



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Farmington School District	*	
	*	
Complainant	*	
v.	*	Case No: E-0049-2
	*	
Farmington Teachers Association/NEA-NH	*	Decision No. 2008-043
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Farmington School District (the "District") filed an unfair labor practice complaint on January 30, 2008 alleging that the Farmington Teachers Association/NEA-NH (the "Association") committed unfair labor practices in violation of RSA 273-A:5, II (b), (d), and (g). The Farmington School District is an SB 2 district and the parties are currently in contract negotiations. According to the District, on or about January 3, 2008 the school board rejected an Association proposal containing \$592,000 in new costs, primarily consisting of wage and benefit increases for the 2008-2009 school year. On or about January 8, 2008 the Association submitted to the school district clerk a petition warrant article seeking, in substance, approval of the \$592,000 amount previously rejected by the school board. The District contends the Association also submitted a petition warrant article seeking a special meeting if necessary to address cost items only. The District claims these actions constitute an illegal bypass of the school board, unlawful direct dealing with district voters, a refusal to negotiate in good faith, and interference with the public employer in the selection of bargaining representatives.

The District's request for an immediate cease and desist order has been denied. PELRB Decision No. 2008-039. The District also requests that the PELRB: 1) sustain the complaint; 2) find that the Association has violated RSA 273-A:5, II (b), (d), and (g); 3) issue an order granting the Board the right to remove the Association's petition warrant articles from the annual warrant presented to District voters; 4) order the Association to pay the costs incurred by the District in pursuing the instant complaint including but not limited to, any and all legal fees; and 5) order such other and further relief as the PELRB may deem appropriate and necessary under the circumstances.

The Association filed its answer denying the District's charge February 15, 2008. The Association contends the disputed petitions were lawfully filed by registered voters and do not represent an action by the Association. The Association claims that under RSA 39:3 District officials are legally obligated to place both articles on the warrant that is submitted to voters.

Accordingly, the Association requests that the PELRB 1) dismiss the complaint; 2) deny all of the District's requests for relief; and 3) order such other and further relief as the PELRB may deem appropriate and necessary under the circumstances.

The undersigned Hearing Officer conducted a pre-hearing conference on February 29, 2008 at the PELRB offices in Concord.

PARTICIPATING REPRESENTATIVES

For the District: Peter C. Phillips, Esq.

For the Association: Steven R. Sacks, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the disputed warrant articles constitute Association action in violation of RSA 273-A:5, II (b), (d), and (g).

WITNESSES

For the District:

1. Michelle Langa, School Superintendent
2. Steve Yurick, Board Member
3. Kathy Seaver, School District Clerk
4. Jacquie Capello, Association President

For the Association:

1. Jacqueline Capello

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. Petition Warrant Article re: Wages
2. Petition Warrant Article re: special meeting

For the District:

1. Association Proposal 1/3/08
2. Tape/Transcript of 2/7/08 Superior Court Hearing
3. Tape/Transcript of 2/26/08 Superior Court Hearing
4. Tape/Transcript of 2/7/08 School District Deliberative Session

For the Association:

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 set aside for hearing is 3 hours. Any requests for additional time shall be filed at least 20 days prior to the date of hearing.

DECISION

1. At the pre-hearing, the parties discussed the pending superior court proceedings, which relate to the budget committee's request for an injunction to prevent the placement of the disputed articles on the warrant. Attorney Phillips and attorney Sacks appeared as counsel for their respective clients in the superior court proceedings. The District has included transcripts from the superior court proceedings in its list of exhibits. The District asserts that these transcripts will show that the Association supported and approved of the disputed articles as of the time of the superior court proceedings, if not earlier.
2. As discussed at the pre-hearing, on or before March 7, 2008 the District shall file a supplement to the complaint describing the facts concerning and the legal

significance of the Association's participation in the pending Superior Court proceedings.

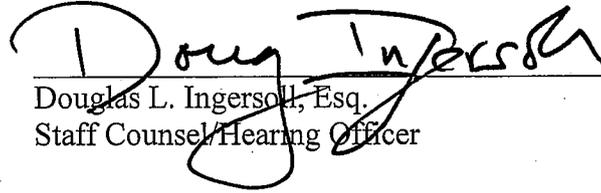
3. On or before March 14, 2008 the Association shall file its response to the District's supplement to the complaint.
4. Because issues concerning the superior court proceedings may require testimony from attorney Sacks, the Association shall, on or before March 14, 2008, file a notice of any need to obtain substitute counsel and whether such substitution will require any changes to the pre-hearing and hearing schedule in this matter.
5. The District shall be prepared to submit evidence concerning the deliberative session by transcript.
6. The parties' representatives shall meet, or otherwise confer, on or before April 3, 2008 to attempt to stipulate to the written submission of this case, or, in the alternative, submission of the case without the need for formal testimony. The parties shall forthwith file a joint statement indicating any such agreement and include a proposed schedule for the parties' filings.
7. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before April 3, 2008 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 the time written submissions are filed, or least 5 days prior to the date of the hearing, as the case may be.
8. 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 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 20 calendar days prior to the scheduled hearing date.
10. 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:

April 10, 2008 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board in Concord.

So ordered.

March 3, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:
Peter C. Phillips, Esq.
Steven R. Sacks, Esq.