



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Bow Educational Association, NEA-NH	*	
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	*	
Petitioner	*	
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Bow School District	*	
	*	CASE No. T-0265-16
Respondent	*	
	*	
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Bow Educational Association, NEA-NH	*	
	*	
Petitioner	*	
	*	CASE No. T-0265-17
	*	
Bow School District	*	
	*	
Respondent	*	DECISION No. 2003-033
	*	
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PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

On February 19, 2003 the Bow Educational Association, NEA-NH (hereinafter referred to as the ("Association")) filed an unfair labor practice complaint against the Bow School District ("District") with the Public Employee Labor Relations Board ("PELRB") now docketed as CASE No. T-0265-16. The Association filed a second complaint of unfair labor practice against the District on March 14, 2003. The Association alleges within these complaints that members of the Bow School Board and its agents undertook communications by direct contact with members, by using the press and by providing content for a public web site that the Association alleges contained false statements and was intended to affect negotiations and Association members' rights. The Association complains that the Districts failed to comply with the provisions of RSA 273-A during a

course of negotiation and mediation proceedings between the parties. Specifically, the Association alleges that the District failed to negotiate in good faith and interfered, coerced or restrained members of the bargaining unit in the exercise of rights granted to them by the Public Employee Labor Relations Act. The Association also alleges that the District breached the parties' collective bargaining agreement (CBA).

The Association requests, as relief, that the PELRB find that the Bow School Board committed unfair labor practices in violation of RSA 273-A; order the District to cease and desist from its unlawful activities; order the District to bargain in good faith and order that the PELRB decision be properly posted in all school buildings.

The District filed its answer to the first complaint, CASE No. T-0265-16, on March 6, 2003 and filed its answer to the second complaint, CASE No. T-0265-16, on March 28, 2003. The District denies that any of the communications of its representatives to others by any means were improper or illegal or that it otherwise violated provisions of the governing statute or constituted a breach of the parties' CBA. For its part, the District requests that the Association's complaint be denied by the PELRB.

PARTICIPATING REPRESENTATIVES

For the Association: W. B. Cumings, Uniserv Director, NEA-NH

For the District: Charles W. Grau, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

The parties have stipulated that the following issues are the critical issues submitted for determination:

1. Whether any of the actions or communications by School Board Members or other representatives of the District to others through either direct contact, utilization of the press or publication of web content constituted a failure to bargain in good faith in violation of RSA273-A:5, I (a), (e), (g) and (h)?
2. Whether any of the actions or communications by School Board Members or other representatives of the District to others through either direct contact, utilization of the press or publication of web content constituted restraint, coercion or interference with the Association's or its members' rights in the exercise of rights provided to them under RSA 273-A thereby constituting a violation of RSA273-A:5, I (a), (e), (g) and (h)?

WITNESSES

For the Association (Complainant)

1. Paula Bailey
2. Lisa Knudson
3. Kathryn Ford
4. (A parent)
5. (A Bow Elementary Teacher)
6. (Others as necessary to #17)
7. Sherry Butt Dunham

For the District (Respondent)

1. Robert Webster,
2. Ralph Minichiello
3. George Roberts
4. Deborah Gibbens
5. Walter B. Cumings
6. Paula Bailey

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

EXHIBITS

For the Association:

1. E-mail Wester to Bailey, dated 2/5//03
2. E-mails Knudson to members, 2/08/03
3. Web page dated 2/28/03 and entitled Frequently Asked Questions -Just Cause
4. Web page dated 3/03/03 and entitled Frequently Asked Questions -Just Cause
5. Bow Times newspaper article, dated 2/27/03
6. Letter to the Editor, Bow Times, dated 3/6/03

For the District:

1. Union contract proposals
2. Board contract proposals
3. E-mails from Cumings to Grau
4. E-mails from Wester to Bailey
5. E-mails from Bailey to Wester
6. E-mail from union members to board members and District Administrators,
7. Mediation Wage Schedule
7. Bow Times newspaper article, dated 2/27/03
8. Letter to the Editor, Bow Times, dated 3/6/03
9. Web page dated 2/28/03 and entitled Frequently Asked Questions -Just Cause
10. Web page dated 3/03/03 and entitled Frequently Asked Questions -Just Cause
11. Examples of "just cause" provisions
12. Research document of NH School Boards Association, dated November 2002
13. Mediation Summary prepared by Cumings, dated on or about 1/17/03

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for an evidentiary hearing on this matter is one hearing day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty-one (21) days prior to the evidentiary hearing.

DECISION

1. The above two captioned matters are hereby consolidated for purposes of the final evidentiary hearing.
2. The parties shall exchange any outstanding documents reasonably requested by the opposing party no later than April 30, 2003. In the event that either party has a good faith belief that he has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of his reasons for not providing the document to the requesting party.

3. The parties have agreed to confer, on or before April 30, 2003, to consider certain proposed exhibits that have generally been described as "contract proposals". The District's representative shall draft a document in matrix or other summary form representing the substance and chronology of the parties' exchange of relevant proposals. That document shall be submitted to the Association for agreement and each party shall sign the document indicating their stipulation as to its contents and thereafter submit it as a joint exhibit at the evidentiary hearing.
4. The party representatives shall also confer, on or before April 30, 2003 to discuss all exhibits planned for introduction at hearing including the several e-mails and examples of "just cause" clauses referenced in the EXHIBITS section, above. The parties shall arrange to pre-mark any exhibits, for identification, prior to the time of hearing and arrange to have sufficient copies of all exhibits available for distribution at the hearing as required by Pub 203.02. It is understood that exhibits that are to be used solely for purposes of impeachment may not be marked prior to the hearing.
5. On or before April 30, 2003 the Association shall inform the District of the identity of the "parent(s)" and "teachers" it intends to call as witnesses. The party representatives shall forward any final amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the date of any hearing on the merits.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties within fourteen (14) days of the date of this order.

Unless otherwise ordered as a result of any subsequent filings, an evidentiary hearing between the parties is scheduled for conduct at the Office of the Public Employee Labor Relations Board on May 15, 2003 beginning at 9:30 A.M.



Donald E. Mitchell, Esquire
Hearings Office

So ordered.
Signed this 2nd day of April, 2003

Distribution:
Steven R. Sacks, Esq.
W. B. Cumings, Uniserv Director
Charles W. Grau, Esquire