



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

White Mountain Regional Education Association,
NEA-New Hampshire

Complainant

v.

White Mountain Regional School Board

Respondent

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Case No: T-0210-15

Decision No. 2004-181

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The White Mountain Regional Education Association, NEA-New Hampshire, (hereinafter "the Association") filed an unfair labor practice complaint on October 8, 2004 alleging that the White Mountain Regional School Board (hereinafter "the District") committed unfair labor practices in violation of RSA 273-A:5 I (c) and (h). More specifically, the Association asserts that on or about April 14, 2004 the District sent several teachers a letter stating that they had been "re-nominated, with reservation, to a teaching contract...for the 2004-2005 school year." The Association also avers that the letter went on to say that an improvement plan for the individual teachers must also be in place before the end of the school year. According to the Association, the parties' collective bargaining agreement ("CBA") does not provide for the placement of teachers on an "improvement plan." It claims that the District has in fact violated Articles XVI (Employee Evaluation), XIII (Fair Treatment), XXVIII (Savings Clause) and XXVI (General Provisions) of the CBA by its untimely evaluation of teachers, insufficient notice of discipline and unilateral altering of evaluation language.

It also asserts that based upon the fact that one such teacher is president of the Association and another is a past president, the District's actions are discriminatory and committed with the intention of intimidating Association members and interfering with union activity. The Association contends that such conduct by the District therefore constitutes violations of RSA 273-A:5 I (c) and (h). As remedies, the Association requests that the PELRB, among other things, (1) find that the District has violated the parties CBA; (2) order that the letters of "reservation" be rescinded; (3) and order that the 2003-2004 evaluations at issue be expunged.

The District filed its answer denying the Union's charge on October 25, 2004. While the District admits that the employment of several teachers was renewed with reservations for the 2004-

05 school year, and that those teachers were required to participate in the development of performance improvement plans, it denies that it has committed any improper labor practice. It states that its actions with respect to evaluations, improvement plans and renewals are not prohibited by, but are consistent with, and are required by Articles XII and XXVII of the CBA, past practices, the District's "Observation and Evaluation Guide" and policies which predate the CBA, as well as RSA 189:14-a. By way of further answer, the District asserts that the "renewal with reservation" does not constitute discipline, that improvement plans have been the practice of the District for some time, and that given that multiple teachers, not just current or past union officials, received the same letter of renewal with reservation, this is evidence that the District's actions were non-discriminatory. The District also raises procedural arguments, including jurisdiction, timeliness, accord and satisfaction, mootness, and waiver and estoppel, based upon its contention that certain teachers on whose behalf grievances were filed have either retired, left the bargaining unit, or otherwise withdrawn or settled their grievance. Accordingly, the District requests that the PELRB (1) deny the relief sought by the Association; (2) dismiss the instant improper practice charge and (3) grant such other relief as may be appropriate and within the PELRB's jurisdiction.

A pre-hearing conference was conducted before the undersigned hearing officer on November 4, 2004 at PELRB offices, Concord, New Hampshire. During the course of the pre-hearing conference, the Association clarified as to which teachers the instant charge still applied (indicating that of the original eight (8) for whom it had sought specific relief, only four (4) of these claims remained) and thereby resolved many, if not all, of the District's procedural claims.

PARTICIPATING REPRESENTATIVES

For the Union: Jay Tolman, UniServ Director

For the Town: Michael S. Elwell, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Has the District violated RSA 273-A:5 I (c) and (h) as a result of its' issuance of the "renewal with reservation" letter of April 14, 2004, requiring certain teachers undergo performance improvement plans, and/or the manner in which it issued certain 2003-2004 performance evaluations?
- (2) If so, what shall be the remedy(ies)?

WITNESSES

For the Union:

1. Gary Arsenault, Association President
2. Regina Turner, grievant
3. Kevin Teehan, grievant
4. Dennis Rylands, Grievance Committee Chair

For the Town:

1. Timothy Markley, Superintendent

2. Dean Cascadden, Asst. Superintendent
3. Marie Fay, Special Educ. Supervisor
4. Peter Mortenson, Former Principal
5. Erik Anderson, Asst. Principal

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. Collective Bargaining Agreement
2. Observation and Evaluation Guide
3. Renewal notices for grievants.
4. Evaluations and observations.
5. Improvement plans.
6. Documents concerning processing, settlement and withdrawal of grievances.
7. Documents re: JROTC employee's status
8. Correspondence and other documents related to the above
9. Feedback report G. Arsenault 3/10/04
10. Improvement plan G. Arsenault 5/14/04
11. Grievance History G. Arsenault 5/7, 5/14, 5/17, 5/21, 5/27
12. Feedback report, Regina Turner 3/23/04
13. Improvement plan Regina Turner 5/14/04
14. Grievance History Regina Turner 5/7, 5/14, 5/17, 5/21, 5/27
15. Grievance History Kevin Teehan 5/7, 5/14, 5/17
16. Letter to Dr. Markley 4/23/04
17. Re-nomination Letter 4/14/04

For the Union:

None other than those marked as joint.

For the Town:

None other than those marked as joint.

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 set aside for this hearing will be one (1) day. 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

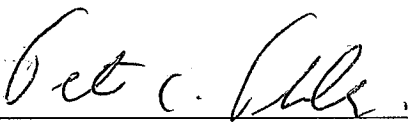
1. The parties' representatives shall meet, or otherwise confer, on or before **December 15, 2004**, in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
2. 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.
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. 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 4, 2005 @ 9:30 AM

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

So ordered.

Signed this 16th day of November, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Jay Tolman, UniServ Director
Michael S. Elwell, Esq.