



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

Manchester School District

v.

Manchester Education Association/NEA

Case No. E-0140-6
Decision No. 2016-232

Pre-Hearing Memorandum and Order

Date of Conference: October 13, 2016

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

Steven R. Sacks, Esq., for the Respondent

Background:

On September 9, 2016, the Manchester School District (District) filed an unfair labor practice complaint alleging that the Manchester Education Association/NEA (Association) violated RSA 273-A:5, II (f) when it attempted to arbitrate a grievance based on a non-renewal of a teacher. The District claims, among other things, that the Association violated the parties' collective bargaining agreement (CBA) by submitting the non-renewal to arbitration because the CBA does not contain specific language permitting the arbitration of non-renewals as required by RSA 273-A:4. The District requests that the PELRB find that the Association breached the CBA in violation of RSA 273-A:5, II (f) and that the grievance is not arbitrable, order a temporary stay of the arbitration pending the PELRB's determination of arbitrability,¹ order the Association to cease and desist from pursuing the arbitration of all non-renewals under the 2015-

¹ The District did not file a separate motion for interim relief as required under Pub 203.04.

18 CBA, and award the District all costs and attorneys' fees associated with this dispute, including all costs and fees associated with arbitration in the event the PELRB finds the dispute nonarbitrable.

The Association denies the charge and argues that the District is precluded from asserting its claim concerning arbitrability of non-renewals under the CBA because this issue was specifically addressed and decided in *Manchester Education Association/NEA-NH v. Manchester School District*, PELRB Decision No. 2016-146 (June 27, 2016). The Association requests that the PELRB find that the Association did not violate the CBA in demanding arbitration of the teacher's non-renewal and summarily dismiss the District's complaint because "the PELRB has very recently considered and ruled on the very same issue." The Association filed a motion to dismiss on the ground of issue preclusion, to which the District objected.

Issues for Determination by the Board

Whether the Association violated RSA 273-A:5, II (f) as charged by the District.

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 District, the Association 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, the District opined that the adjudicatory hearing is unnecessary because there are no facts in dispute in this case and requested cancellation of the hearing

and leave to submit this case on stipulated facts and briefs. The Association agreed that the hearing is unnecessary and that the facts are not in dispute but insisted that this case should be resolved on currently pending motion to dismiss. The District's request at the pre-hearing to cancel the hearing and submit this case on stipulated facts and briefs is taken under advisement.


3. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than **October 18, 2016**.
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 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, the adjudicatory hearing in this case will be held on **October 25, 2016, at 8:30 a.m.**, at the offices of the PELRB in Concord. The time set aside for this hearing is two 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 ten days prior to the date of hearing.

So ordered.

Date: 10/14/2016



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

Distribution: James A. O'Shaughnessy, Esq.
Steven R. Sacks, Esq.

