



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Contoocook Valley Regional School District

Complainant

v.

Contoocook Valley Education Association/
NEA-New Hampshire

Respondent

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Case No. T-0275-20

Decision No. 2004-021

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Contoocook Valley Regional School District (hereinafter "the District") filed an unfair labor practice complaint on January 20, 2004 alleging that the Contoocook Valley Education Association/NEA-New Hampshire (hereinafter "the Union") committed an unfair labor practice by filing two (2) grievances on behalf of its member, David A. Dodge, challenging the actions of the superintendent in suspending him with pay and then recommending his dismissal. The District claims that said grievances are neither grievable nor arbitrable under the parties' collective bargaining agreement ("CBA") and applicable state law. More specifically, the District states that in suspending Mr. Dodge with pay, the superintendent acted in accordance with and as authorized by RSA 189:31. Pursuant to said statute, as described by the District, the superintendent may remove teachers from the classroom "for cause." The District states that Article 3-1.1 of the parties' CBA specifically excludes from the grievance procedure such matters that, by statute, are beyond the scope of board authority or limited to unilateral action by the board. Moreover, Article 3-1.2 provides that "the board does not agree to binding arbitration...[for those matters]...which a specific method of review is prescribed and expressly set forth by law or any rule or regulation of the state Commissioner of Education." The District avers that since Mr. Dodge may seek review of his suspension before the State Board of Education, the matter is therefore excluded from the parties' grievance procedure. The District asserts that pursuant to RSA 189:13, Mr. Dodge's recommended dismissal by the superintendent is an action that is likewise excluded from review under the parties' grievance procedure.

The Union filed its answer to the District's unfair labor practice complaint on February 2, 2004. At the outset, the Union states that the instant charge should be dismissed for failure to allege any specific section of RSA 273-A as being violated. Secondly, it argues that the grievances are in fact covered by the CBA, given that they concern the "discipline" section of the contract, which references, inter alia, "suspensions....and dismissals." In applying the analysis set forth in *Appeal of Westmoreland School Board*, 132 N.H. 103 (1989), the Union asserts that it cannot be stated, with positive assurance, that the actions of the superintendent are not subject to challenge under the CBA's grievance procedure. The Union requests that the PELRB dismiss the District's unfair labor practice charge and grant such other relief as it deems just and proper under the circumstances.

A pre-hearing conference was conducted at PELRB offices on February 18, 2004 during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the District: David S. Forrest, Esq.

For the Association: James F. Allmendinger, Esquire, NEA-NH

ISSUE FOR DETERMINATION BY THE BOARD

Has the Union committed an unfair labor practice by pursuing the grievances on behalf of its member regarding his suspension with pay and recommended dismissal by the superintendent?

WITNESSES

For the District:

1. None at this time, but District reserves the right to call rebuttal witnesses, if necessary.

For the Association:

1. Mary Gaul, UniServ Director, NEA/NH
2. Marc Benson, UniServ Director, NEA/NH
3. Joyce Foster, Former Con-Val Teacher, Union negotiator
4. Gregory Scerbinski, President, Con-Val Education Association
5. Paula Fleming, Teacher, Former negotiator

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 agreement, July 1, 2001 to June 30, 2004.
2. Grievance documents, including District response(s), and related correspondence.

For the District:

1. None other than those marked as "Joint."

For the Union:

1. Bargaining notes, as necessary.
2. Rebuttal records, as necessary.

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 four (4) hours. 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. During the course of the pre-hearing conference, the parties' representatives informed the Hearings Officer that the results of an appeal currently pending and under deliberation before the Contoocook Valley Regional School Board may render the instant matter moot. Accordingly, the parties' representatives are directed to promptly notify the PELRB of the School Board's decision and whether, as a result thereof, the instant matter may be dismissed.
2. The District shall otherwise file with the PELRB its amended complaint, including appropriate statutory references to any and all provisions within RSA 273-A:5 that it alleges the Association has violated, on or before **February 27, 2004**.
3. The parties' representatives shall meet, or otherwise confer, on or before **March 12, 2004** in order to compose a mutual statement of agreed facts and to further explore whether they may be able to stipulate to sufficient facts in order to submit the case either by legal memorandum or cross-motions for summary judgment.

4. In the event that the parties cannot agree as to all relevant facts, then they shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
5. In discussions with the Hearings Officer, counsel for the District indicated his intent to file a Motion for Summary Judgment. It was stipulated that said motion shall be filed with the PELRB on or before **March 22, 2004** and that the Association shall file its response on or before **March 31, 2004**.
6. If there is to be an evidentiary hearing, 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.
7. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
8. 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:

April 6, 2004 @ 9:30 AM

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

So ordered.

Signed this day 26th of February, 2004.

/s/ Peter C. Phillips

Peter C. Phillips, Esq.
Hearings Officer

Distribution:

David S. Forrest, Esq.

James F. Allmendinger, Esq.