



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

Concord School District

v.

Concord Education Association, NEA-NH

Case No. E-0206-1
Decision No. 2017-076

Pre-Hearing Memorandum and Order

Date of Conference: April 26, 2017

Appearances: Edward Kaplan, Esq., for the Complainant
James Allmendinger, Esq., for the Respondent

Background:

On March 28, 2017, the Concord School District (District) filed an unfair labor practice complaint alleging, among other things, that the Concord Education Association, NEA-NH (Association) breached the parties' collective bargaining agreement (CBA) in violation of RSA 273-A:5, II (f) when it filed a grievance disputing the content of the Superintendent's letter notifying a bargaining unit employee that the Superintendent was recommending that the School Board terminate her employment with the District. The District argues that the Association's grievance is outside the scope of the CBA and that "no language in the [CBA] ... can be reasonably interpreted to allow the Union to challenge a letter prepared by the Superintendent pursuant to RSA 189:13." The District requests that the PELRB (1) "stay any action pending a decision in this matter"; (2) rule that "the act of filing the grievance constituted an unfair labor practice"; and (3) direct the Association to withdraw the grievance.

The Association denies the charges and asserts, among other things, that the District's complaint is barred by the doctrine of res judicata because this matter has already been decided in *Concord School District v. Concord Education Association*, PELRB Decision Nos. 89-70 and 90-29. The Association requests that the PELRB dismiss the complaint.

On April 11, 2017 the District filed an "emergency motion to stay arbitration proceedings" pending resolution of this matter by the PELRB. The Association objected to this motion. The District's motion was denied without prejudice. See PELRB Decision No. 2017-062 (April 17, 2017).

Issues for Determination by the Board

1. Whether the District's claims are barred under the doctrine of res judicata.
2. 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. 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. At the telephonic pre-hearing conference, the District indicated that it intends to request that the PELRB seal one or

more of the District's proposed hearing exhibit(s). Hearings at the PELRB are open to the public, and neither RSA 273-A or Pub 100-300 authorize the PELRB to accept exhibits into the record under seal. Formal action on any such request is deferred to the time of hearing. In the meantime, the parties are advised to explore alternative solutions including but not limited to submitting stipulations in lieu of the exhibit(s), redacting sensitive portions of the subject exhibit(s), or using relevant excerpts.

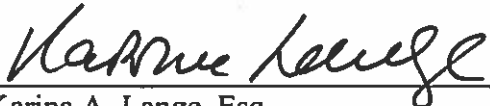
3. The parties shall file a joint statement of stipulated facts and their final witness and exhibit lists no later than **May 8, 2017**.
4. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies 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 as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **May 16, 2017 @ 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 ten days prior to the date of hearing.

So ordered.

Date: 4/26/2017


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

Distribution: Edward Kaplan, Esq.
James Allmendinger, Esq.