



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Laconia Education Association/NEA-NH

Complainant

v.

Laconia School District, SAU #30

Respondent

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Case No. T-0239-22

Decision No. 2001-105

PRE-HEARING MEMORANDUM and ORDER

BACKGROUND

On August 20, 2001, the Laconia Education Association/NEA-NH, (hereinafter referred to as the "Association") filed an improper labor practice charge pursuant to RSA 273-A:5 I (a), (b), (c), (g) and (h), alleging that the Laconia School District SAU #30, (hereinafter referred to as the "District") acting through its Superintendent, transferred a middle school teacher with twenty-four years experience teaching at the Middle School facility to an elementary school as a disciplinary action because of the teacher's role as an Association official who represented grievants and for his role in addressing union concerns about the workplace. The Association further alleges that these actions were undertaken in violation of statutory prohibitions against certain prohibited employer practices as expressed in RSA 273-A:5 I (a), (b), (c), (g), and (h). These include prohibitions against coercing or otherwise interfering with employees in the exercise of rights conferred upon them under the statute, against interfering in the administration of the Association, against discrimination in the terms and conditions of employment for the purpose of discouraging membership in the Association. The complaint also alleges that the Superintendent's actions generally failed to comply with the Public Employee Labor Relations Act (RSA 273-A) and constituted a breach of the parties' collective bargaining agreement (hereinafter referred to as a "CBA").

The Association's complaint of August 20, 2001 did not include any specific requests for a remedy. At the Pre-Hearing Conference, the Association moved to amend its complaint to request relief from the PELRB in the form of full reinstatement of Robert Gunther to his previous position. The District had no objection to this amendment. The District filed a Motion for Deposition at the Pre-Hearing Conference to which the Association objected orally and was offered leave by the Hearing Officer to file a written objection. It accepted leave to do so under the conditions and timetable as appears below.

The Laconia School District responded by asserting the teacher transfer was made for reasons of efficiency in the operation of the District and because the teacher's qualifications and teaching abilities were required at the elementary school to which he was transferred. The District denies that the transfer was related to any union activity. Further, the District raises the issue of the grievance procedure within the parties' CBA that is available to the parties and which has been utilized by the parties in the instant matter. The Association filed a grievance and made a subsequent request for arbitration related to the transfer. A binding arbitration session is scheduled for December 11, 2001. For its part, the District requests that the PELRB, in the first instance, dismiss the Association's complaint and refer the parties to binding arbitration. In the alternative, the District requests that the PELRB hold the Association's complaint in abeyance until the completion of arbitration or if an evidentiary hearing is to be conducted, that upon completion of the hearing the PELRB deny the Association's claim of unfair labor practice against the District.

PARTICIPATING REPRESENTATIVES

For the Association: Steven R. Sacks, Esquire, Staff Attorney, NEA-NH

For the District: Paul T. Fitzgerald, Esquire

ISSUE FOR DETERMINATION BY THE BOARD

After discussion at the Pre-Hearing Conference, it was agreed by counsel that the following issues were relevant to the Board's consideration of this matter:

1. Did the Laconia School District commit an unfair labor practice in violation of RSA-A:5 I (a), (b), (c), (g) or (h) when its Superintendent transferred Robert Gunther from Memorial Middle School to the Pleasant Street School, an elementary school.

WITNESSES

For the Laconia Education Association (Petitioner):

1. Robert Gunther, teacher and member of LEA
1. Deborah Clarke-Tivey, President of LEA
2. Richard H. Coggon, Co-Grievance Chair, LEA
3. Jan Paddleford,* Uniserve Director, NEA-NH

For the District (Respondent):

1. Robert Champlin, Superintendent, Laconia School District
2. Kenneth Rishel, former Superintendent
3. Ms. Terry Forsten, former Principal, Pleasant Street School
4. Beth Arsenault, Chairperson of School Board
5. Timothy Rice,* Principal, Memorial Middle School
6. Christopher Ennis,* Vice-Principal, Memorial Middle School
7. James Chase,* Acting Principal, Pleasant Street School

* Prospective witness, may be deleted by date of submission of Final Witness List

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 Association:

1. Memoranda and documents from Mr. Gunther's personnel file (to be defined more specifically on the Final Exhibit List if to be used at hearing)
2. Any document used by either party in underlying proceedings

For the District:

1. Collective Bargaining Agreement
2. Attachment to LEA Grievance 2000-2001 #3
3. Demand for Arbitration notice, dated July 24, 2000.

4. Memoranda and documents contained in the Grievance Staff Development file (to be defined more specifically in Final Exhibit List if to be used at hearing)
5. Memoranda and documents contained in Mr. Gunther's personnel file (to be defined more specifically in Final Exhibit List if to be used at hearing)
6. Any document used by either party in underlying proceedings

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 time being set aside for this hearing is one 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 October 30, 2001.

DECISION

1. The parties shall continue to exchange documents that are intended to be used at the evidentiary hearing. Any party that believes that it has properly and seasonably requested the production of any relevant document from the other party which it believes that party is in possession of, or has control over, and has not been provided with that document shall immediately inform the PELRB, in writing, of the document(s) requested, the date of the request, the date of the refusal to respond or to failure to comply with the request by the other party, and the purpose for which the party seeks the document from the other.
2. The Association shall forward to the District's counsel a Statement of Association's Counsel representing an offer of proof as to the intended testimony of Robert Gunther in lieu of an amended petition or bill of particulars, so-called. This Statement is intended to apprise District Counsel of the content of the representations alleged to have been made by Robert Gunther to Superintendent Rishel upon which certain ascribed judgments were made by the latter that lead to the transfer of Mr. Gunther. The Statement is to be transmitted electronically or delivered by Association counsel to the District's counsel no later than 12:00 P.M. on Tuesday,

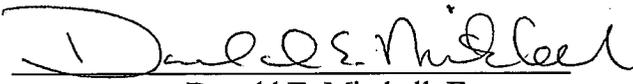
October 16, 2001. It is understood that this Statement shall be made in good faith, purport to be comprehensive, and that it is made in an effort to avoid the necessity of the PELRB making a determination on the pleadings as to the necessity of Mr. Gunther's deposition.

3. In tandem with the instructions contained in Paragraph 2, above, the District's counsel shall review said statement in good faith and applying a reasonable standard of scrutiny evaluate and consider acceptance of said Statement in lieu of its request for Mr. Gunther's deposition. Should the Statement be acceptable, the District's counsel shall notify the PELRB and opposing counsel immediately of the desire to withdraw the Motion for Deposition.
4. The Association's Objection to the District's Motion for Deposition shall be filed with the PELRB no later than 9:00 A.M. on Thursday, October 18, 2001.
5. No later than October 30, 2001 the Association shall file its Objection to the District's Motion to Dismiss the unfair labor practice complaint. The Association's counsel shall also, by that same date, forward written notification to the District's counsel as to whether or not the Association intends to prove that discipline was a motive or intention, in full or in part, behind Mr. Gunther's transfer.
6. Each party representative shall forward complete Witness and Exhibit lists to the opposing representative or counsel and to the PELRB no later than five days prior to the conduct of the evidentiary hearing. The party representatives shall also 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.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than October 20, 2001. Any objection to same shall be filed within ten (10) days thereafter.

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 **Tuesday, November 13, 2001 beginning at 9:30 A. M.**

So Ordered.

Signed this 12th day of October, 2001.


Donald E. Mitchell, Esq.
Hearing Officer