

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Pittsfield School District	*	
	*	
	*	
Petitioner	*	
	*	Case No. T-0250-21
v.	*	
	*	Decision No. 2003-136
Education Association of Pittsfield	*	
NEA-New Hampshire	*	
	*	
Respondent	*	
	*	

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PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Pittsfield School District (hereinafter "the District") filed a Petition for Declaratory Ruling on October 7, 2003 seeking a decision from the Public Employee Labor Relations Board (PELRB) that a teacher performance evaluation plan adopted by the District's School Board on October 2, 2003 falls within the definition of a managerial prerogative and is not substantively inconsistent with the terms of the parties collective bargaining agreement. In citing the case of *Appeal of Pittsfield School District*, 144 N.H. 536 (1999), the District states that while the Court held that the evaluation procedures at issue in that case required negotiation, the Court did not extend that requirement to all future changes in teacher evaluations. The District has now developed a new evaluation plan and avers that it would not serve a public purpose to implement the plan until the issues left open by *Appeal of Pittsfield School District*, specifically as to its bargaining obligations over future changes, have been resolved.

The Union filed its answer to the District's petition on October 22, 2003. The Union asserts that the instant matter has already been litigated before the PELRB and the New Hampshire Supreme Court, and that the arguments proffered by the District now are the same as those that were rejected in the earlier dispute. Moreover, it contends that the District's petition is neither ripe for the PELRB's consideration, nor appropriate for ruling under to PUB 206.01(c)(2), as circumstances have not changed substantially from the prior ruling on the merits. The Union requests, *inter alia*, that the PELRB dismiss the District's petition and issue an order directing the District to bargain with the Union over implementation of the proposed evaluation policy.

A pre-hearing conference was conducted at the PELRB on November 17, 2003 during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Petitioner: Jay C. Boynton, Esquire

For the Respondent: James F. Allmendinger, Esquire, Staff Attorney, NEA-NH

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Is the instant petition ripe for Board decision or otherwise dismissible pursuant to PUB 206.01(c)(2)?
- (2) Is the District obligated to bargain with the Union over the performance evaluation plan adopted by the Pittsfield School Board on October 2, 2003?

WITNESSES

For the Petitioner:

1. Dr. Owen Conway, Superintendent
2. John Freeman, Principal
3. Karen Erlandson, Principal
4. Scott Brown, Chairman, School Board

For the Respondent:

1. Wayne Petrovek, Pres., EAP
2. Jan Paddleford, UniServ Director
3. Hugh Sanborn, EAP
4. Doris Filson, Vice Pres., EAP

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 with 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. Current Collective Bargaining Agreement (8/25/03 – 8/31/06)
2. Record of Prior Proceedings in *Appeal of Pittsfield School District*, 144 N.H. 536 (1999).

For the Petitioner:

1. Proposed Teacher Evaluation plan (October 2, 2003)
2. School Board Minutes, October 2, 2003

For the Respondent:

1. Minutes of Teacher Evaluation Committee meetings
2. 1981 Teacher Evaluation Policy
3. 1997 Teacher Evaluation Policy

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### LENGTH OF HEARING

The time being set aside for this hearing is four (4) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

#### DECISION

1. The Union shall file its Motion to Dismiss with the PELRB on or before **December 5, 2003** and shall endeavor to deliver a copy of said motion to the District's counsel on the date of said filing, via facsimile machine if necessary. The District's objections to the Union's motion shall be filed with the PELRB on or before **December 22, 2003**. The parties' representatives shall use best efforts to confer as soon as possible in order to compose a mutual statement of agreed facts and exhibits in preparation for the filing of the instant motion and response. The parties' representatives shall memorialize those facts upon which they can so stipulate, if any, and file said document with the PELRB contemporaneously with their preliminary submissions.
2. In any event, the parties' representatives shall meet, or otherwise confer, no later than **January 9, 2004** in order to compose a mutual statement of agreed facts and to further explore whether they may be able to stipulate to sufficient facts in order to submit the case for the Board's decision by legal memorandum.
3. In the event the parties agree to all relevant facts and so stipulate, then the parties shall both execute the "Stipulation of Facts" and file said document with the PELRB within five (5) days of such execution. Thereafter, the parties shall file their respective supporting Memorandum of Law with the PELRB within fourteen (14) days. Upon

receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination on the District's petition.

4. In the event that the parties cannot agree as to all relevant facts, then they shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing. A joint stipulation of fact filed in conjunction with the Union's Motion to Dismiss and District's Response, as referenced in paragraph 1, above, shall satisfy this portion of the pre-hearing order.

5. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.

6. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

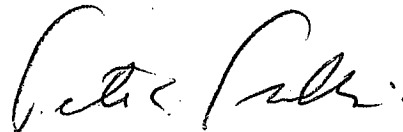
7. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

**January 27, 2004 at 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 18<sup>th</sup> day of November, 2003.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:

Jay C. Boynton, Esquire

James F. Allmendinger, Esquire, Staff Attorney, NEA-NH