

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
BROOKFIELD BOARD OF EDUCATION

DECISION NO. 4031

-and-

MARCH 16, 2005

BROOKFIELD EDUCATION ASSOCIATION

Case No. TPP-22,848

A P P E A R A N C E S:

Attorney Robert J. Murphy
For the Board of Education

Attorney Ronald Cordilico
For the Association

DECISION AND ORDER

On November 16, 2001, the Brookfield Education Association (the Association) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Brookfield Board of Education (Employer or Board of Education) violated the School Board Teachers Negotiation Act (TNA or the Act) by retaliating against a bargaining unit employee for exercising his protected rights. Specifically, the Association alleges that the Board of Education violated the Act when a Principal admonished an Association member for comments made during an Association meeting.

After the requisite preliminary steps had been taken, the parties came before the Labor Board for a hearing on June 23, 2003. Both parties were represented, and were allowed to present evidence, examine and cross-examine witnesses, and make argument. The parties submitted post-hearing briefs, the last of which was received on October 22, 2003.

On the basis of the entire record before us, we make the following findings of fact and conclusions of law, and we issue the following order.

FINDINGS OF FACT

1. The Board of Education is an employer within the meaning of the Act.
2. The Association is an employee organization within the meaning of the Act and all material times has represented a bargaining unit including teachers employed by the Board of Education at its high school.
3. Charles Herrick (Herrick) is a physical education teacher at Brookfield High School. He is a member in good standing of the Association.
4. Herrick has served on the Association negotiating committee and has twice served a two-year term as vice-president of the Association. Currently he is a member of the Professional Rights, Responsibilities and Ethics Committee (PRR& E).
5. The PRR&E is comprised of eight members of the Association (two from each school in the district) and is responsible for filing grievances and meeting with the school Principals to resolve working condition issues at the building level before the issues reach the district level. The committee meets once a month with the Superintendent to resolve issues that were not resolved at the building level.
6. The Association also has building representatives who bring information to meetings from each of the buildings and distribute information from the various Association committees to the membership.
7. On October 18, 2001 a building representative meeting was held and attended by Herrick, another PRR&E member, two building representatives, Association President Sam Burd and several teachers. The purpose of the meeting was to distribute information and discuss topics of concern to members. One of the topics discussed was the schedule of high school seniors who are allowed to arrive to school late or leave early if they have first or eighth period free. Some teachers view the schedule as contributing to over-crowded classes.
8. The issue of first and eighth period off has been an ongoing concern. Herrick and High School Principal Dr. Bernard Nabel (Nabel) engaged in at least three discussions regarding this issue prior to October 19, 2001.
9. On October 19, 2001 Nabel came to the teacher's room between 6:30 a.m. and 6:45 a.m. and in a stern voice told Herrick that he needed to see him in his office right away.
10. Some of the other teachers in the room at the time noticed the interaction and at least one asked Herrick "what did you do now?" as he was leaving the teacher's room.
11. When Herrick got to Nabel's office, Nabel sternly told Herrick to the effect, that he was annoyed or concerned with Herrick and that he understood that Herrick "attacked" guidance counselor Jean Baker during the October 18th meeting.

12. Herrick denied attacking anyone in the guidance department and asked Nabel where he heard that information. Nabel would not tell Herrick where he heard the information other than to say he did not hear it from Jean Baker.
13. The meeting lasted less than fifteen minutes.
14. Herrick was concerned about the lack of privacy in Association meetings after his conversation with Nabel and was upset that Nabel had accused him of doing something that he had not done. Herrick immediately expressed his concerns to the Association President.
15. Nabel has been the principal at Brookfield High School since the beginning of the 99/00 school year.
16. Since Nabel became the principal, he has had an open door policy and it has been his practice to address the staff directly regarding issues. Nabel's demeanor is usually friendly, outgoing, and joking.
17. Herrick and Nabel had a good relationship prior to October 18, 2001 and since the filing of this prohibited practice complaint.
18. The conversation between Nabel and the faculty member who informed him about the October 18, 2001 Association meeting lasted about one half (1/2) minute. The faculty member came to Nabel's office and made the statement. Nabel has not requested from faculty information about Association meetings. Nabel did not tell the faculty member not to discuss Association business with him.

CONCLUSIONS OF LAW

1. Section 10-153e(b)(1) of the Act prohibits an employer from interfering, restraining or coercing employees in the exercise of their protected collective bargaining rights.
2. The School Board violated the Act when the Principal questioned and admonished an Association official regarding statements made during an Association meeting.

DISCUSSION

The Association alleges that the School Board violated the Act when Nabel admonished Herrick for comments Herrick allegedly made during an Association meeting. The Board of Education argues that Nabel did not admonish Herrick and because Nabel's actions were not designed to gather information on Association activities or interfere with employees' rights, his actions are not a violation of the Act. We find that the Act was violated for the following reasons.

Section 10-153e(b)(1) of the TNA prohibits an employer or its agent from interfering, restraining or coercing employees in the exercise of their protected rights. There are no Labor Board cases directly on point with the facts of this case. In this regard, while it is undisputed that Nagel singled out Herrick and sternly addressed him regarding the events of the October 18, 2001 Association meeting, there is also no question that Herrick was not disciplined or in any manner discriminated against as a result of his Association activities. Thus, our case law concerning discrimination does not assist us here. Rather, this is a case in which we must determine if the sole act of the employer in sternly addressing an Association official about his comments during an Association meeting violates the Act.

Under the circumstances of this case, we find a violation. In this regard, we cannot condone or excuse as an isolated incident any action which involves an employer singling out an Association activist in front of his colleagues and then sternly addressing him concerning the events of an Association meeting. Participation in the Association meeting was clearly protected conduct and an employer is simply not allowed to use a position of authority to address employees about such activity in a manner that indicates the employer is unhappy or “concerned” about that activity. Any time a representative of the employer takes the action taken in this case, it has the potential to chill the employees’ willingness to exercise their protected rights and constitutes, at the very least, interference with those rights.

We recognize the testimony and evidence indicating that Nabel had never before displayed any union animus nor ever been accused of any anti-union bias. Certainly there is no evidence of past discrimination or of any further retaliation against Herrick concerning the incident. It is tempting to forgive this “offense” on those grounds. However, we must remember that in another situation, the very same actions could be far more intimidating and have far worse consequences for the employees. As such, we will not overlook this event and will issue an appropriate cease and desist order. The circumstances of this case do not warrant ordering fees and costs to the Association.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the School Board Teacher Negotiation Act, it is hereby **ORDERED** that the Brookfield Board of Education:

- I. Cease and desist from interfering, restraining or coercing employees in the exercise of their protected collective bargaining rights.
- II. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.

- III. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Brookfield Board of Education to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Wendella A. Battey
Wendella A. Battey
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 16th day of March, 2005 to the following:

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