

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EPSOM TEACHERS ASSOCIATION, NEA-NH	*	
	*	
	*	
Petitioner	*	
	*	CASE NO. T-0410:5
and	*	
	*	DECISION NO. 2000-042
EPSOM SCHOOL BOARD	*	
	*	
Respondent	*	
	*	

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Epsom Teachers Association, NEA-NH, (Complainant) filed unfair labor practice charges on March 27,2000 pursuant to RSA 273-A: 5 I (e), (h), and (i) alleging that the Epsom School Board (Respondent) and its agents breached the Collective Bargaining Agreement (CBA) by failing and refusing to bargain in good faith by making a unilateral change in working conditions by mandating teachers be supervisors of pupils at an off-site twenty-four hour "environmental camp activity". Procedurally, the parties have been involved in the grievance process since November 1, 1999 when the Complainant grieved the Respondent's notice of October 29, 1999, alleging that participation by the teachers was now being made mandatory. The Complainant also alleges that the CBA provides submission to the PELRB as the final step in its grievance process.

The Epsom School Board first answers that the CBA provision regarding submission to the PELRB, as a final grievance step, is permissive and not mandatory. The Respondent thereafter generally denies the allegations of the Complainant and by way of a counterclaim alleges that the Complainant, itself, breached the CBA and has undertaken unilateral actions violative of RSA 273-A:5, II (d) and (g) by informing the Respondent that teachers will only participate in the camp duties on a volunteer basis and at a reduced level of participation from that undertaken in the past. Further, the Respondent School Board alleges that by stating that teachers will only participate on a voluntary basis, members have breached the terms of the CBA and that by advising said teachers to adopt such a position, the Complainant Association has violated RSA 273-A:5, II (d), (f), and (g). The scheduled camp dates are May 23-26, 2000.

The primary relief sought by the Complainant, following a hearing by the PELRB, is an order compelling the Epsom School Board to bargain the issue in good faith. The primary relief

requested by the Respondent through its counterclaim is an immediate preliminary hearing resulting in an immediate temporary order supporting the alleged *status quo* relative to the camp participation. Respondent also seeks the issuance of a cease and desist order against the Association mandating that it refrain from advising teachers not to participate in the camp activities, except on a voluntary basis.

PARTICIPATING REPRESENTATIVES

For the Complainant: W. B. Cumings

For the Respondent: Theodore E. Comstock, Esq.

STIPULATED FACTS

The parties have stipulated the following facts:

1. The Epsom Teachers Association is a certified bargaining unit and the Epsom School Board is a public employer within the meaning and application of RSA 273-A:1, X.
2. The parties operate under the terms of a Collective Bargaining Agreement (CBA) in effect from April 30, 1997 until June 30, 2000.
3. The CBA contains a grievance procedure on Page 14, Paragraph 16.33 that states that the dispute may be heard by the New Hampshire Public Employee Labor Relations Board.
4. The Collective Bargaining Agreement contains a negotiated schedule of co-curricula activities at Appendix D, and the list of activities includes an environmental camp entitled "Sargent Camp".
5. The activity was scheduled by the employer for May 23, 2000 through May 26, 2000.
6. The teachers did provide notice to the employer, through the Union by letter of October 22, 1999.
7. On November 1, 1999, the Union filed a grievance.
8. Various grievance level meetings were held pursuant to the negotiated grievance procedure, and a "level three" grievance meeting was held with the Epsom School Board on February 1, 2000. The Epsom School Board "denied" the subject grievance by letter of March 24, 2000.

ISSUES FOR DETERMINATION BY THE BOARD

1. Does the PELRB have jurisdiction to act as the "final step" in the Grievance Procedure under the terms of the CBA to hear this dispute?

2. Do the actions of the Respondent Board associated with the scheduling and conduct of the so-called "environmental camp activity" constitute a failure on the part of the Respondent to bargain in good faith with the Complainant in violation of RSA 273-A:5, I (e), (h) and (i)?
3. Do the actions of the Respondent Board associated with the scheduling and conduct of the so-called "environmental camp activity" constitute restraint, coercion and interference with the Association employees in violation of RSA 273-A:5 I (a)?
4. Do the actions of the Association regarding the terms and conditions of the nature and level of members' participation in the so-called "environmental camp activity" constitute a failure of the Association to bargain in good faith with the Respondent by virtue of making a unilateral change in violation of RSA 273-A:5, II (d) and (g)?
5. Does advice by the Association to the member teachers involved that they should not participate in the activity, except on a volunteer basis, constitute a breach of the parties' CBA and RSA 273-A:5, II. (d), (f), and (g) ?

WITNESSES

For the Complainant: Epsom Teachers Association, NEA-NH

1. Lisa Bauer, Bargaining Unit Representative
2. Cindy Damelio, Association President
3. Louise Wiley, Bargaining Unit Representative
4. Jay Tolman, Field Consultant to NEA-NH

For the Respondent: Epsom School Board

1. Thomas Haley, Superintendent
2. Keith Cota, School Board Chair

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Collective Bargaining Agreement
2. Grievance Record
3. History of Co-Curricula Assignments
4. Negotiation Record

5. Co-Curricula Agreement(s)

For the Respondent:

1. Collective Bargaining Agreement
2. Grievance Record
3. Negotiations Record
4. Job descriptions of co-curricula positions

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The representatives indicate that direct testimony of witnesses is estimated to be two (2) hours for the Complainant and one and one-half (1 ½) hours for the Respondent. The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than **(a day at least 5 days prior to the hearing day)**.


DECISION AND PRE-HEARING ORDER

The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than **(5 days prior to hearing)**. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

Any preliminary, procedural or dispositive motions shall be filed by the parties no later than June 15, 2000.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on June 22, 2000.

Signed this 17th day of May, 2000.


for Donald E. Mitchell, Esq.
Hearing Officer