



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Monadnock Education Association,  
NEA-New Hampshire

Complainant

v.

Monadnock Regional School District

Respondent

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Case No. T-0287-7

Decision No. 2004-122

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Monadnock Education Association, NEA-NH (hereinafter "the Association") filed an improper practice charge on May 27, 2004 alleging that the Monadnock Regional School District (hereinafter "the District") violated RSA 273-A:5, I (a), (e), (h) and (i) as a result of its actions relating to the altering of the contents of a leave request form. The Association states that it negotiated specific changes to the Leave Request Form with the District when it negotiated the collective bargaining agreement (CBA) currently in effect, specifically for the period 2003-2006. The Leave Request Form is referenced in Article 11, Section 12 of the CBA and is attached thereto as Appendix F-1. As asserted by the Association, the newly negotiated form no longer includes personal leave as a separate option, and that, in accordance with Article 11, Section 12, formal approval of personal leave is not required, only notice by the employee. The Association alleges that the District unilaterally substituted another form that lists personal leave as an option and includes it as a category for which formal approval is necessary, and that the School Board, following a hearing on the matter held on March 2, 2004, accepted use of this new form. As remedies, the Association requests that the PELRB order that the unilaterally changed leave form be rescinded, that the duly bargained for leave form be restored, that the District make employees whole for any and all losses suffered, and that the PELRB order any other remedy that is fair and lawful under the circumstances.

The District filed its Answer and Motion to Dismiss on June 9, 2004, wherein it denied all of the Association's charges and requested that they be dismissed. First of all, the District states that the Association filed a grievance in this matter pursuant to the provisions of the

parties' CBA and pursued it through Level C, specifically a hearing before the School Board. Noting that the Association elected not to request arbitration of the matter, the District contends that the Association has failed to exhaust its administrative remedies before proceeding to the PELRB and thus requests that that the instant complaint must be dismissed on such basis. Secondly, the District claims that the instant matter is untimely, in that the Association filed its unfair labor practice complaint well beyond the six (6) month statute of limitations set forth in RSA 273-A:6 and Pub. 201.02(a). It states that since the form at issue was changed as of October 3, 2003, and that the Association was aware of the change at least as of October 7, 2003, when the Superintendent sent a confirmation of such to Mary Gaul, the Association's complaint must be dismissed on this basis as well. As to the merits, the District presents the findings and conclusions set forth in the decision of the School Board as its' primary defense. It asserts, inter alia, that the modifications to the form were minor in nature and did not effect the terms and conditions of employment. Accordingly, the District requests that the Association's unfair labor practice charge be dismissed.

A pre-hearing conference was conducted at PELRB offices on July 19, 2004 at which representatives of both parties were present.

#### PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: Margaret-Ann Moran, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

- (1) Is the Association's complaint barred by the six (6) month statute of limitations as set forth in RSA 273-A:6 and Pub. 201.02(a)?
- (2) Should the instant matter be dismissed based upon the Association's alleged failure to exhaust its administrative remedies?
- (3) Did the District violate RSA 273-A:5, I (a), (e), (h) and/or (i) by unilaterally changing a leave request form?

#### WITNESSES

For the Association:

1. Mary E. Gaul, UniServ Director
2. Scott Minickiello, Association Past President
3. Lisa Fisk, Association President

For the District:

1. Robin Marra, School Board Chair

2. Kenneth Dassau, Asst. Superintendent
3. Dr. David Dahl, Principal
4. Betty Fatro, Principal

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.

#### EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement, 2003-2006
2. Leave Request Form – Appendix F-1
3. Leave Request Form – dated 9/2003
4. Prior CBA, 2001-2003

For the Association:

1. None other than those listed above as “joint.”

For the District:

1. Decision of the Board, dated March 20, 2004
2. Letter dated October 7, 2003 from C. Cardine to M. Gaul
3. Memorandum dated December 19, 2003 from K. Dassau to MRSD Principals

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 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 three (3) 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. During the course of the pre-hearing conference, the PELRB Hearing Officer discussed with the parties' representatives the settlement prospects of the instant matter. The parties' representatives indicated to the PELRB Hearing Officer that based upon the gathering of further information and review of the form(s) at issue, the potential for settlement was significant. As a follow up to these discussions, a

telephonic conference call is scheduled to be held between the PELRB Hearing Officer and the parties' representatives on **August 17, 2004 @ 10:00 AM**.

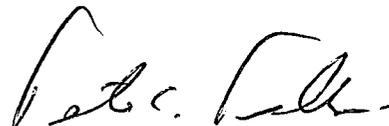
2. In the event the instant matter remains unresolved, the parties' representatives, shall meet, or otherwise confer, on or before **September 23, 2004** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
3. The Association has indicated its intent to call Mary Gaul as a witness. As the PELRB will not accept narrative testimony from a party representative, the Association is directed to identify for the PELRB and the District as to who will conduct questioning of Ms. Gaul and to do so at least five (5) days prior to the date of the hearing.
4. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative 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:

**October 7, 2004 @ 9:30 AM**

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

So ordered.

Signed this 10<sup>th</sup> day of August, 2004.

  
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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Mary E. Gaul, UniServ Director, NEA-NH  
Margaret-Ann Moran, Esq.