



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Monadnock District Education Association, NEA-NH

v.

Monadnock Regional School District

Case No. E-0028-7
Decision No. 2015-008

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: January 12, 2015

Appearances: James F. Allmendinger, Esq., for the Complainant
James A. O'Shaughnessy, Esq., for the Respondent

Background:

On December 11, 2014, the Monadnock District Education Association, NEA-NH (Association) filed an unfair labor practice complaint alleging that the Monadnock Regional School District (District) violated RSA 273-A:5, I (a), (e), and (h) when it nonrenewed two guidance counselors allegedly for budgetary reasons. The Association claims, among other things, that the subject employees were not the least senior employees in their department; and that the District retained a probationary guidance counselor while it laid off two "continuing contract" guidance counselors in violation of Articles 12.4 and 12.6 of the parties' collective bargaining agreement (CBA). The Association requests that the PELRB order the District to reinstate the subject employees with no loss of pay or benefits.

The District denies the charges. The District does not dispute that the nonrenewed guidance counselors were not the least senior in their department but asserts, among other things, that, in accordance with the CBA and state law, the nonrenewal was not based solely on seniority and that the probationary guidance counselor was retained because he possessed unique qualifications. The District also filed a motion to dismiss in which it argues that the PELRB lacks jurisdiction over this case because this case involves interpretation of the CBA and the Association failed to exhaust its contractual remedies, specifically, the grievance procedure culminating in an advisory arbitration; that the claims are time barred under RSA 273-A:6, VII because the alleged violations occurred more than six month prior to the filing of the complaint; and that the complaint failed to state a claim upon which relief may be granted. The Association counters that it is not required to exhaust contractual remedies because the District has expressly repudiated the terms of the CBA; that the claims are not time barred because the violation of the CBA occurred on the date the School Board issued its decision after RSA 189:14-a hearing, and not when the guidance counselors were notified of nonrenewal or when the Superintendent denied the nonrenewal-related grievance; and the complaint does state a claim upon which relief can be granted because the two "continuing contract" counselors should have been retained and the first year guidance counselor should have been laid off instead, in accordance with a the parties' CBA, in accordance with a the parties' CBA.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction of the Association's claims.
2. Whether the Association's claims are time barred under RSA 273-A:6, VII.
3. Whether the District violated RSA 273-A:5, I (a), (e), and/or (h) as charged by the Association.

WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.

DECISION


1. "Parties" means the Association, 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 Association requested continuance of the adjudicatory hearing currently scheduled for January 26, 2015. The District assented to this request. The Association's request is granted. Accordingly, the adjudicatory hearing is rescheduled for **March 10, 2015, at 8:30 a.m.** A rescheduling notice shall issue forthwith.
3. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than **March 2, 2014.**
4. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing.
5. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five (5) copies of each exhibit to the hearing. 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, the adjudicatory hearing in this case will be held on **March 10, 2015, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

January 12, 2015



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

Distribution: James F. Allmendinger, Esq.
James A. O'Shaughnessy, Esq.,