This decision was affirmed on appeal per January 13, 2012 Supreme Court order in *Appeal of Michael Silverstein* NH Supreme Court Case No. 2011-012.

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Michael Silverstein

v.

Andover School Board

Case No. E-0102-1
Decision 2010-203

ORDER

Mr. Silverstein complains that the Andover School Board violated Articles 2, 3 and 7 of the 2008-2011 collective bargaining agreement (Andover CBA) between the Andover Education Association and the Andover School Board because of a reduction in his work schedule and the related financial consequences. *See* PELRB Decision No. 2010-191(pre-hearing order). He has filed and is prosecuting a grievance under the grievance procedure negotiated and agreed to by the Association and the school board, set forth in Article 6 of the Andover CBA. The third and last step of the grievance procedure is a hearing before and decision by the full school board. The Association and the school board agree in Article 6.8.4 of the Andover CBA that the school board's decision "will be final and binding." Both parties to these proceedings have filed briefs concerning this board's jurisdiction over the complaint.

Grievance procedures are workable under RSA 273-A:4 even though the public employer, and not a third party like an arbitrator, is charged with making the final decision. *Appeal of State Employees' Association of New Hampshire, Inc.,* 139 N.H. 441, 444 (1995). Where the collective bargaining agreement contains explicit language providing that the last step

of the grievance procedure is final and binding on the parties, the PELRB does not have jurisdiction in an unfair labor practice proceeding to interpret the collective bargaining agreement and decide whether it has been violated. *See Appeal of Hooksett School District*, 126 N.H. 202 (1985)(where last step of grievance procedure was decision by school board and collective bargaining agreement did not have explicit or implicit language stating last step of grievance procedure was final and binding PELRB had jurisdiction to interpret the contract and decide the matter in dispute.)

Under the applicable law, the PELRB lacks jurisdiction to interpret the Andover CBA and decide the merits of Mr. Silverstein's complaint during the grievance proceedings and after the grievance proceedings are completed. Accordingly the complaint is dismissed.

So ordered.

November 3, 2010.

Jack Buckley, Chair

By unanimous vote. Chair Jack Buckley presiding with Board Members James M. O'Mara, Jr. and Kevin E. Cash also voting.

Distribution:

John F. Teague, Esq.
James A. O'Shaughnessy, Esq.
Heather Silverstein, Esq.
Lorri Hayes
James F. Allmendinger, Esq.