



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Contoocook Valley Education Association, NEA-NH

v.

Contoocook Valley School District

Case No. E-0048-6
Decision No. 2013-197

Order

The undersigned held a hearing in the above captioned matter on September 19, 2013. The case involves the Association's charge that during a grievance proceeding the District improperly refused to recognize the bargaining unit¹ status of a speech language pathologist (SLP) and the Association's concomitant right to prosecute the grievance. In its specification of charges (filed July 30, 2013) the Association alleges that the District has violated RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter); (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations); and (h)(to breach a collective bargaining agreement). The

¹ The PELRB recognizes the Association as the representative of an existing and grandfathered bargaining unit per the December 7, 1976 PELRB Recognition of an Exclusive Representative order, which describes the unit as:

All licensed professional personnel excluding superintendents, assistant superintendents, principals, curriculum coordinators, directors, teacher consultants, business administrators, or other persons employed by the State Board of Education and all other employees of the Board in accordance with Recognition Clause(e) Article 1.

See Association Exhibit 1.

District denies the charges and contends that SLPs are not covered by the unit certification and the complaint should be dismissed.

Evidence at hearing indicates that on or about April 12, 2013 the District informed the Association that it did not recognize SLPs as bargaining unit employees (see Association Exhibit 3), which was three days after the parties participated in an April 9, 2013 PELRB contested hearing on the District's Petition for Declaratory Ruling, Case No. E-0048-5. In that case the District requested a Declaratory Ruling that paraprofessionals are not bargaining unit employees. The Association opposed the District's request and maintains that paraprofessionals, like SLPs, are bargaining unit employees.

There was also evidence at the September 19, 2013 hearing that in the summer of 2013 the District negotiated salaries directly with an Occupational Therapist and a Student Assistant Counselor, two positions the Association contends are also bargaining unit positions.

At the close of evidence the Association filed a Motion to Amend Unfair Labor Practice Charge and Joint Stipulation requesting a substitution of SLP for an occupational therapist reference in the complaint and an amendment of the parties' Joint Stipulation to include the information in District Exhibit 9 (1976-77 District Staff Directory). The complaint's erroneous reference to occupational therapist was reviewed and corrected at the start of the proceedings and no further order is necessary. Also, District Exhibit 9 (and related testimony) is in the record and will be considered together with the Joint Stipulation and other record material.

The Association also moved to amend its complaint to add two additional charges, and a schedule was established for the post hearing filing of a written motion and the District's objection. Both filings have been submitted. By this motion the Association seeks to add a claim that the District engaged in improper direct dealing in violation of RSA 273-A:5, I (e) on account of the District's negotiations with the Occupational Therapist and the Student Assistant

Counselor. The Association also seeks to add a charge that the District's current treatment of SLPs is in retaliation for, among other things, the Association's position in the Declaratory Ruling proceedings and discussions intended to resolve that case, all in violation of RSA 273-A:5, I (d). The Association argues this is shown by the proximity of the April 9, 2013 Declaratory Ruling hearing to the District's April 12, 2013 email regarding the status of SLPs.

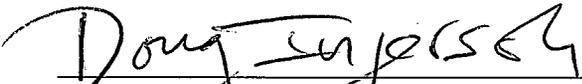
Motions to amend are addressed in N.H. Admin. Rule Pub 201.04 (c), which provides that:

The board shall allow requests for an amendment filed less than 15 days prior to the date of hearing, including requests filed at the conclusion of the hearing to amend the complaint or answer as necessary to conform to the evidence, unless the amendment shall result in unnecessary delay of the proceeding or unfair prejudice to another party in the proceeding.

The primary focus of the evidence at hearing concerned the bargaining unit status of SLPs. Although other evidence was received, as noted, it is not fair or accurate to say that any issues of alleged direct dealing or retaliatory conduct were fully and fairly explored and addressed, or that the District was on notice that it was defending against such claims. In the circumstances, the allowance of the amendments to add claims of direct dealing and retaliatory conduct would constitute unfair prejudice to the District. Accordingly, the Association's motion is denied without prejudice to the filing of separate unfair labor practice complaints raising such claims.

So ordered.

October 9, 2013



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

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