



**State of New Hampshire**  
Public Employee Labor Relations Board

**Sugar River Education Association, NEA-NH**

v.

**Claremont School District**

**Case No. E-0188-2**

**Decision No. 2016-129**

**Pre-Hearing Memorandum and Order**

**Date of Conference:** June 10, 2016

**Appearances:** James F. Allmendinger, Esq., for the Complainant

Mark T. Broth, Esq. for the Respondent

**Background:**

On May 6, 2016, the Sugar River Education Association, NEA-NH (Association) filed an unfair labor practice complaint alleging that the Claremont School District (District) violated RSA 273-A:5, I (a), (e), (g), (h), and (i). In a prior PELRB case (E-0188-1) the parties agreed to submit a dispute over the remedy of an arbitration award<sup>1</sup> to the arbitrator. *See* PELRB Decision No. 2015-259 (December 15, 2015)(the District reserved the right to challenge any award on public policy<sup>2</sup> grounds). On April 4, 2016, the arbitrator issued his second award (on the remedy), stating as follows:

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<sup>1</sup> In the first arbitration award, the arbitrator determined that the District had violated the parties' agreement by unilaterally changing the teaching schedule to a new block schedule.

<sup>2</sup> *See Appeal of Merrimack County*, 156 N.H. 35, 44-45 (2007)(non-compliance with arbitrator's award is justified when the award contravenes "a strong and dominant public policy as expressed in controlling statutes, regulations, common law, and other applicable authority.")

As a remedy, the School District must revert back to the prior block schedule previously agreed upon by the parties. This must occur for the 2016-17 school year. In addition, because of the additional instructional time required by the change in the schedule, Stevens High School teachers must be paid an additional 8% of their salary for this increased teaching workload.

The District objects to, and refuses to implement, the portion of the second award which requires it to "revert back to the prior block schedule previously agreed upon by the parties." In response, the Association filed this unfair labor practice charge, as well as a motion for an immediate cease and desist order to compel the District to fully comply with the second award. The Association contends an immediate cease and desist order is required so that students and staff can plan courses, request classes, and complete preparations for the 2016-17 school year.

The District denies the charges. While the District does not challenge the arbitrator's finding that the changes to the teaching schedule made for the 2015-16 school year violated the collective bargaining agreement, the District maintains that the disputed portion of the second award violates public policy pursuant to which the District alone, and not the parties in collective bargaining, must determine the teaching schedule, which includes making changes like those the District implemented beginning with the 2015-16 school year. In substance, the District argues that the parties' agreement on the teaching schedule, which the arbitrator concluded the District has not followed, was a prohibited subject of bargaining under the three part test described in *Appeal of State*, 138 N.H. 716 (1994). In particular, the District says that: 1) the PELRB may not enforce an award that is contrary to public policy or injurious to the public good; 2) the school board, and not a labor arbitrator, has the authority to decide how educational programs and services, including class schedules, are provided to students; 3) the District had good reasons for the disputed schedule change; 4) unlike members of the school board, a labor arbitrator is not elected and is not accountable to Claremont, its students and parents/guardians; and 5) the

District will incorporate the pay adjustment included in the second award into the base wages of affected high school teachers for so long as the disputed "A/B" schedule remains in effect.

The District has filed its objection to the Association's motion for a cease and desist order, and requests that the PELRB deny the Association's motion.

Issues for Determination by the Board

Whether the PELRB should issue an immediate cease and desist order requiring the District to revert to the prior block schedule as directed by the arbitrator in the second award?

Whether the requirement in the second award directing the District to revert to the prior block schedule previously agreed upon by the parties violates a strong and dominant public policy as expressed in controlling statutes, regulations, common law, and other applicable authority?

Decision

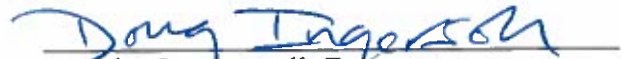
1. "Parties" means the Association, the District or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At pre-hearing the parties agreed that the Association's unfair labor practice charge will be submitted for decision based upon stipulated facts and exhibits and briefs according to the following schedule:  
  
**June 21, 2016:**        Stipulated Facts and Exhibits  
  
**July 15, 2016:**        Briefs.
3. The parties also agreed to argue the Association's pending motion for a cease and desist order on June 23, 2016.

Hearing

Based upon the foregoing, the hearing scheduled for June 21, 2016 is cancelled. The Association's motion for a cease and desist order will be heard on **June 23, 2016 at 8:30 a.m.**

So ordered.

Date: June 13, 2016

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

Distribution: James F. Allmendinger, Esq.  
Mark T. Broth, Esq.