



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**White Mountains Education Association/NEA-New Hampshire**

v.

**White Mountains Regional School District**

**Case No. E-0083-3**  
**Decision No. 2010-142**

**Appearances:**

Jay Tolman, NEA-New Hampshire UniServ Director, Gorham, New Hampshire  
for the Complainant

Barbara F. Loughman, Esq., Soule, Leslie, Kidder, Sayward & Loughman,  
P.L.L.C., Wolfeboro, New Hampshire for the Respondent

**Background:**

The White Mountains Education Association/NEA-New Hampshire (Association) filed an unfair labor practice complaint against the White Mountains Regional School District (District) on April 22, 2010. The Association complains about the District's failure to renew the teaching contract of Stephanie Rogers. According to the Association, the non-renewal was improper and invalid because the District failed to comply with applicable procedures contained in the parties' collective bargaining agreement and the District otherwise lacked a sufficient basis to non-renew Ms. Rogers given her job performance. The Association charges that the District violated RSA 273-A:5, I (h)(to breach a collective bargaining agreement). As relief the

Association requests that the PELRB order the District to provide Ms. Rogers with a contract for the 2010-11 school year with no loss of pay or benefits.

The District denies the charges. The District argues that the Association has failed to state a claim upon which relief can be granted and that the PELRB lacks jurisdiction because RSA 189:14-a gives the District the right to non-renew a probationary teacher without a statement of reasons or a hearing. The District requests that the PELRB dismiss the complaint.

A hearing was held on the Association's complaint on June 10, 2010 at the offices of the PELRB in Concord at which time the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The parties filed post-hearing briefs pursuant to the schedule established by the Board at the conclusion of the hearing. The District subsequently filed a Motion to Strike portions of the Association's brief, claiming the Association did not present evidence to support some of the allegations in its brief. The District also filed a Motion to Reopen the Record, requesting the opportunity to present more evidence on the issue of just cause in the event the Board finds just cause to be an issue in this case. Both parties were provided a full opportunity at the adjudicatory hearing to offer evidence in to the record to support their respective positions, and the Board finds that the record submitted is sufficient to allow the Board to decide this case. The Board's decision is based upon the evidence accepted into the record, and to the extent either party has included allegations or references in their post-hearing briefs which are not supported by the record they are disregarded. On this basis the District's two post-hearing motions are denied.

#### **Findings of Fact**

1. The White Mountains Regional School District is a public employer within the meaning of RSA 273-A:1, IX.

2. The White Mountains Education Association/NEA-New Hampshire is an employee organization certified under RSA 273-A:8 and representing certain employees of the District.

3. The Association and the District are parties to a collective bargaining agreement effective from July 1, 2008 through June 30, 2010 (CBA).

4. The CBA grievance procedure (Article 28, Joint Exhibit 1<sup>1</sup>) provides for three levels of review: Level I – Principal; Level II – Superintendent; and Level III – School Board. The grievance procedure also provides:

If the employee or the Association is not satisfied with the decision of the School Board, then the employee or the Association may take whatever action they may deem appropriate.

5. Article 15 of the parties' CBA, entitled Employee Evaluation, provides in part:

A yearly evaluation report will be presented to all employees by their supervisor at least ten (10) calendar days prior to nomination by the superintendent. This evaluation will be a compilation of reports, observations, and/or memoranda made by the principal, assistant principal or designated administrator. Any information that may be detrimental to an employee's evaluation status must have been presented to the employee in writing at least thirty (30) calendar days prior to the presentation of the evaluation report for a letter "b" recommendation or January 5th for a "c" or "d" recommendation (below). This evaluation report must have one of the following recommendations to the superintendent:

- a) Recommended for continued employment with scheduled increment.
- b) Recommended for continued employment with improvement plan, with scheduled increment.
- c) Recommended for continued employment with improvement plan (no scheduled increment).
- d) Not recommended for continued employment.

The employee must sign a form at the time the evaluation report is delivered to indicate that it has been received.

If an employee receives a "b" or "c" evaluation, the supervisor may require the employee to develop an improvement plan to address the areas of need. Within twenty (20) calendar days, the supervisor will communicate the following in writing: a) specific areas in need of

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<sup>1</sup> All exhibits referenced in the Findings of Fact are incorporated by reference as if fully set forth herein.

improvement, b) available support to help address the identified needs, c) how and when improvements will be measured and evaluated, and d) possible consequences for failure to improve. Within twenty (20) calendar days of receiving this, the employee will respond to the supervisor with their specific plan for improvement. A teacher must be given notice that there is a possibility that they could be placed on an improvement plan. If they are placed on an improvement plan, the plan must be specific and reasonable. The plan shall prescribe: how the teacher can demonstrate results, how the evaluator will measure results, and how much improvement is enough. An in-district WMEA representative chosen by the teacher shall be present at every evaluation conference during this process.

6. Article 25, Section E of the CBA, entitled Hiring, Placement and Supplementary Pay for Teachers, provides:

A Teacher who will not be rehired will be notified by April 15th of the current year as provided in RSA 189:14. A teacher who will not receive a regularly scheduled salary increment will be notified by the same date.

7. During the 2009-10 school year Stephanie Rogers was a third year probationary teacher in the District, and it was her first year as a 7<sup>th</sup> grade math teacher. In two prior years she worked as a math teacher at the District High School.

8. On February 13, 2009, (during the immediately prior school year) Ms. Rogers was evaluated by the former Principal Eric Anderson. Joint Exhibit 2. The evaluation report of Ms. Rogers' performance stated that her overall rating was "satisfactory with concerns." The report did not contain any recommendation to the Superintendent as to the continuation of Ms. Rogers's employment.

9. On March 5, 2009, Principal Anderson informed Ms. Rogers that he was recommending non-renewal of her teacher contract, and the District Superintendent did not nominate Ms. Rogers for renewal. Joint Exhibit 7. The Association grieved the non-renewal for a number of reasons, including the District's failure to provide Ms. Rogers with detrimental information about her performance prior to January 5, 2009 as required by Article 15. The School Board upheld the grievance and Ms. Rogers was given a contract for the 2009-2010

school year without a salary increase, and she was notified that she would be placed on an improvement plan for the 2009-10 school year.

10. Principal Patricia McLean provided Ms. Rogers with the Improvement Plan on or about October 30, 2009. The Improvement Plan is set forth in Joint Exhibit 13. See also Joint Exhibit 12.

11. The Improvement Plan identified areas of concern and contained a rubric that was created for evaluating Ms. Rogers' performance. The plan calls for "on-going adjustments to the curriculum to meet the needs of both struggling and high achieving students." The Association and Ms. Rogers approved the plan and the rubric. The rubric allowed the evaluator to grade Ms. Rogers' performance from one to four, one being the lowest and four the highest possible score in the following "areas of concern": (1) curriculum implementation, (2) relationships with students, parents/guardians, and (3) creative learning atmosphere.

12. Principal McLean conducted a structured observation of Ms. Rogers on November 6, 2009 and provided Ms. Rogers with a structured observation report on November 12, 2009. Joint Exhibit 14.

13. On December 14, 2009, Principal McLean provided Ms. Rogers with a Quarter I Improvement Plan Review and Quarter 1 Rubric which was based on one structured observation and on unannounced observation called "walk-through" conducted by Principal McLean. Joint Exhibits 15 and 16. Ms. Rogers' performance was scored at three minus in Curriculum Implementation area and at two to three in Relations with students, Parents/Guardians and in Creative Learning Atmosphere. The Quarter I Improvement Plan Review included the following:

Curriculum Implementation . . .

1) Classroom instruction provides Tier II instruction with student individual and small group needs being addressed. There needs to be a plan for daily Tier I instruction that engages all students. . . .

2) Begin to increase the rigor and to expand the range of student work to include hands on demonstrations of learning. Presently students are predominantly completing paper-pencil tasks on worksheets and from textbook pages. Provide manipulatives and learning materials for student use during class time.

3) Develop written objectives to support the 3 students who performed between 63-68% on their first quarter report card, as well as for students who are performing below the 70<sup>th</sup> % second quarter for indentifying strategies that should help them increasing their 2<sup>nd</sup> quarter grades. . . .

Creative Learning Atmosphere . . .

1) Ms. Rogers is to provide students with an array of Math manipulatives, learning aids and craft materials by the end of the second quarter for students to have access to for problem solving so that they are not primarily doing only paper pencil tasks. Create an area for students to visually display their creative work.

14. The Quarter I Improvement Plan Review contained the following Final Comment:

Ms. Rogers is to be advised that demonstrated continued improvement will be necessary for the Lancaster School Principal to recommend her for continued employment beyond the current school year. At this time there are still indicators that may impede a recommendation for continued employment.

15. On December 15, 2009, Principal McLean provided Ms. Rogers with a Report of Evaluator-Teacher Interactions. The Report contained comments and suggestions following the “walk-through” conducted by Principal McLean. Joint Exhibit 17.

16. On December 21, 2009, Ms. Rogers submitted a written Response to her First Quarter Review. In her Response, Ms. Rogers expressed concern about the statement in Final Comment and asked Principal McLean to elaborate what the “indicators” were. Joint Exhibit 19.

17. On December 29, 2009, Principal McLean provided a written response to Ms. Rogers’ Response to the First Quarter Review. Joint Exhibit 20. She directed Ms. Rogers to

review the recommendations she provided in the First Quarter Review “for areas to address with specific attention to Curriculum Implementation (recommendation 1 & 2); and Creative Learning Atmosphere (recommendation 1)” and stated:

Also, I spoke with you on 12.14.09 regarding the comment that I made that is at the conclusion of my feedback to Relationships with Students, Parents/Guardians. As you are well aware, the parent communication area is where we are presently putting significant time and effort into ameliorating the current situation to allay student and parent concerns. As the 7<sup>th</sup> grade Math teacher you are a key player in dissipating these concerns.

18. On March 23, 2010, Principal McLean and Mr. Lamarque prepared a Summative Evaluation. Joint Exhibit 27. The Summative Evaluation contained the following statement:

Despite the fact that we were able to commend aspects of your work, the concerns shared in previous evaluations remain. In the best interest of all of our students we will not be recommending you for continued employment.

19. On March 23, 2010, Principal McLean notified Ms. Rogers that she was not recommending renewal of her contract, and on April 13, 2010, Superintendent Fensom issued Ms. Rogers a Non-renewal Letter. The Union grieved the District’s decision through Level III (School Board) without success. District Exhibit C. The School Board concluded that the CBA has not been violated because the administration complied with the requirement of Article 15 in that the “information detrimental to Ms. Rogers evaluation status was provided to her on or before January 5, 2010” and her “evaluation report was presented to her more than ten calendar days before the deadline for nomination by the Superintendent.” The School Board also stated:

There is nothing in the Collective Bargaining Agreement requiring a statement of reasons for non-renewal of a probationary teacher or taking away a right of the Superintendent to non-renew a probationary teacher without a cause and without a statement of reasons.

## Decision and Order

### Decision Summary:

The District complied with provisions of Article 15 of the parties' collective bargaining agreement requiring written notice to Ms. Rogers on or before January 5, 2010 of "any information that may be detrimental to an employee's evaluation status." The Board finds that it does not otherwise have the authority or jurisdiction under either the parties' collective bargaining agreement or applicable law to review and assess the sufficiency or adequacy of the District's justification and reasons for the disputed non-renewal. Accordingly the Association's unfair labor practice complaint is dismissed.

### Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6, and has jurisdiction over the claim that the District breached the parties' collective bargaining agreement given the provisions of Article 28, which sets forth the parties' grievance procedure.

### Discussion:

The Association raises a procedural claim and a substantive claim to support its request that Ms. Rogers be returned to her employment and provided a contract for the 2010-11 school year. The Association's procedural claim is that the District failed to give written notice of "any information that may be detrimental to an employee's evaluation status" by the January 5 deadline.<sup>2</sup> The Association's substantive claim is that Ms. Rogers is otherwise entitled to a renewal of her contract because her job performance was adequate and the District did not have a sufficient basis to discontinue her employment.

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<sup>2</sup> The parties agree that Article 15-B applies to Ms. Rogers' situation and also that the District was required to provide "any information that may be detrimental to (Ms. Rogers) evaluation status" by the January 5 deadline because since in her evaluation Ms. Rogers was not recommended for continued employment.

The Association's procedural claim arises out of Article 15-B of the parties' collective bargaining agreement which provides in relevant part as follows:

Any information that may be detrimental to an employee's evaluation status must have been presented to the employee in writing at least thirty (30) calendar days prior to the presentation of the evaluation report for a letter "b" recommendation or January 5<sup>th</sup> for a "c" or "d" recommendation (below). This evaluation report must have one of the following recommendations to the superintendent:

- a) Recommended for continued employment with scheduled increment.
- b) Recommended for continued employment with improvement plan, with scheduled increment.
- c) Recommended for continued employment with improvement plan (no scheduled increment).
- d) Not recommended for continued employment.

The record reflects that the District failed to comply with this contract provision in the immediately prior school year, a circumstance which the School Board concluded entitled Ms. Rogers to a renewal and a contract for the 2009-10 school year. The Association asserts that the District again failed to comply with this contract provision and Ms. Rogers is entitled to a contract for the 2010-11 school year.

The District completed evaluations during the March time period, and Ms. Rogers' evaluation was complete as of March 23, 2010, and she was not recommended for continued employment. *See* Joint Exhibit 27. The evaluation includes what can be considered as "detrimental information" in three areas. The evaluation first notes that "progress on the (improvement) plan has fluctuated with feedback noting mid-level performance on the rubric with no solid demonstration at the proficiency level." Ms. Rogers was provided with information about this prior to January 5, 2010 as reflected by Joint Exhibit 15 (Quarter 1 Improvement Plan Review) and 16 (Quarter 1 Rubric), both shared with Ms. Rogers in December, 2009. In Joint Exhibit 15 Principal McLean writes that "demonstrated continued improvement will be necessary for the Lancaster School principal to recommend her for

continued employment...” In Joint Exhibit 16, the rubric used to assess Ms. Rogers’ performance under the improvement plan shows she was scored in the 2 to 3 range on a 1 to 4 scale, with 4 representing the highest score.

The March 23, 2010 evaluation also states that “student classroom performance decreased during the second marking quarter. Over 50% of the students saw a letter grade or more decline during this time period.” Again, the District provided Ms. Rogers’ with sufficient written notice of the student performance area of concern prior to January 5, 2010 as reflected by Joint Exhibit 13 (October, 2009 Improvement Plan), which calls for “on-going adjustments to the curriculum to meet the needs of both struggling and high achieving students;” Joint Exhibit 15 (Quarter 1 Improvement Plan Review), which states that “demonstrated continued improvement will be necessary...;” and Joint Exhibit 16 (Quarter 1 Rubric), which gives a 3- score on Curriculum Implementation.

The third detrimental area on the evaluation is that “communication with parents/guardians has been uneven to-date this year. Administrative second quarter improvement plan feedback includes strong concerns regarding the effectiveness of teacher communication with parents/guardians.” The District’s written notification to Ms. Rogers about this area of concern prior to January 5, 2010 is reflected in Joint Exhibit 13 (Quarter 1 Improvement Plan); Joint Exhibit 15 (Quarter 1 Improvement Plan Review); Joint Exhibit 16 (Quarter 1 Rubric); Joint Exhibit 20 (December 29, 2009 McLean Response to Rogers Response), in which Principal McLean writes that “I spoke with you on 12.14.09 regarding the comment that I made that is at the conclusion of my feedback to Relationships with Students, Parent/Guardians. As you are well aware, the parent communication area is where we are presently putting significant time and effort into ameliorating the current situation to allay

student and parent concerns. As the 7<sup>th</sup> grade Math teacher you are the key player in dissipating these concerns.”

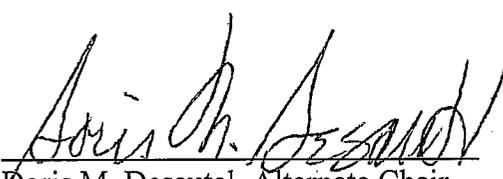
Accordingly, the Board finds that the District did comply with its obligations under Article 15-B to provide detrimental information cited in the March 23, 2010 evaluation to Ms. Rogers prior to January 5, 2010.

The Association’s substantive claim is that, in effect, the District lacked sufficient reasons to discontinue Ms. Rogers’ employment given her performance over the 2009-10 school year. However, this claim fails because the Board does not have jurisdiction to review the substantive basis for the District’s decision to discontinue Ms. Rogers’ employment. Nothing in the CBA or RSA 189:14-a subjects the School Board’s substantive decision to non-renew Ms. Rogers to review by this Board. The CBA does not contain a “just cause” or similar standard that must be satisfied before the District can discontinue the employment of a probationary teacher like Ms. Rogers. Accordingly, the Board will not address whether there was a sufficient or adequate basis for Ms. Rogers’ non-renewal.

In accordance with the foregoing the Association’s unfair labor practice complaint is dismissed.

So ordered.

Date: AUGUST 10<sup>TH</sup>, 2010.

  
Doris M. Desautel, Alternate Chair

By unanimous vote. Alternate Chair Doris M. Desautel presiding with Board Member Carol Granfield and alternate Board Member Richard J. Laughton also voting.

Distribution:  
Jay Tolman, UniServ Director  
Barbara Loughman, Esq.