This decision was summarily affirmed on appeal per November 4, 2010 Supreme Court order in *Appeal of Jeffrey T. Clay, NH* Supreme Court Case No. 2010-0599.

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Jeffrey T. Clay

v.

Newmarket Teachers' Association and Newmarket School District

Case No. E-0092-2
Decision No. 2010-130

Appearances:

Jeffrey T. Clay, pro se.

James F. Allmendinger, Esq., Concord, New Hampshire for the Newmarket Teachers' Association.

Barbara Loughman, Esq. and Maureen Pomeroy, Esq., Soule Leslie, New Hampshire, for the Newmarket School District.

Background:

Jeffrey T. Clay filed an unfair labor practice complaint on December 24, 2009. In general he complains about the June, 2009 termination of his employment as a teacher in the Newmarket School District. He contends that the Newmarket School District (District) and the Newmarket Teachers' Association (Association) conspired to terminate his employment as retribution for filing grievances and also discriminated against him for not being a dues paying member of the Association. Mr. Clay also claims that the Association has failed to fulfill its obligation to represent him in its capacity as the exclusive representative of bargaining unit

employees. He claims that the District's actions violate RSA 273-A:5,I (a), (b), (c), (d), (g) and (h) and the Association's actions violate RSA 273-A:5, II (a), (c), (f) and (g).

The District generally denies the charges in the complaint. The District states that it properly terminated Mr. Clay's employment in accordance with the procedures set forth in RSA 189:13; that the PELRB does not have jurisdiction to consider whether the District's actions were proper under RSA 189:13; that its conduct was otherwise proper; that Mr. Clay has failed to allege facts sufficient to state a claim under the provisions of RSA 273-A:5, I; that he has failed to exhaust remedies available under the collective bargaining agreement; that his claims are barred by res judicata; that the PELRB does not have jurisdiction over any claims maintained under RSA 275-E; and that the complaint is untimely under the 6 month limitation period set forth in RSA 273-A:6, VII.

The Association generally denies the charges and asserts that it represented Mr. Clay as required by law and contract, did not deny Mr. Clay representation on the basis of financial considerations, and did not aid or conspire with the school district in disciplining Mr. Clay. Additionally, the Association claims the complaint is untimely under the 6 month limitation period set forth in RSA 273-A:6, VII; that Mr. Clay failed to exhaust his remedies, that Mr. Clay was represented by counsel of his own choosing in his dismissal hearing and is therefore bound by that decision absent an appeal to the Superior Court under RSA 189:14.

The board held a hearing in this matter on March 31, 2010 at the offices of the PELRB in Concord at which time the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The parties have filed post-hearing briefs and the record is closed.

Findings of Fact

1. The District is a public employer within the meaning of RSA 273-A:1 et. seq.

2. The Association is the exclusive bargaining representative for certified teachers in the Newmarket Junior/Senior High School.

3. Jeffrey T. Clay was a certified teacher employed by the District as a health teacher in the Newmarket Junior/Senior High School from 2001 to 2009. Although he was a member of the bargaining unit represented by the Association, he was not a member of the Association and did not pay dues.

4. The Association and the Newmarket School Board are parties to a collective bargaining agreement dated July 1, 2007 to June 30, 2010 (CBA). Joint Exhibit 1.

5. The CBA grievance procedure is described in Article 3, and provides four possible levels of review: Level One – Principal; Level Two – Superintendent; Level Three – School Board; and Level Four – Final and Binding Arbitration.

6. Under Article 3 Section D a grievant like Mr. Clay has the right to request and obtain review of a grievance through Level Three, and nothing in Section D requires the Association to approve of or become involved in such action.

7. Article 3 Section F of the CBA provides in part as follows:

Rights of Teachers to Representation:

> 1. An aggrieved person may represent himself/herself at Level 1. At Level 2 and beyond, the Association or a representative selected or approved by the Association shall process all grievances.
>
> 2. The Board and the Association shall assure that the parties in interest and witnesses are guaranteed freedom from restraint, interference, coercion, discrimination, or reprisal with respect to the processing of a grievance. In communications with any prospective employer, the administration shall not initiate reference to the filing of a grievance by a certified teacher.

8. Prior to April, 2009 Mr. Clay, the Association, and the District addressed the consequences of the Association's lack of support for grievances moving to Level Two and Three review and the ability of a grievant like Mr. Clay to nevertheless move forward through Level Two and Three review. In such situations Mr. Clay has accused the Association of interfering with his right to use the grievance process and demanded the right to go forward to Levels Two and Three. The District and the Association responded by allowing Mr. Clay to proceed to Levels Two and Three. This is reflected in grievance activity in the February through April, 2008 time period. See Clay Exhibits 17-24, 28, 50.

9. Under the CBA only the Association is authorized to bring a grievance to Level Four - Arbitration.

10. During the 2007-08 and 2008-09 school year Mr. Clay filed a number of grievances, as reflected in Clay Exhibits 12 through 58. The grievances concern subjects such as:

a. Teacher evaluation by department chairs (February to May, 2008 – Clay Exhibit 12-13, 15,17-18,20,23-25,29);

b. Letter of admonishment and contractual disciplinary process (March to May, 2008 – Clay Exhibit 14, 26-27);

c. Association interference with Mr. Clay's use of grievance process (March to May, 2008 – Clay Exhibit 16, 19, 21-22, 28)

d. Dispute over length of teacher work year (September to December, 2008 – Clay Exhibit 30, 34, 37, 44, 47);

e. Complaint investigation process (October to December, 2008 – Clay Exhibits 31, 38, 45);

f. Assignment of 6th class (October to December, 2008 – Clay Exhibits 32, 35, 39, 46, 47);

g. Maintenance of meeting minutes (October 2008 – Clay Exhibits 33, 36, 40);

h. Discipline through mail I (November 2008 – Clay Exhibits 41-42);

i. Sick leave (November 2008 – Clay Exhibit 43);

j. Investigation violation (April to June, 2009 – Clay Exhibits 49, 51, 53, 54, 56, 58);

k. Discipline through mail II (April to June, 2009 – Clay Exhibits 48, 50, 52, 54, 55, 57);

11. The grievances referenced in Finding of Fact 6-j and k relate to some of Mr. Clay's interactions with Principal Andriski in early April, 2009. Mr. Clay met with Principal Andriski on April 9, 2009 to discuss what Principal Andriski described as a "concern for unprofessional behavior." Principal Andriski informed Mr. Clay of his right to bring an Association representative to the meeting with him but Mr. Clay declined to do so. The meeting lasted approximately ten minutes, and ended abruptly at 2:45 p.m. when Mr. Clay left because his contract day ended at 2:45 p.m.

12. During the meeting Principal Andriski reviewed allegations that Mr. Clay had discussed his displeasure "with and disagreement of an administrative decision" during his health classes. Mr. Clay referred to the CBA and asked for more detail about any such complaint, including the nature of the complaint, the date of the act, names of witnesses, and the name of the complaining party. Principal Andriski had not provided Mr. Clay with the requested detail at the time Mr. Clay left the meeting, and Mr. Clay declined to offer any comment about the alleged incident.

13. The next day (April 10, 2009) Principal Andriski sent Mr. Clay a letter in which he documented his "concern for the unprofessional behavior you (Mr. Clay) displayed in the classroom and for your insubordinate behavior displayed during the 4/9/09 meeting…" See District Exhibit B.

14. On April 13, 2009 Mr. Clay filed the Level One Investigation Violation grievance and the Level One Discipline through Mail II grievance as referenced in Finding of Fact 6-j and k. In these grievances he complained that Principal Andriski violated Article 9 of the CBA because he did not provide the complaint detail required and because the April 10, 2010 letter constituted improper "disciplining of subordinates through the mail and without union representation present when being disciplined, as called for in the negotiated agreement." See Clay Exhibits 48 and 49.

15. On April 20, 2009 Principal Andriski denied both grievances. See Clay Exhibits 50 and 51.

16. On April 21, 2009 Association president Nancy Pagnotta and Association vice president John Bridle met with Mr. Clay in the back conference room in the main office and provided him with a letter, Clay Exhibit 54, which included the following content:

> The Newmarket Teachers Association is in receipt of your request to move these grievances forward. As for violation of being denied the right to be informed of the nature of the complaint, approximate date, names of witnesses, person(s) lodging complaint as outlined in Section G, Article IX, lines 600-604, we believe there was no violation of the contract, due to your leaving a meeting before it was finished. As for violation of disciplining of subordinates through the mail, without representation, there is no language specific to that, therefore we believe there was no violation of the contract. You were asked to have representation present at that meeting, and you chose not to bring anyone. The Newmarket Teachers Association has determined that these grievances will not be processed any further.

The Association also provided copies of this letter to Principal Andriski and Superintendent LaRoach. Despite the Association's decision not to support Mr. Clay's April 13, 2009 grievances he was able to pursue them to Level Two (Superintendent) and Level Three (School Board). Both grievances were ultimately heard at the school board's May 28, 2009 meeting and denied. See Clay Exhibit 56 and 57.

17. Mr. Clay was upset with the Association's assessment of his pending grievances and refusal to support the grievances. As he left the conference room and was proceeding through the main office he uttered the words "what a disgrace" or words to that effect. The parties' dispute Mr. Clay's tone of voice. Mr. Clay says his voice was low and he was speaking to himself. Crystal Daley-Dollof, an employee in the main office area, overheard Mr. Clay's remark and understood it as confrontational. Nancy Pagnotta understood that Mr. Clay was calling her a disgrace or threatening her, and she stated in an email to Superintendent LaRoach later that day: "I just want you to be aware that after giving Jeff Clay the NTA (Association) response, I am not feeling safe around his being here."

18. On April 22, 2009 Mr. Clay attended a meeting with Principal Andriski. See District Exhibit C. Mr. O'Callahan was present and took notes. Mrs. Blake attended at Mr. Clay's request. At the meeting Principal Andriski discussed Mr. Clay's interactions with Association representatives on April 21, 2009 and Mr. Clay's "disgrace" comment. Mr. Clay raised his concerns about the Association, indicating that he believed the Association was building a case against him, not supporting him, and acting toward him in a hostile and discriminatory manner. After Principal Andriski indicated he would complete his investigation and forward the information to Superintendent LaRoach for review and action Mr. Clay outlined three grievances he wanted to file against the Association, all relating to whether the Association was fulfilling its obligation to represent Mr. Clay.

19. On April 23, 2009 another meeting took place with Principal Andriski at Mr. Clay's request. Assistant Principal David Williams attended the meeting at Mr. Clay's request and took notes. See District Exhibit D. At the meeting Principal Andriski indicated he had completed his investigation and outlined the reasons why he believed Mr. Clay's behavior had been

unprofessional. Principal Andriski stated that he would soon have a letter for Mr. Clay with his conclusion about the investigation. According to Assistant Principal Williams' notes, after several exchanges about Principal Andriski's letter and Mr. Clay's anticipated written response, Mr. Clay "became visibly agitated. His voice began to (become) strained and his hands became shaky. He said that he would go before the school board and talk about what unprofessional behavior really looks like" and gave some examples.

20. On April 24, 2009 Principal Andriski issued a letter to Mr. Clay concerning his investigation which provided:

> This letter should serve as formal documentation of my concern for your unprofessional conduct that you displayed towards another staff member in the main office on 4/21/09.
>
> On 4/21/09 Nancy Pagnotta came to speak to me about an incident that just taken place between you and Nancy and John Bridle. As you exited the back conference room in the main office you made the comment that Nancy was a "disgrace." The tone and demeanor in which you made this comment to Nancy was observed by Crystal Daley-Dollof as confrontational and unprofessional. Mr. Clay the fact that you would make such a demeaning comment to another staff member in the main office where staff, students, and parents could be sitting at any time displays a lack of good judgment and poor modeling.
>
> Mr. Clay, I am concerned over the pattern of unprofessional conduct that you have been displaying recently at Newmarket Jr./Sr. High School. At this point I will be recommending that the superintendent place you on administrative leave pending any further investigations.
> A copy of this letter will be placed in your personnel file. You have the right to attach comments to this letter.

See District Exhibit E.

21. By letter dated April 28, 2009 Superintendent LaRoach removed Mr. Clay from his position as a health educator and by letter dated May 8, 2009 notified Mr. Clay that he had "scheduled a hearing with the Newmarket School Board at which I will ask the School Board to dismiss you from your contract as a teacher pursuant to RSA 189:13." The letter includes a list

of reasons why Superintendent LaRoach was requesting Mr. Clay's dismissal. See District Exhibit X and HH.

22. Prior to the dismissal hearing Mr. Clay consulted with Peter Miller, an NEA-NH Uniserv Director. Mr. Miller reviewed the fact that the CBA did not contain a just cause provision and suggested that Mr. Clay might have more rights under the law applicable to RSA 189:13 dismissal hearings than under the CBA. Mr. Clay's use of a private attorney was discussed, and Mr. Clay in fact was represented by a private attorney at the dismissal hearing. Mr. Bridle attended the hearing in case Mr. Clay requested Association representation or assistance.

23. The School Board conducted Mr. Clay's dismissal hearing on June 8 and 9, 2009 and issued a written decision dismissing Mr. Clay from his employment on June 26, 2009. See District Exhibit EE. On July 20, 2009 Mr. Clay filed an appeal of his dismissal with the New Hampshire Department of Education, raising a number of procedural and substantive issues as outlined in his seven page appeal document, including alleged violations of RSA 91-A, N.H.Admin. Rule Ed 204, the CBA, bias of school board members, and RSA 189:14-a.

24. After receiving the School Board's decision Mr. Clay contacted Peter Miller by email. Mr. Miller responded to Mr. Clay indicating that Mr. Clay could file a grievance based upon the School Board's use of information outside his personnel file at the dismissal hearing. Mr. Miller offered to assist Mr. Clay with the grievance but Mr. Clay did not respond.

Decision and Order

Decision Summary:

Mr. Clay's claims against the Association are dismissed. All duty of fair representation claims against the Association based upon conduct that occurred prior to April, 2009 are untimely. Additionally, the evidence concerning the time period subsequent to April 1, 2009 is insufficient to establish that the Association either failed to satisfy its obligation to represent Mr. Clay or that the Association's conduct constituted an improper collusion with the District to terminate Mr. Clay's employment.

As to his claims against the District, the evidence is insufficient to establish that Mr. Clay was terminated because he filed too many grievances or because of the nature of his grievances. The board otherwise lacks jurisdiction to review whether the termination of Mr. Clay's employment violated the provisions of RSA 91-A; RSA 189:13; or RSA 189:14-a; or the parties' collective bargaining agreement.

Jurisdiction:

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

Discussion:

All claims against the Association based upon events prior to April, 2009 are dismissed, as such claims were not filed within six months as required under RSA 273-A:6, VII. All claims against the District based upon alleged violations of RSA 91-A (Access to Public Records and Meetings), RSA 189:13 and/or renewal or non-renewal under RSA 189:14-a are also dismissed, as the board lacks jurisdiction over such statutory claims. A violation of these statutes cannot be relied upon to prove a violation of RSA 273-A:5, I or II. The board also dismisses claims

alleging that the District violated Article 9 or any other provision of the CBA. These alleged contractual violations are subject to the Article 3 grievance procedure, which concludes with final and binding arbitration. The board does not have jurisdiction over collective bargaining agreement disputes in such circumstances. See *AFSCME Council 93, Local 1386 Portsmouth City Employees v. City of Portsmouth*, PELRB Decision No. 2009-225; *State Employees Association of New Hampshire, Inc., SEIU Local 1984 v. State of New Hampshire, Department of Corrections*, PELRB Decision No. 2009-263; *Appeal of Town of Bedford*, 142 N.H. 637, 640 (1998).[1]

The claims against the District within the board's jurisdiction are whether the District improperly terminated Mr. Clay's employment in violation of 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 restrain); (b)(to dominate or to interfere in the formation or administration of any employee organization); (c)(to discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in 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); or (g)(to fail to comply with this chapter or any rule adopted under this chapter).

The claims against the Association within the board's jurisdiction are whether the Association improperly failed to provide Mr. Clay with fair representation and/or improperly conspired or colluded with the District to terminate Mr. Clay's employment in violation of RSA

[1] The board does have jurisdiction to interpret collective bargaining agreements and resolve disputes that are covered by a collective bargaining agreement in the context of an unfair labor practice charge when, for example, the filing of an unfair labor practice complaint with the PELRB is the agreed upon final step in the grievance process, *Appeal of Nashua Police Commission*, 149 N.H. 688 (2003), or when the grievance procedure does not conclude with a final and binding last step, *Appeal of Hooksett School District*, 126 N.H. 202 (1985).

273-A:5, II (a)(to restrain, coerce or otherwise interfere with public employees in the exercise of their rights under this chapter); (c)(to cause or attempt to cause a public employer to discriminate against an employee in violation of RSA 273-A:5, I(c), or to discriminate against any public employee whose membership in an employee organization has been denied or terminated for reasons other than failure to pay membership dues); (f)(to breach a collective bargaining agreement); or (g)(to fail to comply with this chapter or any rule adopted hereunder).

The board first addresses Mr. Clay's claim that the Association failed to fulfill its fair representation obligations during the time period beginning in April, 2009. It is uncontested that on April 21, 2009 the Association notified Mr. Clay in writing of the reasons that it would not support his April 13, 2009 grievances. Mr. Clay also contends that during this time period the Association colluded with the District to develop or create reasons to terminate his employment which ultimately resulted in or contributed to his dismissal at the end of June, 2009.

Mr. Clay's claims require an assessment of the nature and extent of the Association's fair representation obligations to bargaining unit employees both generally and specifically in the context of grievance proceedings. Under RSA 273-A:11, the rights accompanying the Association's certification as the exclusive representative of the bargaining unit include:

> (a) The right to represent employees in collective bargaining negotiations and in the settlement of grievances. An individual employee may present an oral grievance to his employer without the intervention of the exclusive representative. Until the grievance is reduced to writing, the exclusive representative shall be excluded from a hearing if the employee so requests; but any resolution of the grievance shall not be inconsistent with the terms of an existing agreement between the parties.

This board has previously recognized the obligation of a union like the Association to provide representation "without hostile discrimination, fairly, impartially, and in good faith." *See Committee for Fairness in Negotiations v. Somersworth Association of Educators, NEA-New Hampshire et al*, PELRB Decision No. 86-54 (citations omitted). In *Committee for Fairness in*

Negotiations, the board reviewed in some detail the nature and extent of a union's representation obligations:

> [W]hile unions have a duty of "complete loyalty to the interests of those whom it represents," the union has a "wide range of reasonableness…in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion."….the proper standard for testing union activity when presented with a claim of unfair representation is whether there was overt hostility or discriminatory purpose; whether the action was in furtherance of legitimate purposes; and, whether the action could have been the result of honest mistake.

The Association's role in grievance proceedings is also addressed in Article 3, Section F of the CBA, which provides that "[a]t Level 2 and beyond, the Association or a representative selected or approved by the Association shall process all grievances." The phrase "shall process" is not defined, but the board understands it to be a contractual version of the statutory requirement that an exclusive representative like the Association has a right, but not an obligation, to intervene in grievance proceedings once a grievance has advanced to a certain point. Immediately preceding portions of Article 3 reference the right of the grievant to request and obtain review of a grievance at Level Two (Superintendent) and Level Three (School Board).

The board finds that neither the law nor the CBA expressly requires that the Association present all grievances through Levels Two (Superintendent) and Three (School Board) irrespective of the Association's assessment of the possible merits of the grievance. The interests of labor relations in general, and the statutory purpose of fostering harmonious and cooperative relations between public employers and employees in particular, are not well served by interpreting the Association's representation obligations in such a rigid and inflexible fashion. The board also does not believe that this is what the Association and the Newmarket School Board intended, as such an interpretation would be consistent with immediately preceding

portions of Article 3 which outline the grievance procedure in detail and specifically contemplate that a grievant may, on his or her own, proceed to Levels Two (Superintendent) and Three (School Board). The record also reflects that parties have employed such an interpretation with reference to grievances Mr. Clay filed prior to the April, 2009 time period.

However, it is still necessary to consider whether the Association's actions were the result of "overt hostility" or "discriminatory purpose" as such a finding would mean that the Association had not fulfilled its fair representation obligations to Mr. Clay. Evidence relevant to this issue includes the fact that Mr. Clay was a non-dues paying and outspoken member of the bargaining unit, the obviously strained relations between Mr. Clay and Association representatives, the events of April 21, 2009, and the reasons the Association declined to assist Mr. Clay with his April 13, 2009 grievances. As to the first three considerations, the board notes that Mr. Clay promoted his interests in his dealings with the Association and District representatives in a somewhat unyielding and dogmatic manner, and he appeared to be somewhat intolerant of those with a different point of view. The board finds all this is a more likely cause of the strained relations, and not the fact that Mr. Clay was an outspoken and non-dues paying member of the bargaining unit. The board also recognizes that it is possible for Association representatives to have a personal dislike for Mr. Clay and to disapprove of the manner in which he interacted with co-workers and District representatives and still fulfill their fair representation obligations. As to Mr. Clay's April 13, 2009 grievances, the Association did outline a number of logical points and considerations upon which it could reasonably rely to justify its decision not to proceed. For these reasons, and with due consideration for all the circumstances reflected in the record, the board concludes there is insufficient evidence to prove "overt hostility" or

"discriminatory purpose" with respect to the Association's handling of Mr. Clay's April 13, 2009 grievances.

Mr. Clay also contends that the Association did not meet its fair representation obligations because it colluded with the District to, in effect, fabricate reasons to justify his dismissal. This is a serious charge and there is insufficient evidence to sustain it. There is a lack of credible evidence that any of the events that transpired during April 2009 were staged or the result of some improper agreement or understanding between the Association and District representatives. The fact that some Association representatives were involved in incidents (like the events of April 21, 2009 involving Mr. Bridle and Ms. Pagnotta) which District representatives cited to justify their actions is not, without more, sufficient proof of improper collusion. It is not a violation of the Association's fair representation obligations for an Association representative like Ms. Pagnotta to complain to administrators about the conduct of a co-employee. Ms. Pagnotta was not required to keep her concerns about Mr. Clay to herself even when her complaints might prompt District representatives to take adverse action against Mr. Clay as ultimately happened in this case. Ms. Pagnotta was free to report what happened, and it was then incumbent upon the District to determine how to proceed.

There is also insufficient evidence that the Association failed to fulfill its fair representation obligations in connection with the RSA 189:13 dismissal hearing. Mr. Clay and Peter Miller, an NEA-NH Uniserv Director, did discuss the pending June 2009 dismissal hearing, including the fact that the CBA does not include a just cause provision and that Mr. Clay might be better served by having a private attorney represent him. Mr. Clay did in fact have a private attorney represent him and he did not demand that the Association represent him, although Mr. Bridle did attend the hearings on behalf of the Association and was willing to provide Mr. Clay

with representation if he desired. Subsequent to the School Board's dismissal decision Mr. Miller responded to Mr. Clay's email questions and outlined the basis for a grievance (the School Board's reliance on documents outside Mr. Clay's personnel file). He also offered to assist Mr. Clay in filing a grievance about the dismissal but Mr. Clay never responded.

Mr. Clay also complains that the District terminated his employment because of the many grievances he filed in the time period prior to May, 2009. The board concludes the evidence is insufficient to sustain this claim. Mr. Clay had been a District employee for a number of years, and according to Mr. Clay he was given a renewal contract in the March to April, 2009 time period. The record reflects that Principal Andriski and Superintendent LaRoach's actions in April and May 2009 were prompted by several matters unrelated to any grievances Mr. Clay had previously filed. For example, in early April, 2009 Principal Andriski had "a concern for unprofessional behavior" which led him to meet with Mr. Clay on April 9, 2009. The meeting ended abruptly when Mr. Clay walked out at the end of the contractual school day. Although Mr. Clay may have been entitled to conclude his work day precisely at 2:45 pm, he did so without requesting a continuation of the meeting on a subsequent date, and it does not appear he notified Principal Andriski at the outset of the meeting that he could only meet until 2:45 pm. The events of April 21, 2009 then ensued, where Mr. Clay met with Ms. Pagnotta and Mr. Bridle, a meeting which concluded with Mr. Clay's "disgrace" utterances in a public area and which was then followed by Ms. Pagnotta's complaints to the administration about Mr. Clay's behavior. The board believes all this is a more likely explanation for Principal Andriski's recommendation to Superintendent LaRoach to place Mr. Clay on administrative leave and Superintendent LaRoach's subsequent request to the School Board to dismiss Mr. Clay than the

fact that Mr. Clay filed grievances. The board reaches the same conclusion as to the reasons for the School Board's dismissal decision.

In conclusion, there is insufficient evidence to prove that the District violated RSA 273-A:5, I (a), (b), (c), (d), or (g). There is also insufficient evidence to prove that the Association violated RSA 273-A:5, II (a), (c), (f), or (g). Mr. Clay's unfair labor practice complaint is dismissed.

So Ordered.

July 26, 2010.

/s/ Charles S. Temple
Charles S. Temple, Esq., Alternate Chair

By unanimous vote. Alternate Chair Charles S. Temple, Esq., presiding with Board Members Kevin E. Cash and James M. O'Mara, Jr., also voting.

Distribution:

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