



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Hillsboro Deering Support Staff AFT-NH,  
Local 6219, AFL-CIO

Complainant

v.

Hillsboro Deering School District

Respondent

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Case No. E-0031-1

Decision No. 2007-018

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Hillsboro Deering Support Staff AFT-NH, Local 6219 (the "Union") filed improper practice charges on November 30, 2006. The Union claims the Hillsboro Deering School District (the "District") violated RSA 273-A:5 (a) and (c) by harassing and intimidating Kelly D'Errico for her union activities. The Union requests that the PELRB order the District to (1) Find that the District has committed an Unfair Labor Practice within the meaning of RSA 273-A; (2) Order the District to cease and desist from such actions; (3) Award the Union all costs and attorney's fees; and (4) Grant such other and further relief as may be just.

The District obtained an extension of time to file its answer and on December 20, 2006 the District filed its Answer. The District also filed a Motion to Require Clarification of Charge and Motion to Stay and Hold this Matter in Abeyance Pending Completion of the Parties' Arbitration Proceedings. The District denies it violated RSA 273-A:5 (a) or (c). Accordingly, the District requests that the PELRB dismiss the instant Unfair Labor Practice Charge.

A pre-hearing conference was conducted at PELRB offices on January 11, 2007 at which time the relationship of two arbitrations to this case was reviewed. One arbitration has resulted in a decision, and the second is scheduled to proceed later this year. It was apparent that these arbitrations do not address or resolve all the matters raised in the complaint, and on that basis the District agreed to withdraw its Motion to Stay. The subsequent pre-hearing order formally addressed the Motion to Stay as well as the District's Motion to Require Clarification of Charge. See PELRB Decision No. 2007-12. Thereafter, on January 22, 2007, the Union filed the

Complaining Party's Specifications, as required, as well as a Motion to Amend. The Complaining Party's Specifications effectively restates the complaint and is now treated as the complaint for purposes of these proceedings, with reference to allegations in the original complaint as necessary. On February 1, 2007 the District filed a Motion to Dismiss. The undersigned hearing officer conducted a further pre-hearing conference on February 2, 2007 at the PELRB in Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the Union: Emmanuel Krasner, Esq.

For the District: Edward Kaplan, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

At the pre-hearing conference the parties were able to identify the six specific incidents which occurred within six months of the filing of the complaint and which serve as the basis for the charge. These are: a) Principal Jon Ingram's June, 2006 actions whereby the work schedule was changed to require Ms. D'Errico, Karen Gerard, and administrators to take turns staying an extra 30 minutes to answer the telephone; b) Principal Ingram's comments to Ms. D'Errico concerning her negative statements about administrators; c) discussions and interactions with Principal Ingram and Assistant Principal Yacopucci concerning a student parking space; d) the scheduling of insurance committee meetings during the afternoon due to Kathy Pepper's schedule; e) discussions concerning witness appearances for arbitration proceedings and whether the District interfered with witness attendance; and f) the District's communication of a settlement proposal concerning one of the arbitration proceedings.

Do these incidents, if proven, establish that the District committed an unfair labor practice by harassing and intimidating Kelly D'Errico for her union activities in violation of RSA 273-A:5 (a) and (c), taking into account evidence of these specific incidents as well as such other evidence as the Board may deem relevant and admissible concerning Ms. D'Errico's claim.

A related issue for the Board is whether all or a portion of the Union's evidence and claims are untimely, inadmissible or irrelevant and should be excluded.

#### WITNESSES

For the Union:

1. Kelly D'Errico, High School Secretary
2. Kim Girard, High School Secretary
3. Diane Levesque, Union Vice President, Secretary
4. Teresa D. Donovan, Esq., Counsel for Union

5. Jon Ingram, High School Principal
6. Barry Proctor, citizen
7. Mary Rose Carter, shop steward
8. Amy Andrews, Accountant – Plodzik & Sanderson

For the District:

1. Michael Henderson, prior High School Principal
2. Jon Ingram, High School Principal
3. Donna Stafford, administration and guidance departments
4. Donald Card, Food Services Director
5. John Yacopucci, Assistant Principal, High School

Both parties reserve the right to amend their List of Witnesses upon proper showing with reasonable notice to the other party.

### EXHIBITS

For the Union:

1. Memorandum from Lisa Braiterman to Kelly D'Errico 1/25/06
2. E-mail from Lisa Braiterman to Teresa D. Donovan, Esq. 1/16/06
3. Written "verbal" warning issued to Kelly D'Errico
4. Letter of "counseling" issued to Kelly D'Errico 5/3/06
5. Denial of Leave issued to Kelly D'Errico 4/20/04
6. Grievance filed by Kelly D'Errico 5/22/06
7. Performance Evaluations for Kelly D'Errico 2003-2006
8. Copies of Grievances filed during contract negotiations
9. Memo from Kelly D'Errico 1/17/06
10. Copy of Kelly D'Errico Grievances and responses
11. Copy of Collective Bargaining Agreement
12. Copies of E-mails from Teresa D. Donovan, Esq. to School District 11/27/06-11/29/06
13. Copy of Arbitrators Decision 12/26/06

For the District:

1. Kelly D'Errico's Personnel File.
2. Documents marked as Exhibits to the two arbitrations connected to this matter.

Both parties reserve the right to amend their List of Exhibits upon proper showing with reasonable notice to the other party. Copies of all exhibits are to be submitted 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 three (3) 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's Motion to Amend is granted.
2. The parties shall prepare a written stipulation in lieu of evidence as to the allegations contained in paragraphs 1-3, 5-10, 13, 17 (including information concerning grievance disposition), 20, 26 and 29 of the Complaining Party's Specifications. This order is based on the District's answer (which admits many of these allegations) and the discussions at the February 2, 2007 pre-hearing conference, which revealed that the parties will be able to otherwise stipulate and agree on the underlying facts covered by these paragraphs. These stipulations shall be filed on or before **February 12, 2007**.
3. After due consideration at the pre-hearing conference, and in particular analysis of the two related arbitration proceedings, the parties agree that the allegations contained in paragraphs 4, 19, 24, 27-28, 31-32, 34-36, 39-44 are to be stricken and no evidence received concerning the allegations in those paragraphs except that the Union may offer the documents referenced in paragraphs 24 and 31, the Union may offer the already issued Arbitration Decision, and the parties stipulation required under paragraph 1 above shall include the stipulation that "There is now a pending arbitration concerning interactions between Ms. D'Errico and Principal Ingram which took place in May 2006, arising from a grievance filed by the Union." As to the pending arbitration the Union may seek to provide more information to the Board concerning the subject matter of the arbitration, but not the merits of the parties' respective positions as to the matters in arbitration.
4. The parties agree that paragraphs 11-12, and 21 of the Complaining Party's Specifications are stricken and, in their place, the following stipulations are to be included in the stipulation the parties are to prepare under paragraph 1 above: a) "Between May 3, 2005 and September 9, 2005 the Union filed three unfair labor practice complaints and the District filed one unfair labor practice complaint. All four complaints resolved by agreement"; and b) "In September, 2005 Kelly D'Errico opposed a domestic partner health insurance benefit under consideration by the School Board because in her view it would benefit the most highly paid members of the District at a time when there were attempts to cut pay and benefits for the lower paid employees of the District."
5. The allegations in the Complaining Party's Specifications remain in dispute. These are restated here in their entirety:
  - a. On February 8<sup>th</sup>, 2005, the Union filed a request for mediation. On February 10, Kelly D'Errico put out a press release informing the public that the support staff

had declared impasse and requested the appointment of a mediator. On February 18<sup>th</sup>, after she had returned from her father's funeral, she was informed that she would have to start moving out of her office which was being turned over to a college admissions specialist and she would henceforth work in the foyer of the Principal's office which was the main office for the school.

A few days later, Dr. Baker spoke to Kelly and told her that the rumors about why she had been moved had to stop. **See Paragraph 14A.**

- b. On or about March 4, 2005, Kelly received a "mid-year review". No secretary before that time had ever received a "mid-year review". The review was issued in very general terms and was negative. **See paragraph 15. (Union to submit performance evaluation and limited background testimony)**
- c. On April 19, 2005, Kelly D'Errico spoke out at a public forum, a School Board meeting. She sent a letter to the editor objecting to certain School Board proposals and responding to statements made by Board members concerning negotiations. She also criticized the Board's proposal to increase administrative salaries at the same time the Board was proposing to cut expenditures for cafeteria workers and other lower paid members of the bargaining unit. Her letter to the editor appeared on April 20, 2005. The next morning, April 21, 2005, Lisa Braiterman appeared at her desk. First Ms. Braiterman asked to see Mr. Ingram who was not there. Then she asked to get a "snapshot" of the information on Kelly's computer. Ms. Braiterman then took over Kelly's work station and proceeded to copy information off of her computer. Ms. Braiterman had never before asked for a "snapshot" or any other information on Kelly's computer. **See paragraph 16.**
- d. On July 11, 2005, Kelly met with Dr. Baker concerning three outstanding grievances including the Adams' grievance. At that meeting Dr. Baker informed her, "You may not agree with the way I am running this District, but that is just the way it is! That's the way the cards were dealt and there isn't anything you can do about it." Kelly's response indicated that it was her duty as Union President to do something about it if Dr. Baker violated the Collective Bargaining Agreement. **See paragraph 18.**
- e. On November 4, 2005, the School District auditors were reviewing the books. They asked Kelly to come to the SAU office to discuss certain entries. Kelly met with Amy Andrews and went over her work. A question had arisen about a double entry. Kelly resolved the question with the auditor. As the meeting was breaking up, Lisa Braiterman came out of her office and began firing questions at Kelly about various matters in a very hostile manner. This questioning continued for several minutes in front of the three auditors and Denise Horne, the School District accountant. Kelly's Principal, Mr. Ingram, appeared in the middle of the cross-examination and simply leaned on the counter and listened while Ms. Braiterman, pacing back and forth, fired question after question at Kelly. Finally,

Amy Andrews, the auditor, intervened, pointed out that Kelly had requested training on this very subject, and that training should be provided. Ms. Braiterman then desisted and Kelly was allowed to leave. **See paragraph 22.**

- f. On November 22, 2005, Mr. Ingram asked Kelly where money from certain accounts was. Mr. Ingram indicated that there was money missing and at one point pounded his fist on the table saying, "Where did the money go!" After he had completed his tirade, Kelly was able to show him in the records where the funds had all been transferred into the general account at the direction of his predecessor. **See paragraph 23.**
- g. On November 30, 2005, another letter written by Kelly D'Errico responding to statements School Board members had made in the press about negotiations and actions of the food service workers was published in the local papers. Three days later there was a question raised about the location of certain purchase orders and invoices. Dr. Baker came to see Mr. Ingram and shortly after she left Mr. Ingram came out and chastised Kelly for things she had supposedly said. **See paragraph 25. (Union to offer letter and newspaper as well)**
- h. On January 17, 2006, Kelly D'Errico met with the Food Services Director, Don Card, concerning a grievance for a cafeteria worker. Mr. Card stated that he had been directed not to speak with her about grievances during the day and that they would have to be done after school. **See paragraph 30.**
- i. On April 25, 2006, at a Grievance Hearing, (verbal warning) Superintendent of Schools, Barbara Baker, began the meeting by stating that "She didn't think Kelly can do her job and she needs to prove she can." Dr. Baker also states that "Kelly needs to get on board with the District or find another job." Dr. Baker also made direct reference to Kelly's "outside activity" and that Kelly needs to "work with the District" Terri Donovan stated to Dr. Baker, "you really don't want to go down that path." commenting on the inappropriateness of criticizing Kelly for her publicly stated opinions and Union activity. Terri Donovan further stated how much Kelly cares about this school district and is committed to the District. **See paragraph 33.**
- j. On June 1, 2006, Jon Ingram presented Kelly D'Errico with the schedule he had come up with for the office staff to stay late, until 4:00, in order to answer the telephone. Kelly's schedule had always been 7:00 am to 3:30 pm since she was first hired by the District in 1999. Mr. Ingram's schedule which he proposed to have effective immediately would have Kelly, the other secretary, Karen Gerard, taking turns staying late to answer the phones. He also provided that administrators would take turns. **See paragraph 37.**
- k. On June 6, 2006, there was an office staff meeting and the issue of staying late was addressed. Mr. Ingram had not mentioned this to the other members of the office staff. There was extensive discussion and eventually the proposal was

dropped “for the time being”. Mr. Ingram said there would be further discussion about implementing the change in December between himself, Kelly, and Ms. Gerard. Kelly asked why she and Ms. Gerard would be the only two secretaries who would be asked to stay late, and Mr. Ingram replied that it was a “front office issue”. Mr. Ingram’s proposal would have unilaterally changed working conditions and placed a burden on Kelly D’Errico in the afternoon as well as on Ms. Gerard. **See paragraph 38.**

- l. On October 17, 2006, Lisa Braiterman informed Teresa Donovan by email that the District would prefer to meet for negotiations concerning the insurance committee in the afternoons due to Kathy Pepper’s schedule. Ms. Braiterman’s email makes it clear that she is aware that Kelly D’Errico would have a difficult time meeting later in the day. After the Union Vice-President was substituted for Ms. D’Errico on the committee, meetings were held by mutual agreement during the day and no further requests were made for late afternoon meetings. **See paragraph 45.**
- m. On or about November 29, 2006, the District did attempt to interfere with the appearance of witnesses at a grievance hearing on November 30, 2006. The Collective Bargaining Agreement between the parties clearly provides that an employee will be excused from work with pay to testify at arbitration or other District related hearings. Collective Bargaining Agreement Section 6.3.3.

This incident parallels the actions taken on or about April 21, 2006, by food services director, Don Card, when he, contrary to all previous practice, informed Kelly D’Errico that he would have to meet on grievance matters after the end of the school day and that he had been directed not to meet with Kelly during the school day; and the action of Mr. Ingram in June, 2006, when he attempted to extend Kelly’s work day. **See paragraph 46.**

- n. The District attempted to interfere with the attendance of witnesses on Kelly’s behalf at an arbitration hearing. The District, through and by the Business Administrator, Lisa Braiterman, did tell one witness for the hearing, HDSS Vice-President Dianna Levesque, that the employees who were being asked to appear as witnesses on behalf of Kelly D’Errico that they would not be paid for the day or they would need to use personal leave time if they went to the arbitration hearing. The Union was forced to issue subpoenas for the appearance of its own bargaining unit members at the arbitration hearing immediately upon being informed of the Braiterman position in this regard. **See paragraph 47.**
- o. On November 30, 2006, the District, immediately prior to the arbitration hearing, did present to Kelly D’Errico the option of withdrawing her grievance, terminating her employment with the District, and accepting a lump sum cash payout and medical benefits for six (6) months. **See paragraph 48.**

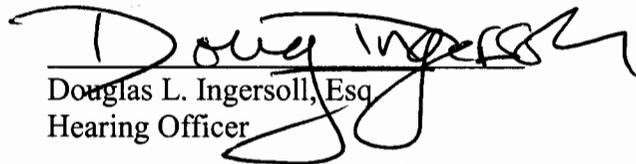
- p. The incidents described in the Complaint concerning student discipline and parking in October, 2006. **See paragraph 51.**
6. Nothing in this order is intended to bar or prevent either party from objecting to the admission of any evidence, including any stipulations.
7. Unless otherwise ordered 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:

**February 13, 2007 @ 9:00 a.m.**

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

So ordered.

February 5, 2007.

  
Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:  
Emmanuel Krasner, Esq.  
Edward Kaplan, Esq.