

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

| | | |
|--|---|-----------------------|
| Farmington Teachers Association/NEA-NH | * | |
| | * | |
| Complainant | * | |
| | * | Case No: T-0391-6 |
| v. | * | |
| | * | Decision No. 2003-125 |
| Farmington School District | * | |
| | * | |
| Respondent | * | |
| | * | |

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Farmington Education Association, NEA-NH (hereinafter "the Union") filed an unfair labor practice complaint on March 25, 2003 alleging that the Farmington School District (hereinafter "the District") committed an unfair labor practice in its refusal to apply certain forthcoming federal grant funds towards enhancing the contractual health insurance benefits of bargaining unit members. More specifically, the Union claims that the District violated RSA 273-A:5 I (a), (g), (h) and/or (i), and Article IX of the parties' collective bargaining agreement ("CBA"), by falsely certifying to the Union that monies received by the District under the federal "No Child Left Behind" law may not legally be utilized for the purpose of raising health insurance benefits. Article IX, Section 9.1 of the parties' CBA provides, in relevant part, that "[a]ny federal funds received from the President's 'No Child Left Behind Bill' by the [District] which can be legally applied to this area shall be used to raise the health benefit...."

The District filed its answer denying the Union's charge on April 2, 2003. While acknowledging that the "No Child Left Behind" Act increased the amount of grant funds to be received by the District for the 2002-03 fiscal year, the District states that the law requires such funds to be targeted for particular employees or categories of employees and for particular purposes, not for an "across the board" increase in health insurance benefits for all members of the bargaining unit. Since Section 9.1 of the parties' CBA only requires the utilization of the "No Child Left Behind" funds if they can "legally" be used for such purpose, the District asserts that it has committed no violation of the law. Accordingly, it requests that the Union's unfair labor practice charge be dismissed.

PARTICIPATING REPRESENTATIVES

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

For the Respondent: Michael S. Elwell , Esquire

ISSUE FOR DETERMINATION BY THE BOARD

Whether or not the District's refusal to use "No Child Left Behind" grant funds in order to raise health insurance benefits under the parties' CBA constitutes an unfair labor practice in violation of RSA 273-A:5 I (a), (g), (h) or (i)?

WITNESSES

For the Complainant:

1. Barbara Post, President, Farmington Education Association
2. James Taylor, Chief Negotiator, Farmington Education Association

For the Respondent:

1. Brian Blake, Superintendent of Schools, Farmington School District
2. Deborah Briggs, Business Administrator, Farmington School District
3. Steve Yurick, Chair, Farmington School Board
4. Todd Lefave, Member, Farmington School Board
5. Virginia Phinney, Farmington School District
6. Dorothy Oliver, Administrator, NH Dept. of Education

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, 2002-03.
2. Federal Statutes and regulations

For the District:

1. Health insurance rate and cost data.
2. U.S. Dept. of Education correspondence
3. Grant data for 2001-02 and 2002-03

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 half 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

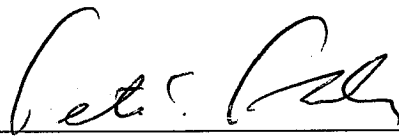
1. The parties stipulate that the PELRB has subject matter jurisdiction over the instant matter. However, during discussions with the hearings officer, it was also acknowledged that the legality of using "No Child Left Behind" grant funds for the purpose of enhancing contractual health insurance benefits is an issue that falls within the jurisdiction and review of the New Hampshire Department of Education.
2. The District indicated its intent to first seek a formal ruling from the New Hampshire Department of Education prior to conducting any further PELRB proceedings. The Union requested a period of time to evaluate how it wished to proceed.
3. Accordingly, if the parties are able to reach agreement on placing the instant matter into abeyance pending a ruling by the New Hampshire Department of Education, they shall file a joint motion with the PELRB, on or before October 31, 2003, requesting an abeyance period, including specific grounds in support thereof, and indicating regular intervals of notification by the parties (i.e., every 30 or 60 days) to the PELRB regarding the status of the case.
4. If the parties are unable to reach agreement on how to proceed, the District shall file its motion with the PELRB requesting that the instant case be placed into abeyance, including its specific arguments in support thereof, on or before November 7, 2003. The Union's objections, if any, to the District's motion, shall be filed with the PELRB on or before November 14, 2003.
5. In the event that this matter is set forward for a hearing before the PELRB, the parties' representatives shall meet, or otherwise confer, on or before thirty (30) days prior to the scheduled hearing date, 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 by legal memorandum.

6. 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 within thirty (30) days. 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 its decision.
7. 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.
8. 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.
9. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

So ordered.

Signed this 24th day of October, 2003.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Steve Sacks, Esquire, Staff Attorney, NEA-NH
Michael S. Elwell, Esq.