



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Farmington Education Support Professionals United/NEA-NH

v.

Farmington School District, SAU #61

Case No. E-0047-4
Decision No. 2014-068

Appearances: James F. Allmendinger, Esq., NEA-NH,
Concord, New Hampshire for the Complainant

Peter Phillips, Esq., Soule, Leslie, Kidder, Sayward & Loughman, PLLC
Salem, New Hampshire for the Respondent

Background:

On March 14, 2013 the Association filed an unfair labor practice complaint under the Public Employee Labor Relations Act. The Association charges that the District violated RSA 273-A:5, 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); (d)(to discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter); and (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations). The Association claims the District violated these provisions

when, among other things, the District prohibited bargaining unit employees from utilizing school email for Association business, questioned the Association's right to file grievances and to utilize certain Association representatives during bargaining, denied an employee's request to have an Association's representative present during a questioning by the Superintendent, and threatened the Association President with unspecified reprisals for attempting to help one of the bargaining unit members with her FMLA request.

The Association requests that the PELRB: 1) order the District to cease and desist from violating RSA 273-A; 2) order the District to post the complaint and the PELRB decision in all schools in the district and electronically via the school's email system; and 3) order the Superintendent to read the PELRB decision to bargaining unit employees in a meeting at school.

The District denies the charges and requests that the PELRB dismiss the complaint. According to the District, its representatives have done nothing improper in their interaction with bargaining unit employees and otherwise acted consistent with their managerial prerogative and rights.

The undersigned board held two days of hearing on the Association's complaint (June 6, 2013 and December 12, 2013) at the PELRB offices in Concord. Both parties presented evidence and have submitted post-hearing briefs. The decision in this case is as follows.

Findings of Fact

1. The Farmington School District is a public employer within the meaning of RSA 273-A:1, X.
2. The Farmington Educational Support Professionals United, NEA-NH (the Union) is the certified representative of the Farmington School District paraprofessional bargaining unit.

3. Steven Welford has been the District's Superintendent since the start of the 2012 - 2013 school year.

4. Jacqueline Capello is a principal at Henry Wilson Memorial School for grades four through six.

5. Steve Woodward is also a principal at Henry Wilson Memorial School for grades seven and eight.

6. Principals Capello and Woodward share the principal duties at Henry Wilson Memorial School and act as "co-principals."

I. Union Election and September 14, 2012 Paraprofessional Meeting:

7. During the summer of 2012 the incumbent Union president resigned. Internal Union elections were planned for October to fill the vacated position and to determine other Union officers. In September the Union's executive board consisted of Martha Horgan (the Union vice-president at the time the incumbent Union president stepped down who became acting Union president pending the outcome of the election), Kris Magri (Martha Horgan's daughter and treasurer), and Pamela Kimbro (secretary). Kris Magri and Martha Horgan are family friends of Principal Capello.

8. On or about September 4, 2013 Kris Magri published a letter (Joint Exhibit 2) at a meeting discussing her views on various matters involving District paraprofessionals, including a number of observations about Laura Parker, a paraprofessional planning to run for Union president.

9. On September 12, 2012, about three weeks into the school year, a teacher at Henry Wilson Memorial School contacted Principal Capello and told her that she and children in her classroom could hear paraprofessionals loudly discussing the Union election and other paraprofessionals in the break-room adjacent to her classroom.

10. On September 13, 2012 Ms. Horgan, Ms. Magri, and Ms. Kimbro met with Principal Cappello and asked for her assistance. They told Principal Capello that paraprofessionals were not getting along, were avoiding each other in the halls so they would not be asked to support certain candidates in the upcoming Union election, and that emails about specific paraprofessionals and their job performance had been sent to Union members from the UniServ Director. This information caused Principal Capello to have concerns about how these events were impacting the work of the paraprofessionals and the general climate of the school.

11. Principal Capello and Principal Woodward investigated the situation by meeting with and questioning a large group of paraprofessionals and then holding a meeting of all paraprofessionals on September 14, 2012. The principals' intent was to address what they perceived as a problem with the school climate, in particular interactions between paraprofessionals that included issues surrounding the upcoming Union election. At this meeting the co-principals told the paraprofessionals that:

- they could be fired at any time if they did not get along with each other
- that they should "play nice in the sandbox"
- that they were employees-at-will
- that it could take up to six weeks to get unemployment compensation if a paraprofessional was fired
- that the District will "weed out" problems and proceed with progressive discipline procedures if necessary
- that in some cases, "glowing" references would not be given if paraprofessionals were terminated
- that paraprofessionals needed to be "professional at all times," which included not talking about Union or other matters in the break room
- that school email should not be used for Union business.

12. Some paraprofessionals were initially confused about why the meeting was being held. They felt threatened by administrator statements at the meeting and believed their jobs

were now at risk. Other paraprofessionals left the meeting believing they could be fired if they did not comply with the stated expectations.

13. After the meeting Principal Woodward realized the meeting had not gone well. He was concerned about some of the statements he and Principal Capello had made to the paraprofessionals. He therefore called the Superintendent and described the meeting. A School Board member who had been contacted by a paraprofessional also called the Superintendent to discuss matters.

14. The Superintendent verbally reprimanded Principals Capello and Woodward on September 17 for holding the September 14, 2012 meeting and for comments they made in the meeting. The Superintendent was upset with Principals Capello and Woodward because he believed their statements were inappropriate, incorrect, and should not have been made, particularly with regard to hiring and firing. He also believed their statements did not “inspire a collaborative staff.”

II. Substitute Teaching Reimbursement:

15. Laura Parker was elected Union President in the mid-to-late October Union election. On November 1, 2012 Ms. Parker was working with students in a classroom when Principal Woodward arrived at the classroom door and asked her to step into the hall. When she came out of class she discovered the Superintendent was present as well. This was Ms. Parker’s first interaction with the Superintendent in her capacity as Union President, and initially she did not even know who the Superintendent was when he began speaking.

16. The Superintendent explained at hearing that he needed to speak with Ms. Parker at that time because it was a payroll week and there was an issue about paraprofessional pay. He also wanted to “open up a line of dialogue” with the Union President. He proceeded to question

Ms. Parker about a paraprofessional at another school who had requested a reimbursement rate for substitute teaching that was higher than the current rate in the CBA and was based upon a Union proposal in negotiations. The Superintendent told Ms. Parker that paraprofessionals were “dangerously close to an unfair labor practice” because they were attempting to unilaterally implement a subject of bargaining.

17. Ms. Parker was not familiar with the circumstances the Superintendent described. She was confused during the encounter with the Superintendent because she had not received advance notice of the meeting/discussion, because he was questioning her about an incident she did not know about, and because she had not met the Superintendent before this conversation and was unsure who he was when he began speaking to her. Ms. Parker also felt the Superintendent was “agitated” as he spoke to her.

18. The Superintendent also wanted to discuss a grievance currently pending at the first step with one of the principals about mandatory attendance at after school meetings without pay.¹ He mentioned that someone had threatened to file “charges at the labor board” about the matter. Ms. Parker responded that mandatory attendance without pay was unfair and the subject should be discussed further in a meeting. After about 10 minutes Ms. Parker returned to her classroom.

III. Grievance Meeting Re Mandatory Attendance At Meetings Without Pay:

19. A number of employees had requested payment for attendance at the mandatory after school meeting on their time cards. Principal Capello advised employees that these time card entries could jeopardize the processing of the employee’s regular paycheck. She later retracted this comment.

¹ The District did excuse employees with a conflicting employment obligation. The grievance charged a violation of wage and hour laws.

20. On November 16, 2012 Ms. Parker was summoned without prior notice to Principal Woodward's office, where she learned that the Superintendent wished to speak with her. Ms. Parker asked that a Union representative attend the meeting as well. The Superintendent told Ms. Parker that paraprofessionals who included time for mandatory meeting attendance on their time cards were not working with the District as a "team." He also noted that pay for mandatory meetings was the subject of a Union proposal in negotiations², and that paraprofessionals who included such time on their time card were unilaterally implementing the Union's proposal. The Superintendent told Ms. Parker "not to take this as threatening" but that this was a "real issue" and a "major violation of the CBA" and that an "unfair labor practice could be requested." The conversation continued until the Superintendent stated that he "couldn't say any more because I see where this is headed - to a ULP." The Superintendent then left in a somewhat abrupt manner saying they would "continue this at the next meeting."

IV. Union's decision to change bargaining team:

21. Lisa Abbott served as the spokesperson for the Union during negotiations but she was not the chief negotiator. Bargaining team members for both sides were paraprofessionals and administration officials, respectively. Neither team had a "professional negotiator," like a UniServ director from the NEA or outside counsel for the District, at bargaining sessions. By early December 2012 the mid-January "deadline" for reaching an agreement was approaching but the parties still had not reached a tentative agreement. The Union felt the District was being dilatory in scheduling bargaining sessions and decided to bring in NEA UniServ Director Peter Miller to assist their team in negotiations. There was no ground rule or other agreement that

² The parties' current agreement was scheduled to expire June 30, 2013.

prevented the Union or the District from making changes to their bargaining team at this or any other stage in negotiations.

22. On December 7, 2012 Ms. Abbott was in class working with students when the Superintendent appeared without prior notice at her door and asked to speak with her in the hall. He proceeded to ask her about the Union's plans to involve Mr. Miller in negotiations and wanted to know if the Union president was behind the decision. Ms. Abbott replied that the Union members felt negotiations were stalled, that the District was not cooperating in scheduling bargaining sessions with them, and the Union thought it could use the assistance of the UniServ Director.

23. The Superintendent informed Ms. Abbott that the District would have a lawyer represent them in negotiations if Mr. Miller became involved, that negotiations would have to start over at "ground zero," and the parties would likely not be able to reach an agreement on a contract by the town budget deadline. According to the Superintendent, he was discouraging Mr. Miller's participation because he thought that scheduling would become a burden if more parties were involved.

24. During this encounter the Superintendent raised his voice to emphasize his point. Ms. Abbott was surprised that the Superintendent had sought her out while she was teaching. She felt intimidated and singled out, and was afraid she might say something which might adversely affect her employment.

25. Pam Lessard is a Title I Reading Specialist who was working in the same classroom as Ms. Abbott and wrote a letter about her observations to Union President Laura Parker (Association Exhibit 4):

I am writing to report an incident...About halfway through the class [the Superintendent] appeared in the door way and beckoned [Ms. Abbott] out into the hall for a consultation. It

was apparent from the beginning that he was angry, and he raised his voice and stayed sufficiently long that the students were getting visibly nervous about the tone of the conversation between a man and a teacher they all care about. The students began to comment on the conversation, so I went over to close the door to the hallway...I noticed that Mrs. Abbott was visibly shaken by the encounter, so I asked if she was all right. She said she was, but it didn't look so to me.... I later learned that the subject of the conversation was ongoing negotiations between the school board and the para union.

26. Ultimately, both Mr. Miller and the District's attorney joined the negotiations and the parties were still in negotiations at the time of hearing.

V. Family Medical Leave Act Incident:

27. Prior to December 14, 2012 Union President Parker called the District Human Resources Director (HR Director) to request Family Medical Leave Act (FMLA) paperwork. Ms. Parker was calling on behalf of herself but left what was apparently an ambiguous message on the HR director's answering machine. The HR Director apparently notified the Superintendent, who listened to the message and understood that Ms. Parker was assisting a co-employee with FMLA paperwork and was requesting information for that purpose.

28. The Superintendent then sent Ms. Parker an email (Association Exhibit 5) and told her she "was not entitled to know the details of an individual's request for FMLA benefits" under applicable law. He also told her that she was "well outside of her area of expertise" and that she was "not the least bit familiar with the legal or administrative requirements" of the FMLA. After a further exchange of emails the Superintendent told Ms. Parker that if the paperwork was for her personally, then she could request it directly from Human Resources.

VI. Personal Day Form Change & January 30, 2013 Grievance Meeting:

29. Sometime before January 30, 2013 the District began requiring that paraprofessionals requesting a personal day include the reason for the request. The District contends this information was needed to ensure that the personal day policy was not being used to do things

that could be done on a weekend or a designated day off. The Union objected to this change, contending that paraprofessionals were allowed a certain number of personal days under their CBA and how they chose to use them was their prerogative. The Union filed a grievance over the change in the policy.

30. On January 30, 2013 the Superintendent held a step two grievance hearing about the personal day form issue. See Association Exhibit 6. Ms. Parker attended in her capacity as Union President. Toward the end of the meeting ended, the Superintendent told Ms. Parker that the School Board wanted to know “how many grievances [the Union] plan[s] on filing?” He also said “you are the only entity filing grievances, is that because of the change in leadership?” The Superintendent explained at the hearing that he asked these questions because the District was not used to grievances being filed and so he asked Ms. Parker whether under her leadership grievances “would be the preferred method” of resolving contract issues. Ms. Parker responded that the Union planned on filing grievances as long as they felt their contract was being violated. She asked “do you really think we have nothing better to do than file grievances?” and the Superintendent replied “we are getting that impression.”

VII. Superintendent’s Conversation with Susan Dooley:

31. Susan Dooley has been a District paraprofessional for eighteen years and a school bus driver for over ten years. She is a member of the Union and has served as a Union representative, a member of the bargaining committee, and a member the elections committee. Before January 30, 2013 it had come to Ms. Dooley’s attention that there was a potential issue with the number of hours she had reported on her time card. She understood the administration was concerned she was working too many hours but the basis for her belief is not clear. She thought she was being scrutinized and that she might be subject to some kind of discipline.

32. On January 30, 2013 the Superintendent boarded the school bus Ms. Dooley was driving as she waited for school to be let out and for children to get on the bus. It appears that the Superintendent's intention was to speak with Ms. Dooley about some ongoing issues with her job as a bus. See Association Exhibit 7 (transcript of bus audio recording equipment) and Joint Exhibit 4 (Sue Dooley February 1, 2013 email notifying the Superintendent of her availability to meet with a representative present).

33. At that time Ms. Dooley was concerned about being reprimanded in some way and so she asked for "representation" when the Superintendent said he would like to speak with her. Ms. Dooley also said that she would like "someone to come represent me and have someone taking notes."

34. The Superintendent acknowledged her request but continued his conversation with Ms. Dooley without a Union member present. The Superintendent proceeded to discuss certain conditions of Ms. Dooley's employment such as time spent driving the bus to a mechanic for service and other matters. The particulars of the discussion are not entirely clear given the information presented at hearing.

Decision and Order

Decision Summary:

We find the District did commit unfair labor practices based upon the events of November 1, 2012, November 16, 2012, December 7, 2012, and January 30, 2013 (grievance meeting). All other Union claims are dismissed.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

In its complaint, the Union charges that the District has committed numerous violations of the Public Employee Labor Relations Act. In particular, the Union claims violations of the following provisions of RSA 273-A:5, I, which provide that it is an unfair labor practice for a public employer to:

- (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;
- (d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter; and
- (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations.

We find unfair labor practices in violation of RSA 273-A:5, I (a) and (b) as to the events of November 1, 2012, November 16, 2012, and January 30, 2013 (grievance meeting) and a violation of RSA 273-A:5, I (a), (b), and (e) as to the December 7, 2012 incident. The evidence is insufficient as to the Union's charges concerning the September 14, 2012 meeting, the December 14, 2012 communications about the FMLA, and the January 30, 2013 encounter between the Superintendent and bus driver Susan Dooley. We do not find any violations of RSA 273-A:5, I (d) and, apart from the December 7, 2012 incident, we do not find any violations of RSA 273-A:5, I (e).

A. November 1 and December 7, 2012 Incidents:

On both November 1 and December 7 the Superintendent unexpectedly interrupted class in order to confront paraprofessionals active in Union business about labor relations issues within the scope of the Act. See Findings of Fact 15-18 and 21-26. On November 1 he insisted

on speaking with Union President Laura Parker about a paraprofessional who, in his judgment, was improperly requesting a pay increase for work as a substitute teaching. On December 7 he questioned Lisa Abbott, the Union's negotiation spokesperson (but not chief negotiator) about the Union's decision to enlist the assistance of an NEA-NH UniServ Director in negotiations.

The manner in which the Superintendent engaged Union President Parker on November 1 about matters clearly within the scope of RSA 273-A and ongoing negotiations violated the Act. The Superintendent targeted Ms. Parker because she was the Union President. He failed to provide any advance notice of his interest in speaking with her in her capacity as Union President. He did not, for example, request that she schedule a time to meet with him to discuss a specified matter in an appropriate setting. Instead, the Union President was pulled from class into the hallway, where the Superintendent, new to the District, attacked and criticized the Union because of a bargaining unit employee's wage request. We cannot fathom any legitimate reason why the Superintendent felt compelled to proceed in this way. There were no exceptional circumstances which might have justified his conduct. He used his position and authority, a lack of notice, and the fact that the encounter was taking place in the hallway right outside the classroom to, in substance, intimidate and threaten the Union.

The Superintendent used similar methods on December 7, 2012. Upset about the Union's decision to involve a UniServ Director in negotiations, he surprised and confronted Union negotiation spokesperson Lisa Abbott, hoping to convince her that having additional assistance in negotiations was unnecessary. In this situation the Superintendent was interfering with a basic employee right, which is fair and meaningful participation in the collective bargaining process. This includes the right to have assistance from a representative of the duly certified employee organization at the bargaining table without having to face or endure argument, resistance, or

intimidation by the public employer. The Superintendent was also attempting to dominate and interfere with administration of the Union, and his conduct and statements also represent a violation of the District's good faith bargaining obligations. The Union, not the public employer, has the authority to decide who will represent the bargaining unit in negotiations. Further, any issues about how negotiations would proceed with the involvement of the UniServ Director was a matter for the bargaining table with the UniServ Director in attendance, not for a one-sided unplanned hallway confrontation between a paraprofessional and the Superintendent.

B. November 16, 2012 and January 30, 2013 (grievance meeting) Incidents:

With respect to events on November 16, 2012 and January 30, 2013 (grievance meeting), we find that the Superintendent interfered with employee rights to maintain grievances and he also interfered with and dominated the administration of the Union. See Findings of Fact 19-20 and 29-30. Both of these incidents involved interactions between the Superintendent and others where the Association's right to file grievances was discussed and/or referenced. According to the information submitted at hearing, the District does not pay paraprofessionals for mandatory meeting attendance that is outside of and in addition to the employees' normal work schedule. However, some paraprofessionals believe they are entitled to wages for such time³, and so make the necessary entries on their time cards. The Union also sought to have the matter settled in ongoing negotiations, so it was raised as a proposal in negotiations.

The November 16, 2012 meeting was called by administration officials (Principal Capello and the Superintendent) without advance notice of time or subject. Union President Parker duly reported to Principal Woodward's office, where the Superintendent proceeded to complain about and challenge Ms. Parker with respect to the paraprofessionals attempts to

³ It is beyond the scope of this decision to consider whether the District's practice implicates any provisions of relevant state or federal wage and hour laws.

receive payment for mandatory meeting attendance. He accused the paraprofessionals of not working with the District as a "team." The attempt of the paraprofessionals to address mandatory meeting attendance without pay is legitimate activity and a right protected under the Act. It directly involves one of the basic terms and conditions of employment, namely the payment of wages. The Superintendent's statement that paraprofessionals are not working as a "team" when they raised the subject is an attempt to discourage the Union and its representatives from raising and pursuing a legitimate workplace issue. The Superintendent was threatening and intimidating the Union President and the Union. He even acknowledged as much, when he asked that his remarks not be construed as "threatening." In the process he was trying to thwart, prevent, and discourage the Union and employees' pursuit and presentation of a legitimate employee workplace concern.

Such disputes must be addressed and resolved not by the methods the Superintendent employed but in a more orderly, fair and equitable manner that does not undermine or circumvent the collective bargaining process and relationship. Bargaining unit employees and their representatives are entitled to assert and represent their interests in workplace conditions covered by the Act without being subjected to this kind of treatment and pressure. In a case like this one, the District could simply have issued a written communication explaining its position on the wage dispute, and the matter could then be addressed further as necessary through the grievance procedure, through the bargaining process, or through other available means.

With respect to the January 30, 2013 grievance meeting, instead of simply dealing with the grievance under consideration, the Superintendent also felt it necessary to challenge Union President Parker about the Union's (and employees) general use of the grievance procedure. It was the Superintendent's position, in substance, that the Union's use of the grievance procedure

was improper, unnecessary, offending the District, and should be discontinued. This is all anathema to the literal statutory requirement that all collective bargaining agreements contain a “workable grievance procedure” per RSA 273-A:4 and the spirit and intent of the Act. The District in general and the Superintendent in particular are required to recognize that the grievance procedure is the designated statutory tool for the identification and resolution of workplace disputes.

C. September 14, 2012 Meeting:

The Union also complains about the September 14, 2012 meeting and statements made by the principals at this meeting which, in substance, emphasized the District’s behavior expectations. See Findings of Fact 7-14. The principals also discussed paraprofessionals’ employment status, disciplinary procedures, and restrictions on the use of school email for union business. Subsequently Principal Woodward discussed the meeting with the Superintendent, who admonished him about the tone of the meeting and their remarks about, for example, hiring and firing and perhaps failing to fully describe their authority in such areas. Although the principals’ conduct at this meeting may have raised legitimate concerns like those cited by the Superintendent, there is insufficient evidence to find that a violation of any of the cited provisions of RSA 273-A:5, I occurred. The administration has a legitimate interest in regulating the school environment and school officials are entitled to hold employee meetings to discuss such matters. There certainly may be situations where such meetings could, for example, improperly delve into the administration of union affairs or interfere with rights secured to employees by RSA 273-A, and we are not suggesting that school officials have carte blanche in this regard. However, we cannot find, on the record submitted, that this is such a case. This particular claim is dismissed.

D. December 14, 2012 FMLA Incident and January 30, 2013 Bus Incident:

With respect to the December 14, 2012 FMLA incident, there is insufficient evidence to find that the District committed an unfair labor practice based upon the information provided, and this particular claim is dismissed. See Findings of Fact 27-28. We reach the same conclusion as to the January 30, 2013 episode involving the Superintendent's conversation with bus driver Susan Dooley. See Findings of Fact 31-34. As a bus driver Ms. Dooley is not an employee of the Farmington Education Support Professionals, NEA-NH bargaining unit. We also lack sufficient information to reach any particular conclusions as to the subject and purpose of the Superintendent's conversation with Ms. Dooley or the Superintendent's conduct. This claim is also dismissed.

In accordance with the foregoing, we conclude that the District has committed unfair labor practices in violation of RSA 273-A:5, I (a), (b) and (e). The District is ordered to recognize and respect the Union's and bargaining unit employees' right to raise and address workplace issues, participate in negotiations with representation of its choosing, and utilize the grievance procedure as necessary. The District is further ordered to refrain from unscheduled confrontations with the Union and Union representatives, like the hallway episodes at issue in this case, to address labor relations issues governed by the Act. The District shall post this decision for 30 days in a conspicuous place where unit employees work.

So Ordered.

March 20, 2014.


David J.T. Burns, Esq., Chair

By unanimous vote of Alternate Board Member David J.T. Burns, Esq. and Board Members Richard J. Laughton, Jr. and James M. O'Mara, Jr.

Distribution: James F. Allmendinger, Esq.
Peter Phillips, Esq.