



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

**CONWAY SCHOOL DISTRICT**

**COMPLAINANT**

**v.**

**CONWAY EDUCATION ASSOCIATION**

**RESPONDENT**

**CASE NO. E-0077-3**

**DECISION NO. 2009-083**  
*(Corrected Decision)*

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: April 28, 2009

Appearances: Complainant: Charles W. Grau, Esq.  
Respondent: Jay Tolman, UniServ Director

**Background:**

Conway School District (District) filed an unfair labor practice complaint against the Conway Education Association (Union) on April 16, 2009. The District claims that the Union violated the parties' Collective Bargaining Agreement (CBA) and RSA 273-A:5, II (f) by attempting to arbitrate a grievance that is not arbitrable.

The District requests that the PELRB, inter alia, find that the Union breached the CBA, thereby committing an unfair labor practice in violation of RSA 273-A:5, II (f), by proceeding to arbitration in the non-arbitrable matter; issue a permanent cease and desist order requiring the

Union to withdraw its demand for arbitration of the alleged grievances; and award the District its attorneys' fees and costs incurred by the necessity of filing the unfair labor practice complaint. The District also filed a Motion for Cease and Desist Order requesting the PELRB to stay proceedings before the American Arbitration Association pending final disposition of the complaint.

On April 22, 2009 the Union filed its answer to the complaint denying the charge. The Union requests that the PELRB, inter alia, deny the District's Motion for Cease and Desist Order; dismiss the complaint; and dismiss the District's request for award of attorneys' fees and costs.

At the pre-hearing conference on April 28, 2009 the parties indicated that they agree to submit this matter on stipulated facts, exhibits, and briefs and proposed the agreed upon schedule of submission.

#### DECISION

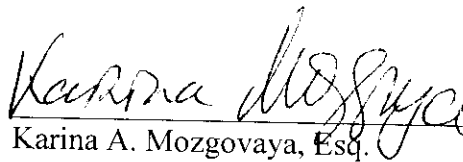
1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. Based upon the parties' agreement to submit this matter on stipulated facts, exhibits, and briefs, the evidentiary hearing currently scheduled for May 12, 2009 is hereby cancelled.
3. The parties shall file a Statement of Stipulated Facts and Opening Briefs no later than **May 15, 2009**. The parties shall file Join Exhibits and other exhibits with the basis for objection to same no later than **May 15, 2009**. The parties shall file Reply Briefs on **May 26, 2009**. In their

briefs, the parties shall specifically address the “positive assurance” standard set forth by the Supreme Court of New Hampshire in *Appeal of AFSCME Local 3657*, 141, N.H. 291, 293, 681 A.2d 100 (1996). See also *Appeal of the City of Manchester*, 144 N.H. 386, 388, 743 A.2d 821 (1999).

4. The undersigned finds that, in its Motion for Cease and Desist Order, the District failed to demonstrate that the interim order is necessary in the public interest as required under RSA-A:6, III and Pub 304.02. The District also failed to demonstrate a likelihood of prevailing based on the pleadings as required under Pub 201.07 (d) (2). Accordingly, the District’s Motion for Cease and Desist Order is denied.

So ordered.

April 28, 2009

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

Distribution:  
Charles W. Grau, Esq.  
Jay Tolman, UniServ Director