



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Keene School District

Complainant

v.

Keene Education Association
NEA-New Hampshire

Respondent

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Case No. T-0282-15

Decision No. 2003-107

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Keene School District (hereinafter "the District") filed an unfair labor practice complaint on August 11, 2003 alleging that the Keene Education Association, NEA-NH (hereinafter "the Union") committed an unfair labor practice by demanding arbitration of grievances pertaining to the performance evaluations of two non-tenured teachers and seeking, as relief, their reinstatement. More specifically, the District contends that the grievances are not arbitrable since, as it alleges, the parties' collective bargaining agreement is not susceptible of an interpretation that covers the dispute. Indeed, the District states that the Union's actions violate RSA 273-A:5, II (f) in that the Union has specifically agreed within the terms of parties' collective bargaining agreement ("CBA") that such matters would not be subject to the grievance procedure. In its complaint, the District requested immediate relief, pursuant to RSA 273-A:6 III, in the form of an interim cease and desist order against the Union preventing it from proceeding to arbitration. As further remedies, the District requests that the PELRB find, inter alia, that the grievances are not arbitrable under the parties' CBA and that the Union has committed an unfair labor practice. It also petitions the PELRB to 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 26, 2003. The Union denies the District's complaint that it has committed an unfair labor practice and asserts that it is seeking to enforce the contractual rights of both teachers by pursuing the instant grievances to arbitration. It maintains that the grievances present the question of whether the District complied with its procedural obligations under the performance evaluation provisions of the CBA and not the actual content of the performance evaluations

themselves. Given the very nature of the contractual violations at issue, the Union states, the reinstatement of both teachers to their former positions is the only practical remedy. The Union requests, *inter alia*, that the PELRB find that the grievances filed are arbitrable and that it deny the District's requests for immediate injunctive relief and reimbursement of legal costs.

PARTICIPATING REPRESENTATIVES

For the Complainant: John Wrigley, Esquire

For the Respondent: Steve Sacks, Esquire, Staff Attorney, NEA-NH

ISSUES FOR DETERMINATION BY THE BOARD

1. Is the District entitled to an interim relief pursuant to RSA 273-A:6 III?
2. Does the Union's demand that the subject grievances proceed to arbitration constitute an unfair labor practice in violation of RSA 273-A:5 II (f)?

WITNESSES

For the Complainant:

1. Patricia Trow Parent, School District Personnel Manager
2. Phillip G. McCormack, Superintendent of Schools

For the Respondent:

1. Mary Gaul, UniServ Director, NEA/NH
2. Brenda Dunn, Pres., Keene Education Association

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 – 6/30/06.
2. Grievance filed on behalf of Patenaude.
3. Grievance filed on behalf of Shalit.
4. Arbitration filing at AAA for Patenaude Grievance.
5. Arbitration filing at AAA for Shalit Grievance.
6. Evaluation Manual, section entitled "Introduction and History."

7. Evaluation Manual, section entitled "Appeal and Grievance Procedure."
8. Principal's letter regarding Patenaude grievance.
9. Principal's letter regarding Shalit grievance.
10. Individual Teaching contract for Patenaude.
11. Individual Teaching contract for Shalit.

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 four (4) hours. 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' representatives shall meet, or otherwise confer, on or before **October 9, 2003**, in order to compose a mutual statement of agreed facts and to further explore whether they may be able to stipulate to sufficient facts in order to submit the case either by legal memorandum or cross-motions for summary judgment.
2. In the event the parties agree to all relevant facts and so stipulate, then the parties shall both execute the "Stipulation of Facts" and file said document with the PELRB within five (5) days of such execution. Thereafter, the parties shall submit their respective supporting Memorandum of Law to the PELRB no later than **October 31, 2003**. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination on the merits.
3. In the event that the parties cannot agree as to all relevant facts, then they shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.

4. If there is to be an evidentiary hearing, 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 date. 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.
5. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on **November 13, 2003 at 9:30 AM** at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this day 29th of September, 2003.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
John Wrigley, Esquire
Steve Sacks, Esquire, Staff Attorney, NEA-NH