



**STATE OF NEW HAMPSHIRE**  
Public Employee Labor Relations Board

**Manchester Education Association/NEA**

**v.**

**Manchester School District**

**Case No. E-0140-3**  
**Decision No. 2015-241**

Pre-Hearing Memorandum and Order

Date of Conference: November 5, 2015

Appearances: J. Joseph McKittrick, Esq., for the Complainant  
James O'Shaughnessy, Esq., for the Respondent

Background:

On October 5, 2015, the Manchester Education Association/NEA (Union) filed an unfair labor practice complaint alleging that the Manchester School District (District) violated RSA 273-A:5, I (a), (d), (g), and (h). The Union alleges, among other things, that, following a disciplinary investigation, the District placed a teacher on unpaid leave and gave the teacher a notice of the recommendation of immediate dismissal; and that, after changing the teacher's status from unpaid to paid leave and withdrawing the recommendation for a dismissal under RSA 189:13 (NH teacher dismissal statute), the District "relabelled" the dismissal as a "non-renewal" under RSA 189:14-a (NH teacher non-renewal statute). The Union asserts that the reasons for the non-renewal were identical to those given for the employee's dismissal and that the District changed the action from a dismissal to a non-renewal in order to avoid its contractual obligation to submit the dismissal action to a neutral arbitrator. The Union also asserts that,

under the successor CBA, the parties agreed to arbitrate non-renewal grievances; and that the District refused to proceed to arbitration even though this CBA became effective retroactively on July 1, 2015, i.e. before the District School Committee upheld the recommendation for non-renewal. The Union requests, among other things, that the PELRB find that the District violated (1) RSA 273-A:5, I (a) by attempting to prohibit the subject teacher and the members of the union from exercising their statutory rights, (2) RSA 273-A:5, I (d) by discharging the teacher under the guise of a non-renewal because, in part, he challenged the District's dismissal, (3) RSA 273-A:5, I (g) "by failing to adhere to having (and using) a workable grievance procedure," and (4) RSA 273-A:5, I (h) "by failing to arbitrate the issues between the parties."

The District denies the charges and claims, among other things, that it decided not to renew the subject teacher's contract rather than pursue his termination as a result of the findings of the second investigation ordered by the District and "due to the time of its completion"; and that the Superintendent's decision to non-renew was issued prior to the effective date of the parties' successor CBA<sup>1</sup> and that the Union never grieved the decision to nonrenew. The District also asserts that the PELRB does not have jurisdiction over any claims maintained under RSA 189:14-a or RSA 189:13; that the sole remedy for this complaint is an appeal to the State Board of Education per RSA 189:14-b; that the complainant failed to exhaust remedies when he allowed the appeal of this non-renewal to the State Board of Education to lapse; that the grievance is not arbitrable per RSA 273-A:4; that the complaint fails to state a claim upon which relief can be granted; and that the complaint is untimely under six months limitation period set forth in RSA 273-A:6, VII.

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<sup>1</sup> The District asserts that, while the Superintendent can recommend termination of a teacher, the final authority to terminate lies with the School Committee. However, the decision to non-renew a teacher, according to the District, lies with the Superintendent and becomes final without the School Committee's approval unless it is appealed by a teacher.

## ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over the Union's claims.
2. Whether the District violated RSA 273-A:5, I (a), (d), (g), and/or (h) as charged by the Union.

## 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 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 moved to continue the adjudicatory hearing currently scheduled for November 19, 2015 on the ground that the counsel for the District has a conflict with a hearing scheduled for the same date in the Circuit Court. The Union assented to this motion. The parties proposed the following alternative hearing dates: December 9, 2015 and December 11, 2015. The District's assented to motion to continue the adjudicatory hearing is granted. Accordingly, the adjudicatory hearing scheduled for November 19, 2015 is rescheduled for December 9, 2015. A rescheduling notice shall issue forthwith.
3. Per Pub 203.04 (a) and (b), all requests for specific relief, including a request to dismiss the complaint, shall be presented by means of a motion and shall be in written form. In this case, a motion to dismiss, if any, shall be filed no later than November 23, 2015.

4. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than 10 days prior to the date of hearing.
5. 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 **December 9, 2015, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 6 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: 11/9/15

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

Distribution: J. Joseph McKittrick, Esq., for the Complainant  
James O'Shaughnessy, Esq., for the Respondent