

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Amherst School District

Complainant

v.

Amherst Support Staff Association,
NEA-New Hampshire

Respondent

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Case No. M-0759-6

Decision No. 2003-101

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Amherst School District (hereinafter "the District") filed an unfair labor practice complaint on July 25, 2003 alleging that Amherst School Staff Association, NEA-NH (hereinafter "the Union") committed an unfair labor practice by (1) refusing to negotiate with the District and (2) demanding that the District proceed to fact finding. The District states that the Union's actions violate RSA 273-A:5, II (a), (d) and (f). The District cites as authority RSA 273-A:12, I, in its assertion that the Union has waived its right to compel the District to participate in fact-finding until the next fact-finding cycle arrives in late 2003. The District requests, among other things, that the PELRB find that the Union has committed an unfair labor practice, order the Union to cease and desist in its demand for fact-finding and that the PELRB award attorney's fees and costs to the District that it has incurred as a result of the filing of the instant charge.

The Union filed its response to the District's unfair labor practice complaint on August 11, 2003. The Union contends that it has negotiated in good faith with the District. It states that the parties have reached impasse. The Union denies that it has committed an unfair labor practice and asserts that the plain wording of RSA 273-A:12, I allows it to proceed to fact-finding at this time. The Union requests that the PELRB (1) dismiss the District's complaint and (2) order the District to participate in the fact-finding process.

PARTICIPATING REPRESENTATIVES

For the Complainant: Thomas J. Flygare, Esquire

For the Respondent: Philip G. Pratt, Uniserv Director, NEA/NH

ISSUE FOR DETERMINATION BY THE BOARD

1. Do the action(s) undertaken by the Union, including its declaration of impasse and notification to the District of its intent to initiate fact-finding, constitute a failure to negotiate in good faith in violation of RSA 273-A:5 II (a), (d) and/or (f)?

WITNESSES

For the Complainant,

1. James O'Mara, School Board Member/Bargaining Team Member
2. Michael Galan, Business Administrator, SAU 39
3. Thomas Flygaré, Management Representative

For the Respondent,

1. Philip Pratt, Union Representative
2. Lisa Heney, Member, Union Bargaining Team
3. Roberta Potter, Member, Union Bargaining Team
4. Millie Thibeault, Member, Union Bargaining Team
5. Mary Mortimer, Member, Union Bargaining Team
6. Judy DiMarco, Member, Union Bargaining Team
7. Kathleen Parkhurst, Member, Union Bargaining Team
8. Cindy Langly, Member, Union Bargaining Team
9. Kaylee Palardy, Member, Union Bargaining Team

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 with 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

Joint Exhibits:

1. Parties' collective bargaining agreement, 7/1/02 – 6/30/03.
2. Union and District Contract Proposals

For the District:

1. None other than those marked as "Joint."

For the Union:

1. None other than those marked as "Joint."

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

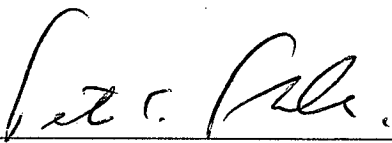
The time being set aside for this hearing is one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties shall meet, or otherwise confer, on or before October 10, 2003, in order to (a) explore settlement possibilities and (b) compose a mutual statement of agreed facts as may be stipulated.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion or other good cause shown, an evidentiary hearing between the parties will be held on **October 30, 2003 at 9:30 AM** at the offices of the Public Employee Labor Relations Board.

So ordered.

Signed this 23rd day of September, 2003



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Thomas J. Flygare, Esq.
Philip O. Pratt, Uniserve Director, NEA/NH