



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**SEACOAST EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION, NEA-NH**

COMPLAINANT

v.

CASE NO. E-0064-3

**WINNACUNNET COOPERATIVE
SCHOOL DISTRICT, SAU # 21**

DECISION NO. 2009-121

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 17, 2009

Appearances: Complainant: James F. Allmendinger, Esq.
Respondent: Paul L. Apple, Esq.

Background:

Seacoast Educational Support Personnel Association, NEA-New Hampshire (Union) filed an unfair labor practice complaint against Winnacunnet Cooperative School District, SAU # 21 (District) on May 11, 2009. The Union claims that the District violated RSA 273-A:5, I (a), (c), and (d) by placing a letter of reprimand in an employee's personnel file in retaliation for that employee's speaking on behalf of the union at the school board meeting.

The Union requests that the PELRB order the District to remove the letter of reprimand from the employee's file.

On May 26, 2009 the District filed an answer denying the Union's allegations. The District claims that, during the meeting, the employee negligently left at the desk a confidential

list of special education students making it open to discovery by members of the public and that she was disciplined for her failure to use due care in handling a confidential document and not for any other reason. In addition, the District asserts that the Union's complaint is barred because the Union failed to exhaust the remedies under the Collective Bargaining Agreement (CBA) as it did not file a grievance or otherwise follow the grievance procedures set out in the CBA.

The District requests that that the PELRB deny the Union's request for relief.

At the pre-hearing conference, the counsel for the District indicated that he intends to file a motion to continue an adjudicatory hearing on the ground that the District's witness, Superintendent James Gaylord, might not be available on the date of the hearing.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the letter of reprimand at issue in this matter constitutes a retaliation for the employee's union activity in violation of RSA 273-A:5 (a), (c), and (d).
2. Whether the Union's complaint is barred because the Union failed to exhaust remedies under the CBA.

WITNESSES

For the Union:

1. Linda Libbey
2. Leisa Blatchford
3. Lee Sidoti
4. Donna Christman
5. Carol Caesar
6. Venus Merrill

For the District:

1. James Gaylord
2. Linda Evans
3. Diana Weidenbacker

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

Joint and Agreed:

1. Letter of Reprimand
2. Collective Bargaining Agreement
3. Any writings between the Union and the District regarding this matter
4. Rules and Regulations regarding Professional Standards of Conduct
5. Relevant communications
6. Attorney General's Department of Justice Officer Deadly Force Investigation Protocol dated February 9, 2004

For the District:

1. List of Special Education Students which allegedly was in the employee's possession at the school board meeting

Both parties reserve the right to amend their Lists 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. 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.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. Any Motion to Continue the currently scheduled adjudicatory hearing shall be filed on or before **June 22, 2009** and shall comply with the requirements set out in the updated rule **Pub 201.08**; otherwise, the adjudicatory hearing will be held as previously scheduled.

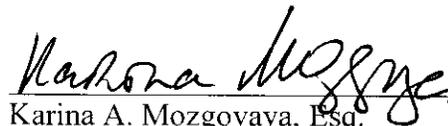
3. The parties shall prepare and file a Statement of Stipulated Facts no later than 10 days prior to the scheduled adjudicatory hearing.
4. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than 10 days prior to the scheduled adjudicatory hearing.
5. The parties shall pre-mark any exhibits prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.03.

HEARING

Unless otherwise ordered as a result of the filing of a Motion to Continue or other motion, the adjudicatory hearing between the parties will be held on **June 30, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled adjudicatory hearing shall be continued, all time references as appear in paragraphs ## 3, 4, and 5 of the DECISION SECTION shall be based upon the rescheduled date for the adjudicatory hearing. The time set aside for this hearing is 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 10 days prior to the date of hearing.

So ordered.

June 17, 2009



Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:
James F. Allmendinger, Esq.
Paul L. Apple, Esq.
Donna Christman, UniServ Director
James Gaylord, Superintendent