



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Deborah A. Gist
Commissioner

March 5, 2013

Jon Anderson, Esquire
EDWARDS WILDMAN PALMER, LLP
2800 Financial Plaza
Providence, Rhode Island 02903

RE: Foster-Glocester Regional School District/RI Model Education Evaluation System

Dear Attorney Anderson:

Please be advised that I am in receipt of your letter dated February 12, 2012, wherein you seek guidance relative to addressing NEA-Ponagansett's position that changes in educator evaluation be viewed as a term and condition of employment and therefore a subject to bargaining pursuant to RIGL 28-9.3-2. Belanger v. Matteson, 115 RI 332 (1975), directs that conditions of professional employment are generally mandatory subjects of collective bargaining. Additionally, RIGL 16-2-9(23)(b) on its face appears to subject most management authority to the collective bargaining process except when specific statutes or constitutional principles require otherwise, meaning that there are therefore limitations to the permissible scope of collective bargaining. Pawtucket School Committee v. Teachers' Alliance, 652 A.2d 970 (RI 1995). And in a Commissioner's decision, it was decided that the Regents' educational policy determinations could not be pre-empted or otherwise altered by the terms and conditions of a collective bargaining agreement. NEA v. Middletown School Committee, Commissioner's Decision (2000). Moreover, the Supreme Court has more recently held that ". . . school committees are not at liberty to bargain away their powers and responsibilities with respect to the essence of the educational mission." School Committee v. Federation of Teachers, 945 A.2d 339 (RI 2008).

As you are aware, several advisories and memos have been issued by RIDE since 2009 relative to the regulatory authority of the Basic Education Program regulation (BEP) and its application to the professional personnel policies and contractual provisions addressing human capital decisions. It is to be emphasized that excluding the management of human capital from the parameters of arbitrability as matters defined within the "essence of the educational mission" is a logical progression along a continuum starting with the Belanger decision and moving forward to the Supreme Court's recent alignments with the dissent of Justice Paolino in Belanger, a dissenting opinion that has been numerously cited by the Rhode Island Supreme Court. See e.g. State v. Rhode Island Alliance of Social Service Employees Local

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580, SEIU, 747 A.2d 465 (2000). Moreover, the educator evaluation process cannot be abstracted from school administrative decisions that have an impact on the identification of teachers who are in need of improvement, who are to remain, and who should be removed from the classroom. It is a progressive tool inseparable from these difficult decisions that are the sole prerogative of management.

The BEP is part of the body of Rhode Island's educational laws, and it requires that every school district teachers assign on the basis of their ability to meet the needs of students. Teaching effectiveness being the most important factor in improving student performance, all school districts must assure that this BEP mandate is being met, and such assurance can only be achieved by means of an effective human capital management system. The ability to comply with these legal requirements is dependent upon the evaluation of personnel performance, and it is the sole responsibility of LEA management to undertake this responsibility in accordance with evaluative measures that are consonant with the standards set forth in the BEP and more specifically developed for instructive purposes in the Rhode Island Model Education Evaluation System. In the end, achieving optimal learning and teaching requires strategic performance management. The six standards constituting the Educator Evaluation System Standards are essential to supporting school leadership in driving the human capital cycle toward accurately gauging the varying qualitative levels of educator performance.

The Supreme Court has held that the Certified Teachers' Arbitration Act cannot be construed in such a way that results in a school committee's bargaining away its responsibility for formulating educational policy. North Providence School Committee v. The North Providence Federation of Teachers, Local 920, American Federation of Teachers, 945 A.2d 339 (RI 2007). Given that the responsibility for determining the level of effectiveness of classroom teachers belongs solely to management, it therefore inexorably follows that, the selection of the appropriate tools for measuring effectiveness belongs to management as well.

Sincerely,



Deborah A. Gist
Commissioner of Education

DAG/crb

Cc: Michael Barnes