

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Farmington Teachers Association		*
NEA-NH		*
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Complainant		*
		*
	Case No. T-0391-5	*
		*
v.		*
		*
	Decision No. 2003-041	*
		*
Farmington School District		*
		*
Respondent		*
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PRE-HEARING MEMORANDUM and ORDER

BACKGROUND

On March 20, 2003, the Farmington Teachers Association/NEA-NH, (hereinafter referred to as the "Association") filed an improper labor practice charge pursuant to RSA 273-A:5 I (a), (c), and (g) alleging that certain actions of the Farmington School District, (hereinafter referred to as the "School District"), acting through its agents, including the Superintendent of Schools, sent a letter on January 16, 2003 to a member of the bargaining unit. The Association alleges that the act of communicating that letter and its content referring to that unit member's discussion of a recent air quality report at an Association meeting interfered with her exercise of rights provided to public employees under the provisions of RSA 273-A:5,I(a); discriminated in her tenure or the terms and conditions of her employment for the purpose of discouraging her membership in the Association in violation of RSA 273-A:5,I(c); and, otherwise failed to comply with the provisions of RSA 273-A:1, *et seq.* or rules promulgated thereby in violation of RSA 273-A:5,I(g). The Association requests relief in the form of an award of attorney' fees and other non-specific relief.

The District filed its answer on April 4, 2003 wherein it admitted that the Superintendent sent the January 16, 2003 letter to the unit member and denied other relevant allegations of which the Association had complained. Further, the District asserts that the matter at issue is time barred from consideration as it occurred more than six (6) months prior to the complaint being filed. Also, the District asserts that the matter is moot by reason of a retraction of the correspondence and is that the unit member's conduct was not "protected" conduct under the statute. The District also requested further detail as to the nature of the practices and pattern that are alleged and the dates of acts alleged to comprise the practices and pattern. For its part, the District requests the PELRB to dismiss the Association's complaint without prejudice.

### PARTICIPATING REPRESENTATIVES

For the Association: James Allmendinger, Esquire, Staff Attorney,

For the District: Michael S. Elwell, Esquire

### ISSUE FOR DETERMINATION BY THE BOARD

After discussion at the Pre-Hearing Conference, it was determined by counsel that the following issues were relevant to the Board's consideration of this matter -

1. Is the Association's complaint barred by the six month statute of limitations provided by RSA 273-A:6, VII?
2. Does the subsequent Superintendent's letter of February 19, 2003 cause the Association's complaint to be moot?
3. Did the District's actions undertaken by the Superintendent, or other agents, constitute either: (letter references are to subsections of RSA 273-A:5, I)
  - a. Interference with its employees in the exercise of the rights conferred by RSA 273-A;
  - c. Discrimination in the tenure, or terms and conditions of employment of its employees for the purpose of discouraging membership in the Association; or
  - g. A failure to comply with RSA 273-A or any rule promulgated thereby?

WITNESSES

For the Association (Complainant):

1. AnnMarie Conley, recipient of the 1/16/03 letter
2. Barbara Post
3. Jim Taylor
4. Ted Wells
5. Stacy Dailey
6. Matt Cahillane, Office of Community & Public Health

For the District (Respondent):

1. Brian Blake
2. David Miller
3. Sharon Turner

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

Joint Exhibits:

1. Letter from Superintendent to Ms. Conley, dated 1/16/03

For the Association:

1. Unspecified background documents regarding "media circus", so-called (to be specifically identified in the Association's Final Exhibit List).

For the District:

1. Air quality reports
2. Nurse's office log.
3. Parent complaint re: "falsified log"
4. Superintendent letter dated 2/19/03

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 this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed on or before June 2, 2003.

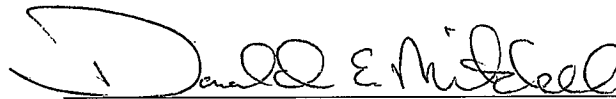
#### DECISION

1. The Association shall file an amended complaint adding additional detail consisting of the other acts and practices referenced in the unnumbered second paragraph in Section 3 of its original complaint on or before May 16, 2003 and provide a copy to the District's counsel at the same time and by the same method as used to file the amended complaint with the PELRB.
2. The District's counsel shall thereafter file any necessary answer to the amended complaint on or before June 2, 2003 and provide a copy to the District's counsel at the same time and by the same method as it used to file the amended complaint with the PELRB. By that same date and manner, the District's counsel shall forward a copy of its Final Witness and Exhibit Lists to the Association's counsel.
3. The Association's counsel shall file its Final Witness and Exhibit Lists on or before June 9, 2003 and provide a copy to the District's counsel at the same time and by the same method as it used to file the amended complaint with the PELRB.
4. The party representatives shall also meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
5. Any party that believes that it has properly and seasonably requested the production of any relevant document from the other party which it believes that party is in possession of, or has control over said document and has not been provided with that document, that party shall immediately inform the PELRB, in writing, of the document(s) requested, the date of the request, the date of the refusal to respond or to failure to comply with the request by the other party, and the purpose for which the party seeks the document from the other.

6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than June 2, 2003. Any objection to the same shall be filed no later than June 9, 2001.
7. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, June 19, 2003 beginning at 9:30 A. M.

So Ordered.

Signed this 30<sup>th</sup> day of April, 2003.



Donald E. Mitchell, Esq.  
Hearing Officer

Distribution:

James F. Allmendinger, Esquire, Staff Attorney, NEA-NH  
Michael S. Elwell, Esquire, Farmington School District