



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Fall Mountain Regional Education Support	*	
Personnel Association/NEA-NH	*	
	*	
	*	
Complainant	*	
	*	Case No: T-0380-6
v.	*	
	*	Decision No. 2003-129
Fall Mountain Regional School District	*	
	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Fall Mountain Regional Education Support Personnel Association, NEA-NH (hereinafter "the Union") filed an unfair labor practice complaint on September 10, 2003 alleging that the Fall Mountain Regional School District (hereinafter "the District")¹ committed an unfair labor practice by subcontracting bargaining unit work to non-bargaining unit employees and, in doing so, violating the *status quo* doctrine. More specifically, the Union claims that the District was required to maintain the *status quo* as to terms and conditions of employment during the period of the parties' contract impasse, including an alleged prohibition against subcontracting of bargaining unit work as contained in a Memorandum of Agreement executed by the parties. The Union asserts that when the District laid off its kitchen employees, and members of the bargaining unit, effective June 30, 2003 and later replaced them with employees of the subcontractor at the start of the new school year, it violated the *status quo* doctrine and RSA 273-A:5 I (a), (c), (e), (g), (h) and (i). As remedies, the Union requests, among other things, that the District be ordered to rescind its contract with the subcontractor, return to the *status quo ante*, and rehire the laid off kitchen staff with full back pay and benefits restored.

The District filed its answer denying the Union's charge on September 25, 2003. It contends that "Memorandum of Agreement" cited by the Union is in actuality a "side letter" to

¹ The instant improper practice charge filed by the Union named the "Fall Mountain School Board" as the respondent public employer. The representatives of the parties acknowledged at the pre-hearing conference that the appropriate name of the public employer for purposes of this case should be the "Fall Mountain Regional School District."

the parties' CBA entitled "Contracting for Independent Services." The District claims that it acted in conformity with the subcontracting side letter and specifically denies that it violated or breached the so called "*status quo*" doctrine. On the contrary, it asserts that the side letter at issue includes a valid "sunset" or "*status quo* clause" that ended the prohibition against subcontracting of work as of June 30, 2003. Moreover, the District also claims that the Union has waived any right to challenge the District's interpretation of the "side letter" before the PELRB based upon the Union's failure to file a timely grievance under the parties' CBA. Accordingly, it requests that the Union's unfair labor practice charge be dismissed.

PARTICIPATING REPRESENTATIVES

For the Union: James F. Allmendinger, Esquire

For the District: Timothy A. Gudas, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

(1) Has the Union waived its right to challenge the District's interpretation of the subcontracting "side letter" by failing to file a timely grievance pursuant to the grievance procedure as contained in the parties CBA?

(2) Did the District violate the *status quo* doctrine and otherwise commit an unfair labor practice within the meaning of RSA 273-A:5 I (a), (c), (e), (g), (h) and/or (i) by contracting out bargaining unit work to non-bargaining unit personnel?

WITNESSES

For the Union:

1. Mary Gaul, UniServ Director, NEA/NH
2. Gary Merrill, member, Union bargaining team
3. Karlene Lawrence, member, Union bargaining team
4. James Brooks, member, Union bargaining team
5. Elaine Gray, member, Union bargaining team
6. Judith Bellows, member, Union bargaining team

For the Respondent:

1. Stephen Varone, Business Administrator
2. John Murray, member, Fall Mountain Regional School Board.
3. James Elsesser, member, Fall Mountain Regional School Board
4. Charles Shaw, member, Fall Mountain Regional School Board
5. Albert St. Pierre, former member, Fall Mountain Regional School Board
6. Carmella Tsetsi, former member, Fall Mountain Regional School Board

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 with 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 agreements, past and present.
2. Subcontracting "side letters", past and present
3. Factfinder's report
4. Letter regarding subcontracting
5. Contract with subcontracting company
6. Letter of Layoff/Non-renewal

For the Union:

1. Bargaining notes
2. Unemployment documents

For the District:

1. Bargaining Notes
2. Analysis of cost-savings from Subcontracting

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. After discussion between the parties' representatives and the hearings officer, the parties have agreed to further examine and consider whether or not an agreement may be reached on deferring the instant matter to arbitration. If they are able to arrive at such an agreement, the parties' representatives shall thereafter file a joint motion

requesting that the instant matter be held in abeyance pending completion of the arbitration procedure. The motion shall be filed no later than **November 18, 2003**, shall be signed by both parties representatives and shall describe the particular grounds upon which the motion is based.

2. The parties' representatives shall meet, or otherwise confer, on or before **December 18, 2003** in order to compose a mutual statement of agreed facts. The parties representatives shall memorialize those facts upon which they can so stipulate and file said document with the PELRB at least five (5) days prior to the date of the hearing.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

January 8, 2003 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 5th day of November, 2003.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

James F. Allmendinger, Esquire
Timothy A. Gudas, Esquire