



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Berlin School District v. AFSCME Council 93, Local 1444

and

AFSCME Council 93, Local 1444 v. Berlin School District

Case No. E-0020-1
Case No. E-0020-2
(Consolidated Cases)

Decision No. 2011-125

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: April 27, 2011

Appearances: Peter C. Phillips, Esq. for the Berlin School District

Karen E. Clemens, Esq. for the AFSCME Council 93, Local 1444

At the pre-hearing conference in Case No. E-0020-1 on April 27, 2011 the parties jointly requested consolidation of Case No. E-0020-1 and Case No. E-0020-2 claiming that both cases arose out of the same occurrence and involve the same set of facts. The parties' request is granted and Cases Nos. E-0020-1 and E-0020-2 are consolidated for the purposes of this order and the adjudicatory hearing.

Background¹:

In Case No. E-0020-1, the District claims that the Union committed an unfair labor practice in violation of RSA 273-A:5, II (d), (f), and (g) when it filed a wrongful demand for

¹ The parties filed a Joint Pre-Hearing Worksheet in Case No. E-0020-1 on April 22, 2011.

arbitration for a grievance concerning bargaining unit work allegedly being performed by a non-bargaining unit supervisory employee. The District requests that the PELRB order the Union to cease and desist from pursuing the subject grievance and to hold the grievance in abeyance pending the PELRB's consideration of this matter; find that the Union's grievance is neither procedurally nor substantively arbitrable and that the Union has violated RSA 273-A:5, II (d), (f), and (g). The AFSCME denies the charges and claims that the grievance involves an arbitrable matter and that the grievance was timely because it was filed within 5 days from the hiring of a new non-bargaining unit supervisory employee who started to perform bargaining unit work, such as snowplowing, shortly after hiring. The Union requests that the PELRB dismiss the District's complaint.

In Case No. E-0020-2, the Union claims that the District violated RSA 273-A:5, I (e), (g), (h), and (i) when it assigned bargaining unit work to a newly-hired non-bargaining unit supervisory employee and refused to negotiate this change and its impact, including the loss of overtime, on bargaining unit employees. The Union requests that the PELRB sustain the Union's charge; issue an order that the District violated RSA 273-A:5, I (e), (g), (h), and (i); and issue an order that all custodians who lost overtime opportunities due to the District's action be made whole. The District denies the charges and asserts that matters such as reorganization, hiring, and assignment of work duties are within the District's management rights and that the Union has never requested to bargain the impact of the District's decision to eliminate a bargaining unit position and create a non-bargaining unit supervisory position. The District also denies the existence of "bargaining unit work."²

² Based on the District's representations at the pre-hearing conference as the District has not yet filed an answer, due May 3, 2011, to the Union's complaint in Case No. E-0020-2.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union has filed a wrongful demand for arbitration.
2. Whether the District improperly assigned bargaining unit work to a non-bargaining unit employee without negotiating the assignment and its impact on bargaining unit employees.

WITNESSES

For the Union:

1. Mark LaPoint, President of Local 1444
2. Michael Blair, AFSCME Staff Representative
3. Bob Rodrigue, Chief Steward

For the District:

1. Corinne Cascadden, Superintendent of Schools
2. John Donaldson, former Operations Manager
3. Bryan Lamirande, Business Administrator
4. Richard Girard, Building/Grounds Director

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

As outlined in the parties Joint Pre-Hearing Worksheet. 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. 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 Union, the District, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. Case No. E-0020-1 and Case No. E-0020-2 are consolidated for the purposes of the adjudicatory hearing and this pre-hearing order applies to both cases. As the parties discussed Case No. E-0020-2 at the pre-hearing conference on April 27, 2011, the pre-hearing conference in Case No. E-0020-2, scheduled for May 6, 2011, is cancelled. As a result of consolidation, the adjudicatory hearing in Case No. E-0020-2 previously scheduled for June 14, 2011 is cancelled.
3. As agreed at the pre-hearing conference, the Joint Pre-Hearing Worksheet filed for Case No. E-0020-1 shall apply to the Case No. E-0020-2 as necessary. The District shall file an answer to the Union's complaint in Case No. E-0020-2 no later than May 3, 2011.
4. The parties shall exchange and file their final witness and exhibit lists no later than May 9, 2011.
5. The parties shall prepare and file a final statement of stipulated facts no later than May 9, 2011.
6. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing on consolidated Cases Nos. E-0020-1 and E-0020-2

will be held on **May 17, 2011 at 9 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 hours.

So ordered.

April 28, 2011



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

Distribution:

Peter C. Phillips, Esq.

Karen E. Clemens, Esq.

Michel Blair, Staff Representative, AFSCME

Corinne Cascadden, Superintendent, Berlin School District