



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

White Mountains Educational Support Personnel/NEA-New Hampshire

v.

White Mountains Regional School District

Case No. E-0096-1
Decision No. 2010-109

Order re: Motion to Dismiss

Background:

White Mountains Educational Support Personnel/NEA-New Hampshire (Union) filed an unfair labor practice complaint against the White Mountains Regional School District (District) on April 22, 2010. The Union claims that the District violated RSA 273-A:5, I (h) by breaching Articles XVIII and XXIV of the parties' Collective Bargaining Agreement (CBA) when it failed to follow allegedly required contractual procedures before proceeding with disciplinary action. In particular, the Union asserts that the District failed to provide a supportive statement of facts before proceeding with disciplinary action, failed to provide a letter of warning before proceeding with disciplinary action, improperly placed material in the employee's personnel file after giving her a notice of a dismissal hearing; and improperly failed to sign the employee's evaluation. The Union also claims that the District violated RSA 273-A:5, I (d) by discriminating against the employee in some manner on account of the reinstatement of the employee's health insurance benefits in 2009 following a settlement agreement in a separate matter.

The District has moved to dismiss, citing the Union's failure to complete the grievance process set forth in Article III of the CBA, and in particular the Union's failure to proceed through Level III with its grievance. Under Level III the School Board is charged with reviewing the grievance "with all concerned parties" and thereafter providing notice of the School Board's decision in writing. The District also argues, among other things, that the Union has failed to allege sufficient facts to state a claim with

respect to a discrimination claim based upon the reinstatement of the employee's health insurance benefits.

The Union objects, as reflected in its written pleadings and argument on the record. The Union argues that its failure to complete the contractual grievance procedure should be excused because the process would be futile, the Union is certain the School Board will deny the grievance, and the Union would then have the right to file an unfair labor practice claim. In these circumstances the Union argues it is entitled to proceed with its complaint and the board should decide the case on the merits.

Decision:

The District's Motion to Dismiss is granted. The Union's failure to complete the contractual grievance process cannot be excused according to the standards set forth in *Appeal of Campton School District*, 138 N.H. 267 (1994) and *Appeal of State Employees' Association*, 139 N.H. 441 (1995).

Because the contractual violations raised by the Union are subject to the grievance process the board lacks jurisdiction to address the merits of the complaint. The board also agrees that there are insufficient pleadings or allegations to support a claim of discrimination based upon the reinstatement of health insurance benefits and that claim is dismissed as well.

So ordered.

Signed this 3rd day of June, 2010.


Doris M. Desautel, Alternate Chair

By unanimous vote. Alternate Chair Doris M. Desautel presiding with Board Member Carol Granfield and alternate Board Member Richard J. Laughton also voting.

Distribution:

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