

NH Supreme Court declined appeal of this decision on November 9, 1990, NH Supreme Court Case No. 90-380.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD EDUCATION ASSOCIATION/NEA-NEW HAMPSHIRE

Complainant

v.

CONCORD SCHOOL DISTRICT

Respondent

CASE NO. T-0220:17

DECISION NO. 90-27

APPEARANCES

Representing Concord Education Association/NEA-NH:

Waldo B. Cumings, UniServ Director, NEA-NH

Representing Concord School District:

Edward M. Kaplan, Esq., Counsel

Also appearing:

- Larry White, Asst. Superintendent
- Laurie Gordon, C.E.A.
- Joyce Read, C.E.A.
- Julie Westgard, C.E.A.
- Lionel DeLacey, C.E.A.
- C. Jones, C.E.A.
- T. Croteau, NEA-NH
- Ted Comstock, N.H.S.B.A.

BACKGROUND

On June 2, 1989, Concord Education Association (Association) by its President Joyce Read filed improper practice charges against the Concord School District (District) alleging the District failed to negotiate in good faith by refusing to negotiate the implementation and procedures of a new evaluation model by which members of the bargaining unit will be evaluated and, further, by unilaterally adopting and implementing a new evaluation policy which effects terms and conditions of employment all in violation of RSA 273-A:5 (a), (e) and (g). The charge continues to detail the dates and actions of the parties with respect to the new teachers evaluation model.

The District by its counsel Edward M. Kaplan, Esq., responded to the charge summarized as follows:

1. The Concord School Board in 1986 established an evaluation committee to develop and recommend a new teacher evaluation model. The Committee was made up of seven teachers and six administrators. The Committee's recommendations were finalized during the 88-89 school year.
2. In February 89 the Union demanded to bargain the procedures to be used in the evaluation of the Concord staff.
3. The District declined to negotiate with the Association and circulated in April 89 the model approved by the evaluation committee and scheduled an informational meeting concerning the model.
4. The District agrees that the model approved by the Committee will effect management decisions concerning the continued employment of teachers, but further deny that the procedures and conditions under which evaluations will take place are mandatory subjects of bargaining under 273-A.
5. The new evaluation model is being used for the 89-90 school year.
6. The Association waived any right to bargain the issue by acquiescing to the action of the evaluation committee and further the Association delegated its authority to bargain over the implementation of the new model to its members on the evaluation committee and is bound by the results of the committees work and further the action by the District are within managerial discretion and not a subject of bargaining.

The relief requested by the Association is a finding of improper practice under 273-A and an order by PELRB that the evaluation procedures and implementation thereof is a proper subject for negotiations. Further Association requests the District be ordered to negotiate the issue as it involves the terms and conditions of employment.

The issue before this Board is simple and straightforward, "Does the evaluation procedure of teachers constitute terms and conditions of employment and if so is it a subject for negotiations between the parties?"

Hearing on this matter was held on August 15, 1989, at the PELRB office in Concord, New Hampshire, all parties represented.

Witnesses for the Association testified as to the evaluation committee's formation in 1986 and the final report completed in May, '89, the intent of the contract language, the various requests made to the superintendent to negotiate the issue, the fact that some teacher members of the evaluation committee did not support its conclusion, the establishment of goals for teachers which would be considered in the evaluation, the involvement of a Factfinder's discussion of the issue before us, its potential use in discharge of a teacher and frequency of evaluations. Various views of the current contract language was offered by Association officers, negotiators and teachers.

The evaluation subject had been discussed at the table and Exhibit Association H-6 indicated a desire of the parties to wait for the report of the evaluation committee.

PELRB Decision #85-86 offered in Exhibit Association H-3 was presented wherein PELRB found that parties must negotiate any impact of new policies which may effect terms and conditions of employment, Association Exhibit H-2, PELRB Decision #84-75 wherein PELRB found, "the conditions under which the evaluation takes place and the rights of the teacher(s) is, and as rightly been, a proper subject for negotiation since this process clearly effects the 'terms and conditions of employment,' as specified by 273-A and PELRB. The evaluation policy and conduct of the evaluation(s) are clearly rights which are contained to the phrase, 'Managerial policy within the exclusive prerogative of the public employer' but the impact of the policy and specifically the procedure, are also clearly a mandatory subject of negotiation."

FINDINGS OF FACT

Upon examining all the written testimony, exhibits and oral arguments of the parties, the following findings are made and are hereby substituted for the parties requests for findings;

1. The existing contract between the parties expires August 31, 1990.
2. Paragraph B, page 20 of the contract deals with evaluations as follows: "The parties agree teachers shall be evaluated in a fair, open and effective manner. Any model for evaluation adopted by the School District shall decide when evaluations will occur. Notification of any teacher deficiencies in a timely manner with assistance provided to the teacher so that improvement can be made without undue delay or detriment to the teachers and the students. This contract language is silent on any method of adopting of an evaluation model.
3. The fact that the special evaluation committee, charged with proposing an evaluation plan model, composed of teachers and administrative person does not in any way abrogate the right of approval or disapproval of the plan. No evidence was offered that would indicate that the intent of the evaluation committee intended other than exploration of the issue and a responsibility to come up with a recommended plan.
4. The issue of negotiations that evaluation plan and procedure had been discussed by the parties on several negotiating sessions without resolution.
5. The District erroneously concludes that by virtue of teachers participation in the evaluation committee efforts waived the Association's right to negotiate the issue. Evidence presented at the hearing did not support that conclusion. There was no evidence that the Association delegated its authority to bargain the issue for its membership.

6. No evidence was offered that the intent of the evaluation committee in any way was to substitute its actions, by implications or otherwise, for authority to bargain for the union.
7. No evidence was presented to dispute the fact that the School Board has the right to create an evaluation committee and recommend policies and procedures which fall within the managerial rights of the School Board.
8. The School Board did in fact adopt and implement the evaluation procedure unilaterally without conferring with the bargaining unit representative.

DECISION AND ORDER

PELRB finds that the School Board acted improperly in implementing an evaluation policy that could impact terms and conditions of employment and therefore did commit an unfair labor practice under 273-A:5. The School Board is hereby ORDERED to negotiate with the bargaining unit the revised teacher evaluation model proposed by the special committee and its implementation.

Signed this 11th day of April, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding. Members Daniel Toomey and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.