STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of	
TRUMBULL BOARD OF EDUCATION	Case No. TPP-3963
- and -	Decision No. 1635
TRUMBULL EDUCATION ASSOCIATION	April 5, 1978

APPEARANCES:

Cummings & Lockwood
By: Donald Houston, Esq.,
for Trumbull Board of Education

Ronald Cordilico, Esq.,
for Trumbull Education Association

DECISION
and
DISMISSAL OF COMPLAINT

On March 11, 1977, Trumbull Education Association (Association) filed with the Connecticut State Board of Labor Relations (Board) a complaint alleging that the Trumbull Board of Education (Respondent) had engaged and was engaging in practices prohibited by the Act concerning School Board-Teacher Negotiations (Act) in that:

"1. The complainant Trumbull Education Association is the legally recognized bargaining representative of all certified professional employees of the respondent Trumbull Board of Education.

2. On March 3, 1977, Ms. Linda Potz, a member of the bargaining unit, requested Dr. Yetman, Superintendent of Schools, to permit a union representative to accompany her to a meeting with Dr. Yetman at which Ms. Potz intended to appeal an evaluation of her teaching performance.

3. Dr. Yetman denied Ms. Potz's request.

4. The meeting between Dr. Yetman and Ms. Potz took place as scheduled.

5. The Board of Education, acting through its agent Dr. Yetman, has thereby interfered with, restrained and coerced Ms. Potz in the exercise of the rights guaranteed her by Sections 10-151(a) through (g) of the Connecticut General Statutes. Said action, therefore, constitutes a prohibited practice.

The complainant Association, therefore, seeks a comprehensive statutory remedy."

After the requisite preliminary steps had been duly taken, the matter came before the Board for hearing on December 15, 1977, at which the parties appeared and were fully heard. Both parties filed written briefs which were received by the Board on March 6 and 8, 1978.

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

Findings of Fact

1. Trumbull Board of Education is an employing board of education subject to an Act Concerning School Board-Teacher Negotiations.

2. Trumbull Education Association is an organization for professional or economic improvement within the meaning of said Act and has at all material times been the exclusive representative of a unit of Respondent's certified professional employees (teachers) with exclusions not here material.

3. The parties had a collective bargaining agreement in effect from September 1, 1974, to and including June 30, 1977 (Contract) which contained among others the following provisions:

"ARTICLE IV - GRIEVANCE PROCEDURE

SECTION 1. A grievance is hereby defined as any written complaint by a teacher, a group of teachers or the Association alleging that a provision of this Agreement has been misapplied or violated or indicating a dissatisfaction with conditions of employment.

XXX

Level 1. ... the principal or the immediate supervisor to whom the grievance is submitted shall discuss the grievance with the grievant and a representative of the Association...

/Similar language is found under Level 2, 3, and 4/

XXX

SECTION 4. Procedural Provisions

a. The grievant may be accompanied by his Association representative at Level 1, 2, 3 and 4 and by his legal counsel at Level 3 and 4.

XXX

ARTICLE XIV - MISCELLANEOUS

SECTION 1. Teachers shall be given a copy of their personal evaluation reports prepared by their supervisors and/or principals and shall have the right to discuss such reports with their supervisors and/or principals. A teacher may appeal an adverse evaluation report as follows:

XXX

c. Teachers assigned to pupil personnel services may appeal to the Superintendent."

Linda Potz was employed by Respondent as a guidance counselor for the school year 1975-76 and 1976-77. She was a member of the bargaining unit represented by T.E.A.

5. On or about January 5, 1977, Potz was given a written evaluation of her performance made by Mr. Kovachi, director of guidance, which was on the whole very favorable. The only part that even implies any adverse criticism is as follows:

"COAL - To develop an effective contact with staff and administration of both schools.

ACHIEVEMENT - Staff relations being an area of expressed concern, Linda made this a high priority item. She has sought and received the help of Mr. DiDonato and Mr. McCarthy, along with my assistance.

Linda has made a concentrated effort to interact effectively with the staff, administration and other members of her department. An example of this, was when she volunteered to cook the faculty Christmas breakfast at Hillcrest. She, (as a new staff member at Hillcrest), has reached out to the faculty. Therefore, this situation has been primarily a problem at Madison.

I feel there has been considerable progress made in this area and that Linda should continue to give this goal a high priority. The direction should be, to continue to understand why some individuals react as they do, thus, preventing similar reactions from occurring. Obviously, she can not assume responsibility for everyone else's behavior, but by anticipating a possible undesired reaction, take the necessary steps to create better communication and cooperation.

Linda and I will generate additional recommendations to ho developed as goals for next year."

6. On February 16, 1977, C. Duncan Yetman, interim superintendent of schools, wrote to Potz advising her that her contract would not be renewed for the 1977-78 school year.

7. Potz requested reasons for her non-renewal and Yetman wrote her on February 23, 1977, advising her that Respondent "did not renew /hër/ contract of employment because /it/ is not satisfied with /her/ performance including /her/ lack of professional judgment in various matters under /her/ control."

8. On February 26, 1977, Potz wrote Yetman the following letter:

"I wish to exercise my rights under Article XIV, Miscellaneous, Section 1. c. of the contractual agreement between the Trumbull Education Association and the Trumbull Board of Education and schedule a conference with you to appeal the svaluation report which I received n January 6, 1977 from Mr. Kovachi, Director of Guidance.

In view of the fact that I have reasonable grounds to fear that the conference might result in my discipline or discharge, I wish to exercise my right to have a union representative accompany me."

9. On March 3, 1977, the review requested by Potz was scheduled. Potz appeared for the review with Richard Morrisey, president of T.E.A., and askod Yetman to allow Morrisey to accompany her at the interview.

10. Yetman replied that the Contract gave her no right to be represented and it was not Respondent's policy to allow representatives at such a review; that Potz would not be allowed to have one.

11. At this time Kovachi was with Yetman. Potz remonstrated about the refusal to let Morrisey accompany her and added that if she could not have a representative, she would like Kovachi to leave as well. Yetman agreed and both Morrisey and Kovachi left. Yetman at no time insisted on having the interview or on its continuance. It lasted three hours during all of which time Potz was free to terminate it.

12. When Potz and Yetman were alone she stated that she would like to sit down and discuss the whole situation with him, and he agreed (Tr. 59). She then discussed the evaluation and initiated discussion of the non-renewal. In this discussion Potz addressed herself to several incidents which were not mentioned in the evaluation and gave her version or explanation of these incidents.

13. Most of the information given by Potz at this interview had already been shared with Yetman before by members of the staff. After the interview Yetman had further conferences with Mr. McCarthy, Potz' principal, and Mrs. Blumin, director of pupil services. Yetman did not make any further use of the information supplied by Potz at the March 3 meeting.

14. On March 8, 1977, Potz wrote Yetman asking for further particulars of the reasons for her non-renewal.

15. The assistant superintendent of personnel, the director of pupil services, and the principal of the junior high school prepared a letter responding in detail to this request which Yetman reviewed, approved, and signed on April 29, 1977. This letter stated that Respondent's dissatisfaction was related to eight enumerated instances or particulars which were recited in some detail. These included instances of repeated meetings with male school personnel in her office for extended periods of time during the school day; repeated use of the telephone for personal business in contravention of the principal's directions; the arrangement for a minor female student to receive birth control pills without the knowledge of the student's parents or the approval of the director of pupil services; the failure to refer a mentally disturbed student in accordance with the usual procedure; interference with the school nurse's attempts to treat students overdosed on drugs or alcohol; refusal to maintain student files in the school. Several of the incidents were brought up by Potz in the March 3rd interview with Yetman but they were not included in the letter of April 29th because of anything Potz revealed in the interview.

16. Potz requested Respondent to hold hearings to review her non-renewal. Five such hearings were held in June and July, 1977, at which several witnesses testified to most of the incidents recognized in the letter of April 29th. Yetman did not testify at these hearings and no use was made at them of information revealed by Potz at the interview of March 3rd.

17. Respondent after these hearings concurred in Yetman's recommendation of non-renewal. It is rare for a board of education to reverse a superintendent's recommendation in such a case but it does occur.

18. Potz has sought review by the Superior Court of Respondent's action in connection with her non-renewal and this suit is now pending in court.

19. Before the interview of March 3, 1377, Potz had reason to know and in fact believed that the reasons for her non-renewal were incidents not mentioned or apparently referred to in the evaluation.

Conclusions of Law

1. A teacher represented by a statutory bargaining agent has a statutory right to be accompanied by a representative of that agent upon a review of an unfavorable evaluation (pursuant to Article XIV of the Contract) when the employee reasonably believes that the evaluation jeopardizes her job security, subject to the conditions placed upon that right by NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

2. There was no basis for such reasonable belief in this case since the evaluation was favorable and the teacher had reason to know and in fact believed that the reasons for her non-renewal were incidents not mentioned or apparently referred to in the evaluation.

3. Any belief that the teacher's job was in jeopardy because of facts extraneous to the evaluation did not give her a right to representation upon the review of her evaluation at least until she disclosed to the superintendent her intent to broaden the interview to include discussion of these facts.

4. Where a teacher has a contractual or other right to an interview which sho seeks in order to protect her job security, her right to have a bargaining agent representative present at the interview does not depend on the employer's consent to such presence.

Discussion

I.

We agree with the award of Arbitrator Blum that the Contract gave Potz no right to be accompanied by an Association representative at the review of her evaluation provided by Article IV (c). The Contract expressly and clearly provides for such representation at all formal levels of the grievance procedure. Article IV Levels 1 through 4, and section 4. There is no corresponding provision in Article XIV. The contrast is too pointed to admit the implication of a similar right under the latter article. This does not, however, end the matter since there may be a statutory right which is independent of contract.

II.

The National Labor Relations Board holds that there is a statutory right to such representation in certain types of interviews under certain specified conditions. This line of decisions has been upheld by the United States Supreme Court. NLRB v. Weingarten, Inc., supra; ILGWU v. Quality Mfg. Co., 420 U.S. 276, 88 LRRM 2698 (1975). These cases dealt with interviews rouuested or demanded bv the employer. The Court held that where-such an interview may put his job security in jeopardy the employee has a right to union representation under section 7 of the national act which assures to employees the right to "mutual aid and protection." NLRB has put five conditions upon the right which are accurately set forth in the Association's brief:

> "1) The right is based on § 7, and denial of it is a violation of § 8(a) of the NLRA.
>
> 2) The employee must request representation.
>
> 3) The employee must reasonably believe the interview will result in disciplinary action.
>
> 4) The employer may refuse to permit the representation by either terminating the interview, or making it purely voluntary.
>
> 5) The employer has no duty to bargain with the representative."

The Supreme Court upheld the rule as NLRB had formulated it. We are persuaded that NLRB's rule is well adapted to serve the policies of our labor relations statutes (including the Act) and adopt it. The question then is how this rule applies to the present case.

It is conceded that Potz expressly requested representation. There is grave doubt, however, whether she had a reasonable belief that the interview she originally reauestcd would result in disciplinary action within the meaning of the rule as we interpret it. We put aside any question about the disciplinary nature of non-renewal. If "discipline" were to be defined too narrowly to include the present case then it is not the proper word. We do not think the rule is confined to cases of punishment for misbehavior but extends to all interviews that may reasonably be thought to put

the employee's job security in jeopardy,+

The jeopardy to Potz' job in the present case is too clear for argument; indeed jeopardy may be too weak a word for she had already been notified of her non-renewal, the ultimate adversity to any job security. Our difficulty stems, rather, from the apparent lack of connection between the evaluation, which we view as very favorable,** and the non-renewal. We hold that, on the record before us, Potz could not reasonably have thought there was such connection. Indeed, we do not believe she thought so in fact for she sought to broaden the scope of the interview early in its course to include incidents that had no apparent connection with the evaluation and that did in fact constitute the basis for her non-renewal. It may well bc that Potz intended from the very beginning to use the review of her favorable evaluation as a vehicle for appealing her non-renewal. If that was the case she did have reasonable basis for thinking that the interview (as thus expanded) would affect her job security. Rut Potz did not disclose this intent until after the interview had begun and after Yetman has denied the request for representation. If Potz had a right thus to extend the scope of the interview (a question we do not decide) and if she had renewed the request for representation at this point we think that would have brought the case within the spirit of NLRB's rule, but we are unwilling to apply that rule to a situation where neither the employee nor the employer has a reasonable basis for perceiving a connection between the interview and job security on the facts disclosed to the employer at the time representation is requested.

Respondent urges another reason for upholding its position. After Yetman denied representation Potz went ahead with the interview although Yetman did not insist on it. This contention invokes another condition placed on the rule. In Weingarten the Court approved NLRB's *condition* that the employer might refuse to permit the representation by either foregoing the interview or making it purely voluntary. Here, concededly, Potz continued to participate in the interview voluntarily so far as Yetman's conduct at the time was concerned. The Association urges, however, that Potz' conduct was not really voluntary since she was under pressure to save her job. The same thing is true to a greater or less extent in all these cases. We see a material difference, however, between a situation where the employer wants the interview primarily for his purposes and the situation here where the employee not only seeks the interview but has a contractual or other right to it. In such a case the employer has no right to forego the interview and the employee should not be compelled to choose between her right to the interview and her right to representation. We do not believe NLRB's fourth condition was intended to apply to such a case and we find that its application would be inconsistent with the policies of the Act. Whether the fourth condition should be applied to that part of the interview beyond the scope of the review of evaluation is a question we do not reach since the second condition was not met; Potz made no request for representation after she disclosed her wish to broaden the interview to include an appeal from her non-renewal.

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* NLRB has also stated the rule alternatively in just this way in a passage quoted by the Supreme Court. NLRB v. Weingarten, Inc., supra, at 257, 88 LRRM at 2691.

** The Association's brief characterizes the evaluation as "adverse." (p. 7). It could bear that construction only if it was customary to use "Aesopian language" in evaluations. If that is the case the Association failed to show it.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by An Act Concerning School Board-Teacher Negotiations, it is

ORDERED, that the complaint filed herein be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By _____
Fleming James, Jr., Chairman

_____
Kenneth A. Strodle

_____
Patricia V. Low

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