting, and wrote and distributed e-mails in support of the separate balloting effort.

26. The normal administration/faculty meeting function was replaced with a social shower for a faculty member and a polling or voting-type procedure was conducted at that function by Mims and Harris, albeit imperfectly and incompletely, using a ballot type document of several questions developed by them.
27. Following his remarks on April 2, 2008, Nannicelli was aware of the activities that ensued within the middle school faculty and with the defensive action of the Union in counseling members to sign the initial petition of support of the Superintendent, notwithstanding the Union's no confidence vote, so as to conceal their true sentiment and protect themselves from specific identification by management.
28. Notwithstanding knowledge that Teich was the Union representative in the middle school, Nannicelli allowed Harris to assume authority to speak for the Union and also agreed to leave the faculty meeting/shower to facilitate further faculty discussion or balloting despite requests from Teich that he not allow the faculty meeting/shower to be used for balloting or to discourage other acts that were contributing to divisiveness within the faculty.

DECISION AND ORDER

SUMMARY

The Majority hold that Principal Nannicelli undertook a course of action in reaction to a Union vote of “no confidence” that included directing specific words to the Union membership at a mandatory school administration meeting resulting in intimidation of employees and requesting their attendance at a meeting where non-attendance would expose members who had supported the no confidence vote and undercut the previous Union vote amounting to “interference” and constituting a statutory violation. The Minority holds that Nannicelli’s remarks represented constitutionally “protected free speech” regardless of the manner of communication and did not rise to the level of prohibited actions amounting to interference with either employee rights or Union administration.

JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has primary jurisdiction to adjudicate claims of improper labor practice between the duly elected "exclusive representative" of a certified bargaining unit comprised of public employees, as that designation is applied in RSA 273-A:10, and a "public employer" as defined in RSA 273-A:1,I. See RSA 273-A:6,I. PELRB jurisdiction is proper in this case as the Union has alleged violations of RSA 273-A:5 (a), (b) and (g).

DISCUSSION

Reduced to its essentials, this case involves a valid activity undertaken by the Union, namely a Union vote of “no confidence” in the district’s school superintendent, and a brief series of subsequent actions undertaken by Nannicelli, the principal of the middle school. The decision

of this board calls for the determination of whether Nannicelli's actions or inaction amounted to restraint, coercion or interference with the right of the faculty members represented by the Union to undertake and express a vote of "no confidence" in the school superintendent in violation of RSA 273-A:5,I(a) or whether his actions or inaction amounted to interference in the administration of the Union in violation of RSA 273-A:5,I (b).

On March 27, 2008 the Union's leadership convened a scheduled Union meeting that, among other actions, involved a vote the result of which was the issuance of a vote of "no confidence" in the school superintendent. On April 2, 2008 Nannicelli convened a properly scheduled meeting of the middle school staff including those represented by the Union. He was entitled under the parties' CBA to conduct up to four of these so-called "mandatory" meetings during each school year. He planned to address the "no confidence" vote undertaken by the Union representing members within the school system, including faculty working in the middle school. There was conflicting testimony as to whether his remarks or the responses to his remarks occurred moments prior to the scheduled end of the meeting or moments after. We do not find significance in the precise designation of 3:30PM as the staff obligation was to attend an hour long meeting and not a meeting that must necessarily conclude at 3:30PM. Weighing the testimony of the witnesses, we do find that under the circumstances in this case it would be the exception for reasonable subordinate employees to feel they could simply walk out or walk by their supervisor to exit a meeting he had convened while he was addressing an issue that he had introduced as being "serious." The issue that was initiated by Nannicelli was the earlier "no confidence" vote in the superintendent conducted by the Union and exercised by some of its members on March 27, 2008. Again, the witnesses differ as to the exact words that Nannicelli used to address the members of the faculty. The essence of his remarks were as follows: that he

had a serious topic to raise; that a vote of “no confidence” in the school superintendent had been passed by the Union; that he supported the superintendent, that he interpreted any vote of no confidence in the superintendent to be a vote of no confidence in himself as an administrator, that he did not believe that “his” teachers were supportive of the vote, that there was an upcoming school board meeting that would consider the Union’s action in voting and issuing the “no confidence vote”, that he was going to attend that meeting and show support for the superintendent and invited the faculty present to join him to demonstrate similar sentiment because he wanted the superintendent to know how “his” teachers felt on the no confidence vote. Nannicelli admitted that he understood that Union issues and administration issues should not be mixed at the mandatory staff meeting convened by him. Some of the faculty present when he made his remarks expressed that they thought his remarks were inappropriate. Eventually the sentiment that further discussion was inappropriate rose to a point where the topic was generally abandoned and another announcement by a faculty member concluded the meeting and the attendees left. The majority finds Nannicelli’s testimony that he believed his “passionate” remarks at a mandatory meeting were “benign”, to be at best, naive. Similarly the majority finds in the context of our factual findings in this case that his declaration to the effect that if anyone present “chose” to be intimidated by his remarks was their own personal choice demonstrates a surprising naiveté or, worse, an ignorance of the relationship between a supervisor and subordinate individuals in the workplace. This is particularly so when that supervisor’s expression amounting to opposition to an action taken by some of the employee members of a duly certified Union is made at a time of heightened anxiety due to its proximity in time to what all employees present know to be a period of decision-making involving possible non-renewals of employment for individual teachers.

Following Nannicelli's mandatory meeting two faculty members undertook efforts that, while not ordered by Nannicelli, were in line with and supportive of the sentiment he expressed during the meeting. In the few days that lapsed between this mandatory meeting and the scheduled school board meeting at which time the "no confidence" vote was to be addressed some of those present at the mandatory meeting undertook what we believe to be reasonably predictable actions as a result, in full or in part, of Nannicelli's "benign" plea for support. Two faculty members that demonstrated their support were William Harris and Ellen Mims. Both of these faculty members were essentially non-participants in Union meetings or operations until this time. Harris is a long-time personal friend of Nannicelli and a non-tenured teacher who came to the school two years earlier at approximately the same time as Nannicelli. Mims is a fourth year teacher and stated that her actions were, at least, in part based upon prior discussions with the superintendent during a week she had spent at an education seminar at which she was "drinking wine with [the superintendent]" and discussing education issues and concluded that she agreed with the superintendent's approach to education.

Mims drafted a letter supportive of the superintendent and solicited fellow faculty to sign the letter. Both Harris and Mims collaborated to conduct what they referred to as a "vote" during another faculty gathering at a time designated as another faculty meeting. The "vote" consisted of a document laid out on a table at the meeting that faculty members were requested to sign indicating their support of the superintendent. Mims directed e-mails to faculty who had not signed in support. She also engaged in an e-mail exchange with the president of the Union expressing disagreement with the Union action. It is noteworthy that Mims informed Nannicelli

of this exchange by e-mail copy and editorialized on her note to Nannicelli. Eventually, Mims attended the school board meeting and read the letter of support publicly before the board and the superintendent and submitted it to the board.

For his part, in addition to generally strategizing and collaborating with Mims in the acts stated above, Harris solicited and received a promise from Nannicelli that the principal would remove himself from the faculty meeting. We do not find the testimony that Nannicelli had no idea of what was to occur during this meeting while he was absent to be credible. We believe that Nannicelli knew that Mr. Harris was not the Union's representative. However, Nannicelli ignored the requests of the authorized Union representative at his school that he not allow the faculty meeting to be used for balloting and that he discourage other acts that were occurring, following the April 2, 2008 mandatory meeting, that were contributing to divisiveness within the faculty.

It is a violation of RSA 273-A:5, I (a) for a public employer to interfere with its employees in the exercise of rights conferred upon them by this statute. Among these rights is the right for employees within a bargaining unit to be free from public employer interference in so-called "concerted activity." In this case the concerted activity of the employees was undertaking a vote of "no confidence" in the school superintendent which was sponsored by the employees' exclusive bargaining representative. It is also a violation of RSA 273-A:5, I (b) for a public employer to interfere with the administration of an employee organization, like the Union in this case. Unlike instances where Union organizational campaigns often result in management campaigns where free speech issues may become more prevalent, the instant case does not involve a campaign to establish whether the employees will be represented by a Union. The

Union is already established as the exclusive representative of the faculty in the Hillsboro-Deering school district, including those assigned to the middle school directed by Nannicelli and is entitled to the protections of our statute.

Our key focus is on the prohibition against the public employer through any of its representatives or agents to interfere with employee actions in support of what they believe to be improvements in their working conditions and to interfere with legitimate Union actions in furtherance of its administration. When we consider the totality of the circumstances described above we conclude that the actions and non-action of Nannicelli, a management representative by virtue of his position as principal of the middle school, rise to the level interference with the rights of the employees within the bargaining unit. One employee right interfered with was the concerted activity to vote “no confidence” in the school superintendent without the risk of individuals being “outed” as supporters of that vote if they did not follow Nannicelli’s urging to attend the school board meeting with him. A second employee right interfered with was not to be subjected to statements by their direct supervisor in the workplace that could be reasonably foreseen to result in and did result in undue, unnecessary and inappropriate intimidation at a sensitive time in the school year when decisions regarding individual employees’ continued employment normally are at issue. We make this determination fully cognizant of the respondent’s assertion that Nannicelli’s remarks should be protected as “free speech.” However, we feel such reliance on constitutionally protected free speech is misplaced and cannot be used under the circumstances here to avoid public employer obligations under our state’s public employee labor law. While the substance and manner of employer communications may be protected under some circumstances, particularly where those communications are made outside of the workplace or in a public forum where all are free to express certain opinions those

circumstances are not present here. Here we do not feel that the protections that attach to constitutionally protected speech followed Nannicelli from forums of open public debate, into the middle school to a mandatory meeting after normal workday hours with Union members whose leadership was neither noticed nor invited to attend.

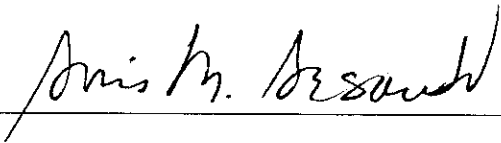
We likewise conclude that the actions of Nannicelli rise to the level of interference with the administration of the Union in violation of RSA 273-A:5, I(b). One Union right interfered with was the right of a Union to exclusively represent the bargaining unit by not having its members directly addressed by employer representatives on Union matters, *i.e.* the “no confidence” vote in the manner, location and method employed by Nannicelli. A second Union right interfered with was the right not to have its leadership structure subverted by having the Union’s sole, authorized building representative’s responsibility and authority diminished by Nannicelli acceding to contrary requests of other Union members who were not part of the Union leadership structure.

Therefore, having found that unfair labor practices did occur, we hereby order that Principal Nannicelli, as a representative of the public employer, is to cease and desist from repeating such actions as were described in this decision and specifically to desist from discussing Union actions with members of the bargaining unit at school administrative/staff meetings and shall communicate with and accept requests or petitions related to Union actions only from duly authorized Union officers and building representatives.

A printed copy of this decision may be posted by the Union for a period of thirty days from the date it is received in each of the public employer's buildings where members of the Union work and in a location reasonably calculated to inform the members of this bargaining unit.

So Ordered.

Signed this ^{5th} day of September, 2008

A handwritten signature in cursive script, reading "Doris M. Desautel", is written over a horizontal line.

Doris M. Desautel, Alternate Chairperson

By majority vote. Alternate Chairperson Doris Desautel and Board Member E. Vincent Hall voting in the majority and Board Member James M. O'Mara dissenting and voting as the minority.

MINORITY OPINION

While I do not disagree with the majority as to the factual findings in this case, I do not reach the same conclusion. Simply put, while I agree that Nannicelli is a representative of the public employer I do not think that the actions that he took rise to a level of behavior or conduct that constitutes interference with either the exercise of employee rights or the administration of the Union. Instead, I would focus on Nannicelli's right to express his opinion as an individual and as a workplace supervisor cooperating with the school administration and managing the responsibilities within his authority. When his statements and actions are looked at from that perspective, I believe that he was entitled to say what he said where he said it and how he said it as an expression of his constitutionally protected free speech. The fact of the existence of a Union in the workplace should have no more prohibitive effect on him making verbal remarks directly to the staff of the middle school regarding an action taken by the Union than directing his remarks to Union members via an e-mail as the court instructed this board in reversing our opinion in *Hampton Police Association v. Town of Hampton PELRB Decision # 2005-113*, (See *Appeal of the Town of Hampton*, 134 N.H. 132) .

In respectful dissent,



James M. O'Mara, Jr., Member

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