



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Fall Mountain Regional Educational Support
Personnel Association/NEA-NH

Complainant

v.

Fall Mountain Regional School District

Respondent

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Case No: T-0380-7

Decision No. 2004-099

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Fall Mountain Regional Educational Support Personnel Association, NEA-NH (hereinafter "the Association") filed an unfair labor practice complaint on May 7, 2004 alleging that the Fall Mountain Regional School District (hereinafter "the District")¹ committed an unfair labor practice by unilaterally reducing the number of work hours for certain bargaining unit employees and by otherwise not maintaining the *status quo* for certain benefits. More specifically, the Association relates that the parties' collective bargaining agreement ("CBA") expired on June 30, 2003 and that bargaining unit employees have since been working under its terms pending the settlement of a new contract. The Association states that the voters rejected a fact-finder's recommendations in March 2004. At that time, according to the Association, the voters did adopt a budget that resulted in the reduction of the number of hours to be worked by a large percentage of employees in the bargaining unit, including "aides" and "paraprofessionals," from thirty (30) or more hours per week to twenty-seven (27). Because of this reduction in work hours, the Association states that many of these employees have lost access to negotiated benefits. The Association contends that the District was required to maintain the *status quo* as to terms and conditions of employment during the period of the parties' contract impasse, including employees' hours of work and access to benefits. When the District unilaterally took this action,

¹ The instant improper practice charge filed by the Association named the "Fall Mountain Regional School Board" as the respondent public employer. The appropriate name of the respondent for purposes of this case was identified as the "Fall Mountain Regional School District" during the course of the pre-hearing conference. (See also PELRB Decision No. 2003-129).

the Association alleges that it violated not only the *status quo* doctrine but also RSA 273-A:5 I (a), (c), (e), (g), (h) and (i). As authority, the Association cites the case of *Appeal of White Mountains School Board*, 125 N.H. 790 (1984).

The Association also contends that the District has violated the parties' CBA by failing to provide increases in vacation time based on years of service, by failing to make longevity payments, and by informing several employees that it will not pay the contractually mandated local retirement stipend. Accordingly, the Association asks, *inter alia*, that the PELRB order the District (1) to cease in its commission of unfair labor practices, (2) to restore the hours of work that it unilaterally reduced, (3) to provide employees with the appropriate level of vacation, retirement and longevity benefits per the CBA, and (4) to make employees whole for any losses suffered.

The District filed its answer denying the Association's unfair labor practice charge on June 3, 2004. While the District admits that the voters rejected the fact-finders recommendations on March 9, 2004 and that on the same date a separate warrant article was adopted by the voters setting a new budget amount, it denies that this new budget unilaterally reduced hours of work for bargaining unit employees. The District submits that some employees were offered the opportunity to work for the District during the 2004-2005 academic year at hours that are different than those that they worked in the 2003-2004 academic year, and that as a result of reduced hours some employees who previously had access to certain benefits lost such access. The District denies that its actions in this regard violated any provision of RSA 273-A and/or any obligation to maintain status quo. The District notes that in accordance with Article XVIII of the CBA, "[h]ours of work are to be determined by the Board to meet the needs of the District." It asserts that it has applied the principle of *status quo* since June 30, 2003 and denies that said principle requires increases in vacation time or longevity.² The District therefore requests that the Association's unfair labor practice be dismissed.

Whereas a Notice of Pre-Hearing Conference was duly issued by the PELRB, and no correspondence was subsequently received from the Association requesting a continuance, the matter proceeded as scheduled at PELRB offices on June 30, 2004. Only the representative for the District was in attendance.³

PARTICIPATING REPRESENTATIVES

For the Association: None

For the District: Edward M. Kaplan, Esq.

² At the pre-hearing conference, the District's representative supplemented his answer by indicating that the District has also properly applied the *status quo* principle to the retirement stipend referenced in the Association's complaint.

³ At the time of the pre-hearing, an agent of the PELRB attempted to contact representative(s) of the Association at their office in order to inquire as to the reason for their absence. The agent was informed that the representatives were away from the office and were otherwise unavailable.

ISSUES FOR DETERMINATION BY THE BOARD

Did the District violate the *status quo* doctrine and otherwise commit an unfair labor practice within the meaning of RSA 273-A:5 I (a), (c), (e), (g), (h) and/or (i) by unilaterally reducing hours of work, failing to provide increases in vacation time based on years of service, failing to make longevity payments, and/or informing employees that it will not pay the contractually mandated local retirement stipend?

If so, what shall be the remedy?

WITNESSES

For the Association:

None submitted.

For the District:

1. Stephen Varone, Business Administrator
2. Joseph Della-Badia, Superintendent
3. Representative of Fall Mt. Regional School Board
4. Representative of Fall Mt. Regional District Budget Committee

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(s).
2. Contract(s) issued to individual employees.
3. Warrant articles.
4. Budget documents.
5. Vote tallies.

For the Association:

None submitted.

For the District:

1. Budget Committee documents.

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 (1/2) 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' representatives shall meet, or otherwise confer, on or before **August 6, 2004** in order to compose a mutual statement of agreed facts. The parties representatives shall memorialize those facts upon which they can so stipulate and file said document with the PELRB at least five (5) days prior to the date of the hearing.
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 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.
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 for other good cause shown, an evidentiary hearing between the parties will be held on:

August 17, 2004 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 1st day of July, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

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