



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MADISON EDUCATION ASSOCIATION/NEA-NH

COMPLAINANT

CASE NO. E-0074-1

v.

DECISION NO. 2009- 009

MADISON SCHOOL DISTRICT

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: January 16, 2009

Appearances: Complainant: Peter Miller, UniServ Director
Steven Sacks, Esq.
Respondent: Peter C. Phillips, Esq.

Background:

Madison Education Association/NEA-NH ("Union") filed an unfair labor practice complaint on December 4, 2008. The Union claims that the Madison School District ("District") violated RSA 273-A:5, I (a), (c), (g), (h), and (i) by unilaterally excluding certain employees in the after-school program from the certified bargaining unit.

The Union requests that the PELRB order the District to recognize the employees in the after-school program as bargaining unit members, to hear the grievance relative to the disciplined after-school program employee, and to take all other steps necessary to make the Union whole.

On December 19, 2008 the District filed an answer and exceptions denying the Union's charge of unfair labor practice. The District also claims that the Union's complaint violates the statute of limitations and that the Union waived its right to contest the District's actions with respect to the creation of the after-school program positions.

The District requests that the PELRB dismiss the complaint and grant such further relief as is just and appropriate under the circumstances and within the PELRB's jurisdiction.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union's complaint is untimely.
2. Whether the after-school program positions of Center Director/Lead Teacher and Associate Teacher are in the certified bargaining unit.
3. Whether the District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (c), (g), (h), and (i) by unilaterally excluding after-school program positions from the certified bargaining unit.

WITNESSES

For the Union:

1. Lisa Curran
2. Gwen Poirier
3. Deb Parsons

For the District:

1. Lisa Curran
2. Gwen Poirier
3. Cynthia Hyatt

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

For the Union:

1. Collective Bargaining Agreement, 2007-2009
2. Individual employment agreements
3. Email messages and other communications regarding the subject positions
4. Grievance and responses to grievance

For the District:

1. Collective Bargaining Agreement
2. Unit certification
3. Board minutes
4. Correspondence regarding Lisa Curran, including individual contracts

Both parties reserve the right to amend their Lists 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. 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 complainant and respondent or the counsel/representative appearing in the case.

2. At the pre-hearing conference, the complaining party indicated that it intends to file an Assented to Motion to Continue. Any Motion to Continue the currently scheduled evidentiary hearing shall be filed on or before **January 28, 2009** and shall contain the required information in accordance with Pub 201.07 (e); otherwise, the evidentiary hearing will be held as previously scheduled. This provision in no way binds the PELRB to grant this or any other motion.

3. The parties shall prepare and file a Statement of Stipulated Facts no later than 5 days prior to the scheduled evidentiary hearing.

4. The parties shall prepare and file a Statement of Contested Facts no later than 5 days prior to the scheduled evidentiary hearing.

5. The parties shall amend and exchange their Witness and Exhibit lists no later than 5 days prior to the scheduled evidentiary hearing.

6. The parties shall 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.


HEARING

Unless otherwise ordered as a result of the filing of a Motion to Continue or other motion, the evidentiary hearing between the parties will be held on **February 5, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled evidentiary hearing shall be continued, all time references as appear in

paragraph ## 3, 4, 5, and 6 of the DECISION SECTION shall be based upon the rescheduled date for the evidentiary hearing. The time set aside for this hearing is 5 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.

January 16, 2009


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:
Peter Miller, UniServ Director
Steven Sacks, Esq.
Peter C. Phillips, Esq.