



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Michael Silverstein

v.

Andover School Board

Case No. E-0102-1
Decision 2010-191

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: October 20, 2010.

Appearances: Heather Silverstein, Esq., for Michael Silverstein
James A. O'Shaughnessy, Esq., for Andover School Board

Background:

Mr. Silverstein filed a complaint alleging the school board violated the 2008-2011 collective bargaining agreement between the Andover Education Association and the Andover School Board by reducing his position from five days to four days per week for the 2010-11 school year. Among other things, Mr. Silverstein complains about a decrease in pay and an increase in the amount he is required to contribute to the cost of his health insurance coverage. He asserts that the School Board violated Article 2 (Salary Schedule), Article 3 (Fringe Benefits) and did not follow or comply with Article 7 (Reduction-In-Force) of the collective bargaining agreement and has thereby violated RSA 273-A:5, I (h) and (i).

Mr. Silverstein also complains that contractual grievance procedure is unworkable because it concludes with a final and binding decision at Step Three without any involvement of neutral third parties contrary to RSA 273-A:5 and A:6.

As relief Mr. Silverstein requests that he be reinstated to step 11, Masters degree, on the wage schedule and receive back pay with interest, retirement, and other benefits and also be reimbursed for additional health care costs with interest, as well as filing fees, travel costs, and attorney fees.

The School Board denies the charges and contends that the changes to Mr. Silverstein's work schedule did not constitute a reduction in force within the meaning of Article 7 and the School Board's actions were a proper exercise of management rights. At the pre-hearing conference the School Board withdrew its estoppel and laches defenses.

ISSUES

1. Jurisdiction of the PELRB over Mr. Silverstein's complaint.
2. Does the 2008-2011 collective bargaining agreement contain an unworkable grievance procedure in violation of RSA 273-A:5 and A:6.
2. Did the School Board's actions violate Articles 2, 3 and/or 7 of the 2008-2011 collective bargaining agreement and therefore commit an unfair labor practice in violation of RSA 273-A:5, I (h) and (i).

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet except that Mr. Silverstein has eliminated six witnesses (Conner, Murphy, LaRoche, Peters, Keezer, and Schultz) and added one witnesses to his list (Jensen). The District has added two witnesses (Wiley and Gagne). Both parties reserve the right to amend their List of Witnesses and 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. Any such amendments should not be inconsistent with the discussion of witnesses and possible testimony at the pre-hearing conference. 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. 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 Mr. Silverstein, the School Board, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. As stated in the complaint, reflected in the 2008-2011 collective bargaining agreement, and discussed at the pre-hearing conference, the third and last step of the grievance procedure is a hearing before the school board. The collective bargaining agreement provides that the "Board's decision will be final and binding." Per the October 15, 2010 Supplemental Notice Re: Pre-Hearing Conference the parties were informed that they should be prepared to discuss the PELRB's jurisdiction over the complaint given the decisions in several listed prior court and PELRB decisions. As referenced during the pre-hearing conferences, both parties shall file briefs addressing the PELRB's jurisdiction given the cited language in the collective bargaining agreement grievance procedure according to the following schedule:

Opening briefs: October 27, 2010

Reply briefs, if any: November 1, 2010

3. The parties shall prepare and file a final statement of stipulated facts on or before **November 2, 2010.**
4. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before **November 2, 2010.**
5. As discussed at the pre-hearing conference, PELRB rules and law do not provide for the conduct of formal pre-hearing discovery such as requests for production of documents, interrogatories, and depositions, as allowed, for example, under Superior Court rules, and which may give rise to discovery motions like the motion to compel filed by Mr. Silverstein. However, the parties were able to resolve most of the issues and concerns raised by Mr. Silverstein's motion to compel by agreement, including agreement on the sharing of certain documentary information, clarification of certain documentary information, and arrangements to share additional documentary information.
6. Two outstanding information requests remain. Both are denied. The School Board is going to assemble and share information concerning teacher schedules, work load, and the work day which will be adequate for Mr. Silverstein to offer evidence that the changes to his position were unnecessary. A determination of the relevancy of such information is reserved at this time. The other information request relates to Mr. Silverstein's experience in his application for employment with another school district. He did not offer anything at the pre-hearing conference to suggest that any School Board or District representative somehow improperly interfered with his application for employment with another school district other than the fact that he did not receive an interview. Additionally, such information does not appear to be related to or necessary for the adjudication of his claims. A separate basis for the denial of these two

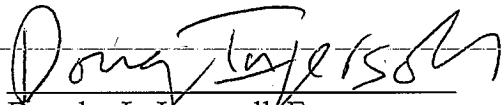
unresolved information requests is that formal discovery proceedings, as noted, are not part of pre-adjudicatory proceedings at the PELRB.

HEARING

Subject to a determination of the PELRB's jurisdiction in this matter, and unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held beginning at **9:00 a.m.** on **November 10, 2010** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 hours.

So Ordered.

October 21, 2010



Douglas L. Ingersoll, Esq.
Presiding Officer/Executive Director

Distribution:

John F. Teague, Esq.
James A. O'Shaughnessy, Esq.
Heather Silverstein, Esq.
Lorri Hayes
James F. Allmendinger, Esq.

