



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Marlow Education Association/NEA-NH	*	
	*	
	*	
Complainant	*	Case No: E-0030-1
v.	*	
	*	Decision No. 2006-191
Marlow School District	*	
Respondent	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Marlow Education Association/NEA-NH, (hereinafter "the Association") filed an unfair labor practice complaint on August 7, 2006 alleging that the Marlow School District (the "District") committed unfair labor practices in violation of RSA 273-A:5 I (a), (c), (d), (e), (g), (h) and (i). The Association's complaint concerns Richard Brewer, formerly a classroom teacher and principal (a "teaching principal"). The Association acknowledges that Mr. Brewster is not a certified administrator, he cannot hire, fire, or discipline, and he does not perform final staff evaluations, although he provides input into that process. The Association claims that on or about April 23, 2006 the District improperly eliminated Mr. Brewer's principal duties, resulting in a 25% salary reduction for Mr. Brewer.

The Association contends that the District's actions constituted: 1) a unilateral and illegal modification of the bargaining unit; 2) discrimination against Mr. Brewer for his union membership and activity; 3) a failure to comply with the certification requirements of the order; and 4) a breach of collective bargaining agreement provisions dealing with recognition, discipline, and evaluation.

The Association requests that the PELRB order the District to: 1) cease and desist its unilateral attempt to remove the teaching principal from the bargaining unit; 2) provide Mr. Brewer with a contract that includes compensation for principal duties; 3) make Mr. Brewer whole for any and all losses suffered; 4) order the District to meet it's obligations under the collective bargaining agreement and the statute; and 5) compel the District to obey any Order by the Board, which may be fair and lawful.

The District filed its Answer on August 22, 2006 and denies that it has acted improperly. The District states that Article VI, paragraph 6.2 of the July 1, 2005 to June 30, 2008 collective bargaining agreement provides that "supervisory personnel responsible for the evaluation of employees shall be qualified for that purpose." In the spring of 2006 the School Board, in consultation with the SAU #29 Superintendent, decided that the principal of Perkins Elementary School should be a certified administrator in order to satisfy the CBA given the current complexities of the position, as evidenced by laws such as No Child Left Behind and Individuals with Disabilities Education Act.

Accordingly, the District requests that the PELRB: 1) deny the request for a cease and desist; 2) affirm the Marlow School District's exercise of its management prerogative to obtain the services of a certified administrator to perform the increasingly important and complicated roles of the principal; 3) deny Mr. Brewer's claims of compensation; 4) find that the District has met its obligations under the Collective Bargaining Agreement; and 5) order such other and further relief as justice may require.

The undersigned Hearing Officer conducted an informal pre-hearing conference on October 23, 2006 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: John F. Teague, Esq.

PRINCIPAL ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the District unilaterally modified the bargaining unit and breached the parties' CBA by hiring a certified principal (a position the parties agree is outside the bargaining unit) and terminating Mr. Brewer's duties as principal under the teacher-principal bargaining unit position?
- (2) Whether the District terminated Mr. Brewer's service as teacher-principal because of his union membership and activity?

WITNESSES

For the Association:

1. Richard Brewer
2. Michelle Munson, Superintendent
3. William Gurney, Asst. Superintendent
4. Wayne Woolich, Asst. Superintendent
5. Joseph Scharf, Chairman, Marlow School Board

For the District:

1. Michelle Munson, Superintendent
2. William Gurney, Asst. Superintendent
3. Wayne Woolich, Asst. Superintendent
4. Catherine Reeves, Dir. Special Education
5. Paul Cooper, Mngr. Of Personnel Services
6. Joseph Scharf, Chairman, Marlow School Board
7. Stephanie Tickner, Marlow School Board
8. Kenneth Dassau, Marlow School Board
9. Arthur Andreasen, Marlow School Board
10. Nancy Thomasko, Marlow School Board

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

For the Association:

1. Bargaining History and Proposals
2. Correspondence between parties
3. Evaluation Policy Manual

For the District:

1. Marlow School Board Minutes, 2005-06
2. Evaluation Forms
3. Federal Legislation
 - a. No Child Left Behind
 - b. IDEA (2006 Regulations)
4. State of New Hampshire Curriculum Frameworks

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-half (½) 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. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before November 3, 2006 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 the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.

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.

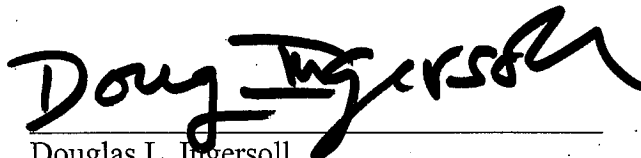
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

November 16, 2006 @ 9:30 AM

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

So ordered.

Signed this 23rd day of October, 2006.



Douglas L. Ingersoll
Hearing Officer

Distribution:
Mary E. Gaul, UniServ Director
John F. Teague, Esq.