



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NASHUA SCHOOL DISTRICT**

**COMPLAINANT**

**CASE NO. E-0001-6**

**v.**

**DECISION NO. 2008-208**

**NASHUA TEACHERS' UNION**

**RESPONDENT**

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**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: October 1, 2008 at the PELRB in Concord.

Appearances: Thomas M. Closson, Esq.  
Emmanuel Krasner, Esq.

Background:

The Nashua School District ("District") filed an unfair labor practice complaint on August 20, 2008 arising from the Nashua Teachers' Union's demand for arbitration. The District seeks to prevent the Nashua Teachers' Union from arbitrating a grievance which seeks back pay for 13 middle school teachers stemming from alleged "overages" in class size and/or teaching load in school years 2006-07 and 2007-08. At the pre-hearing the parties clarified that the grievance is based upon Article 8:4 C (1) of the parties' September 1, 2006 to August 31, 2011 Collective Bargaining Agreement, a contract which was approved in April, 2008. Article 8:4 C (1) addresses teaching load and for middle school teachers it represents a change from

teaching 6 classes with 1 preparation period per day (the 6-1 schedule) to teaching 5 classes with one preparation and one duty period per day (the 5-1-1 schedule). Middle school teachers changed to the 5-1-1 schedule beginning with the 2008-09 school year. The Union's pending grievance seeks compensation for the 13 middle school teachers for the 2 contract years (2006-07 and 2007-08) when they were on the 6-1 schedule.

The District contends the cost to pay the compensation associated with the grievance was never approved by the Nashua aldermen, and accordingly the Union is precluded from arbitrating its claim. The District also contends it never agreed to the retroactive application of the 5-1-1 schedule.

The District claims the Union has violated RSA 273-A:5, II (d), (f), and (g). As remedies, the District requests that the PELRB: 1) order the Union to cease and desist seeking arbitration of this dispute; 2) order the Union to reimburse the District for all of its costs and fees in this proceeding; and 3) order such other relief as may be appropriate.

On September 17, 2008 the Nashua Teachers' Union filed its answer. The Union contends the disputed costs were approved and that the threshold issue is whether the Article 8:4 C (1) change to a 5-1-1 schedule is retroactive to September 1, 2006, thereby entitling the Union to bring a claim for the 2006-07 and 2007-08 school years for 13 middle school teachers. The Union argues that this threshold issue should be addressed in arbitration before the District's arguments concerning approval of cost items are considered.

The Union requests that the PELRB: 1) dismiss the complaint; or 2) defer to arbitration to have the arbitrator resolve the factual disputes between the parties in accordance with the contract and then, upon the completion of the factual determination, determine whether or not the Union' grievance is appropriate as in the event that either side feels that the arbitrator has

exceeded his powers, a complaint to the PELRB will be in order; and 3) grant such other relief as may be just

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB should address the District's arguments concerning the approval of cost items associated with the Union's pending grievance in advance of an arbitrator's determination as to whether the District violated Article 8:4 C (1) on account of the 13 middle school teacher's 6-1 schedule during the 2006-07 and 2007-08 school years?

2. If so, whether the aldermen approved the costs associated with the Union's pending grievance, namely the application of Article 8:4 C (1) to the 13 middle school teachers for school years 2006-07 and 2007-08?

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#### WITNESSES

For the District:

1. James Mealey
2. Chris Hottel
3. Robert Sherman

For the NTU:

1. Robert Sherman
2. Jeff Cassidy
3. Benay Watts
4. Jackie McKinnon

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

For the District:

1. Collective Bargaining Agreement
2. Costing proposals submitted to the Nashua Board of Alderman

For NTU:

1. Notes from negotiation
2. Tentative agreement

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.

## DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case.
2. The District's joint motion to continue is granted and the hearing is rescheduled to December 9, 2008.
3. The parties shall prepare and file a statement of stipulated facts on or before December 1, 2008.
4. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before November 21, 2008.

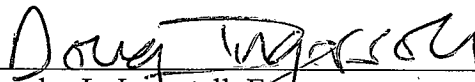
5. The parties shall pre-mark all exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **December 9, 2008 @ 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 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 10 days prior to the date of hearing.

So ordered.

October 13, 2008

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

Distribution:  
Thomas M. Closson, Esq.  
Emmanuel Krasner, Esq.