



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Brookline Teachers Association, NEA-New Hampshire

v.

Brookline School District, SAU #41

Case No. E-0116-1
Decision No. 2011-160

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 1, 2011¹

Appearances: James F. Allmendinger, Esq. for the Brookline Teachers Association,
NEA-New Hampshire

Pierre A. Chabot, Esq. for the Brookline School District, SAU #41

Background:

The Union filed an unfair labor practice complaint on April 22, 2011 claiming that the District violated RSA 273-A:5, I (a), (e), (g), and (h) by refusing to recognize Occupational Therapists and Speech Language Pathologists as members of the bargaining unit, by unilaterally changing the terms and conditions of their employment, by refusing to process their grievances, and by failing to file a unit modification petition with the PELRB. The Union asserts that the District's past practice has been to treat Occupational Therapists and Speech Language Pathologists as members of the bargaining unit. The Union requests that the PELRB order the District to return to the status quo and continue to recognize Occupational Therapists and Speech

¹ The parties filed a Joint Pre-Hearing Worksheet on May 19, 2011.

Language Pathologists as members of the bargaining unit.

The District denies the charges and asserts that, because under the PELRB certification the bargaining unit consists of permanent teachers and Occupational Therapists and Speech Language Pathologists are not certified or recognized as teachers, they are not included in the bargaining unit. The District also asserts that the Union's complaint is barred by the 6-month statute of limitation set forth in RSA 273-A:6. The District requests that the PELRB dismiss the complaint.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union's complaint is untimely.
2. Whether the District violated RSA 273-A:5, I (a), (e), (g), and/or (h) by refusing to recognize Occupational Therapists and Speech Language Pathologists as members of the bargaining unit, by changing the terms and conditions of their employment, by refusing to process their grievances, and/or by failing to file a unit modification petition with the PELRB.

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. 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. 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 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. At the pre-hearing conference, the District's representative indicated that he intends to file a motion to dismiss. A motion to dismiss, if any, shall be filed no later than June 7, 2011. Any response to the motion shall be filed no later than June 14, 2011.
3. The parties shall exchange and file their final witness and exhibit lists no later than 10 days prior to the date of hearing.
4. The parties shall prepare and file a final statement of stipulated facts no later than 10 days prior to the date of hearing.
5. 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 between the parties will be held on **June 23, 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.

June 1, 2011


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

Distribution:

James F. Allmendinger, Esq.
Pierre A. Chabot, Esq.
Kathleen C. Peahl, Esq.