

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Laconia Education Association/NEA-NH

Complainant

v.

Laconia School District, SAU #30

Respondent

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Case No. T-0239-24

Decision No. 2003-071

PRE-HEARING MEMORANDUM and ORDER

BACKGROUND

On April 28, 2003 the Laconia Education Association/NEA-NH, (hereinafter referred to as the "Association") filed an improper labor practice charge pursuant to RSA 273-A:5 I (e), (g), (h) and (i), alleging that the Laconia School District SAU #30, (hereinafter referred to as the "District") acting through its employees and agents, undertook certain unilateral actions resulting in the elimination of benefits to six employees and that the same actions constitute an attempt to unilaterally exclude a total of nine positions from the bargaining unit. The Association further alleges that these actions were undertaken in violation of statutory prohibitions against certain employer practices as expressed in RSA 273-A:5 I (e) to refuse to negotiate in good faith, (g) to generally fail to comply with the Public Employee Labor Relations Act (RSA 273-A), (h) to constitute a breach of the parties' collective bargaining agreement (hereinafter referred to as a "CBA") and (i) to invalidate the parties' CBA. The Association's complaint did not include any request for a specific remedy.

The Laconia School District ("District") filed its answer on May 12, 2003 generally denying that any actions it undertook to utilize a so-called "Specialist's Contract" to govern the employment of individuals within certain positions represent a breach of the parties' CBA or violate statutory provisions. The District further answers that the positions of "elementary school psychologist", "LAB (Learning Alternative Behaviors) Supervisor", and "Technology Assistant" are not covered by the parties' CBA

and neither these positions nor the additional positions of "ESOL Tutor/Specialist"; "Laconia High School Child Care Manager"; "Laconia High School Career Support Specialist"; "Memorial Middle School Granite Program Specialist"; "Memorial Middle School Alternative Education Specialist"; and "Woodland Heights Behavior Consultant" require the issuance of the "Requisite certificate from the New Hampshire Department of Education.

For its part, the District initially raised the issue of whether or not this matter is properly before the PELRB or should be processed under the grievance provision of the parties' CBA. At the pre-hearing conference, the District withdrew that issue and the parties stipulated to the PELRB's subject matter jurisdiction over the Association's complaint. The District reserved its right to pursue a potential dismissal based upon a limitation of actions statute pending further discovery. It ultimately requests that the PELRB dismiss the Association's complaint.

#### PARTICIPATING REPRESENTATIVES

For the Association: Steven R. Sacks, Esquire, Staff Attorney, NEA-NH

For the District: Paul T. Fitzgerald, Esquire

#### ISSUE FOR DETERMINATION BY THE BOARD

After discussion at the Pre-Hearing Conference, it was agreed by counsel that the following issues were relevant to the Board's consideration of this matter:

1. Is this complaint filed in a timely manner?
2. Whether or not persons in the positions named by the Association in its complaint perform sufficient teaching functions so as to require the parties to negotiate their wages, hours and conditions of work?
3. Do the actions undertaken by the Laconia School District in utilizing so-called "Specialist's Contracts" in the employment of individuals in the positions of "elementary school psychologist", "LAB (Learning Alternative Behaviors) Supervisor", and "Technology Assistant" constitute the commission of an unfair labor practice in violation of RSA-A:5 I (e), (g), (h) or (i)?
4. Do the actions undertaken by the Laconia School District in setting the benefits for the positions of "ESOL Tutor/Specialist"; "Laconia High School Child Care Manager"; "Laconia High School Career Support Specialist"; "MMS Granite Program Specialist"; "MMS Alternative Education Specialist"; and "Woodland Heights Behavior Consultant" without negotiation with the Association constitute the commission of an unfair labor practice in violation of RSA-A:5 I (e), (g), (h) or (i)?

WITNESSES

For the Laconia Education Association (Petitioner):

1. Heather Nelson
2. George Kalipolites
3. Andrew Welsh
4. Colleen Poire
5. Lizabeth Rosenfeld
6. Michelle Plourde
7. Deborah Clarke-Tivey
8. Richard H. Coggon
9. A representative of the NH Department of Education\*
10. Other individuals employed in the subject positions\*\*

\* Complainant must notify the Respondent of the representative's identity at least fifteen (15) days prior to the final hearing to allow Respondent to properly prepare rebuttal through cross examination or presentation of an additional witness.

\*\* Complainant must notify Respondent of those selected to testify at least at least fifteen (15) days prior to the final hearing so that Respondent need not unnecessarily prepare for cross-examination for those not scheduled to testify.

For the District (Respondent):

1. Robert Champlin
2. Colleen Poire
3. Heather Nelson
4. Andrew Welsh
5. Michelle Plourde
6. Edward Emond
7. Ann Drouin
8. Chris Ennis

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

## EXHIBITS

### Joint Exhibits:

1. Parties' Collective Bargaining Agreement, 2000-2003
2. Job descriptions
3. Individual contracts for positions named in pleadings
4. District's Collective Bargaining Agreement with Educational Assistants

### For the Association:

1. None other than those marked as "Joint"

### For the District:

1. None other than those marked as "Joint"

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

## LENGTH OF HEARING

The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB within ten (10) calendar days of the date of this Order.

## DECISION

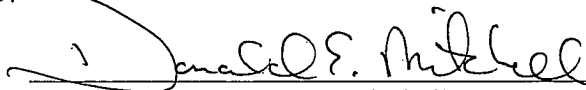
1. The parties stipulate that the PELRB has subject matter jurisdiction to proceed with this matter.
2. Upon the oral motion of the Association, the positions of Laconia High School Child Care Manager and Woodland Heights Behavior Consultant are dismissed from consideration in these proceedings.

3. The Association shall file its intended additional Amended Complaint, regarding teaching functions, with the PELRB on or before July 2, 2003. The District shall thereafter file its Amended Answer on or before July 12, 2003.
4. The parties shall continue to exchange documents that are intended to be used at the evidentiary hearing. Any party that believes that it has properly and seasonably requested the production of any relevant document from the other party which it believes that party is in possession of, or has control over, and has not been provided with that document shall immediately inform the PELRB, in writing, of the document(s) requested, the date of the request, the date of the refusal to respond or to failure to comply with the request by the other party, and the purpose for which the party seeks the document from the other.
5. Any District motion asserting that the Association's complaint is barred by a statute of limitations shall include the chronology and basis for its assertion and be filed within twenty (20) calendar days of the date of this Order.
6. Each party representative shall forward complete Witness and Exhibit lists to the opposing representative or counsel and to the PELRB no later than five days prior to the conduct of the evidentiary hearing. The party representatives shall also meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties within ten (10) calendar days of the date of this Order. Any objection or response to the same shall be filed five (5) days thereafter.

Unless otherwise ordered as a result of the filing of any subsequent motion or other good cause shown, an evidentiary hearing between the parties will be scheduled in due course at the Office of the Public Employee Labor Relations Board. The parties shall be noticed through separate correspondence of the date of the final hearing.

So Ordered.

Signed this 18th day of June, 2003



Donald E. Mitchell, Esq.  
Hearing Officer

Distribution:

Steven R. Sacks, Esquire, Staff Attorney, NEA-NH  
Paul T. Fitzgerald, Esquire