



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

Daniel O'Donnell

v.

Nashua School District

Case No. E-0155-2

Decision No. 2015-235

Pre-Hearing Memorandum and Order

Date of Conference: October 27, 2015

Appearances: Daniel O'Donnell for the Complainant

Stephen M. Bennett, Esq., for the Respondent

Background:

On September 23, 2015, Daniel O'Donnell filed an unfair labor practice complaint alleging that the Nashua School District (District) violated RSA 273-A:5, I (h) and (g) when, among other things, it failed to utilize the number of work days set forth in the collective bargaining agreement (CBA) to determine a per diem pay rate for the purpose of calculating Mr. O'Donnell's severance pay. Mr. O'Donnell claims that the District divided his annual salary by 245 days, instead of dividing it by 214 work days as allegedly required under the CBA, to determine his per diem pay rate, which resulted in significant underpayment. Mr. O'Donnell also asserts that the District violated the grievance procedure deadlines set forth in the CBA between the Nashua Association of School Principals (Union) and the District; and that this CBA does not

contain a workable grievance procedure as required under RSA 273-A:4.¹ Mr. O'Donnell requests that the PELRB, among other things, order the District to reimburse him for "the difference between the amount he has been paid and a proper calculation of sick and vacation day severance" (\$7,923.69) and to cease and desist from unfair labor practices.

The District denies the charges and asserts, among other things, that the CBA does not require a calculation using 214 days instead of 245 days; that there were no discussions during the contract negotiations regarding a change in the calculation of severance pay; that such a change is a cost item that requires the approval of the legislative body; and that neither the Board of Education nor the Board of Aldermen were advised that there was a change in calculation of severance pay for retirees or approved of it. The District also requests the dismissal of the complaint on the ground that the CBA contains a workable grievance procedure which culminates in final and binding arbitration and Mr. O'Donnell failed to request arbitration of his grievance.

ISSUES FOR DETERMINATION BY THE PELRB

1. Whether the PELRB has jurisdiction over the complaint.
2. Whether the District violated RSA 273-A:5, I (h) and/or (g) as charged by the Complainant.

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.

¹ In Count II of the complaint, Mr. O'Donnell also alleged that the District's representatives attempted "to coerce an agreement from O'Donnell by proposing to delay the process if he does not agree" to extension of deadlines for the issuance of the Board of Education decision on his grievance; and that this action violated the CBA and the implied covenant of good faith and fair dealing. At the pre-hearing conference, Mr. O'Donnell withdrew this claim.

DECISION


1. "Parties" means the Complainant, 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. An objection to the District's motion to dismiss, if any, shall be filed no later than November 6, 2015, 8:30 a.m.
3. An updated joint statement of stipulated facts and witness and exhibit lists, if any, shall be filed no later than November 2, 2015.
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. 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 **November 6, 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.

Date: 10/28/15


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

Distribution: Mr. Daniel O'Donnell
Stephen M. Bennett, Esq.