



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Marlborough Education Association,
NEA-New Hampshire

Complainant

v.

Marlborough School District

Respondent

*
*
*
*
*
*
*
*
*
*
*
*

Case No. T-0321-6

Decision No. 2004-095

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Marlborough Education Association, NEA-NH (hereinafter "the Association") filed an unfair labor practice complaint on April 15, 2004 alleging that the Marlborough School District (hereinafter "the District") committed an unfair labor practice by unilaterally reducing the hours of work of certain employees. More specifically, the Association claims that during the fall of 2003 the District violated RSA 273-A:5 I (a), (c), (e), (g) and (i) when it changed the work schedule for so-called tutors (including library and classroom assistants) from 29.5 hours per week to 27 hours per week. The Association states that this change occurred during a time in which the Association was engaged in the process of organizing said employees. It thus contends that the District was obligated to maintain the status quo as to their wages, hours and working conditions. As remedies, the Association requests, among other things, that the District restore the 29.5 hour schedule and make the employees whole, including retroactive relief, for the loss of 2.5 hours per week in compensation since the date of the unilateral change.

The District filed its answer denying the Association's charge on April 26, 2004. While acknowledging that a reduction in the hours of work did occur, the District states that this was the result of a proper exercise of management rights and consistent with the practice of the administration to establish the work schedule for the employees. The District states further that the 29.5 hour work week was mistakenly implemented and that in order to stay within the budget that had been presented and approved by the voters, a reduction in the number of hours of work was necessary. The District specifically denies that it engaged in any unlawful interference or

discrimination against employees based upon their union activity, and points out that it had consented to the proposed incorporation of support staff, including the tutors, into the Association. In any event, the District claims that the Association's complaint is not timely filed within the six (6) month statute of limitations. Accordingly, based upon all of the foregoing, it requests that the Association's unfair labor practice charge be dismissed.

A pre-hearing conference was conducted at PELRB offices on June 23, 2004 at which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: Douglas S. Hatfield, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Is the Association's complaint barred by the six (6) month statute of limitations set forth in RSA 273-A:6 and Pub. 201.02(a)?
- (2) Did the District violate RSA 273-A:5, I (a), (c), (e), (g) and/or (i) by unilaterally reducing the hours of work for certain employees from 29.5 hours per week to 27?

WITNESSES

For the Association:

1. Vivian Chiang, Association President
2. Mary E. Gaul, UniServ Director

For the District:

1. Patricia Trow Parent, SAU Personnel Manager
2. Tim Rohrer, SAU Business Administrator
3. Susan Leach, Principal

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.

EXHIBITS

Joint Exhibits:

1. None identified at this time.

For the Association:

1. Payroll records.
2. Memos.

For the District:

1. None identified at this time.

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 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 three (3) 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. The parties' representatives shall meet, or otherwise confer, on or before **September 10, 2004** 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 that document with the PELRB at least five (5) days prior to the date of the hearing.
2. The Association has indicated its intent to call Mary Gaul as a witness. As the PELRB will not accept narrative testimony from a party representative, the Association is directed to identify for the PELRB and the District as to whom will conduct questioning of Ms. Gaul and to do so 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 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.

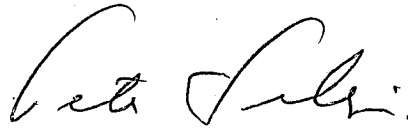
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion, or for other good cause shown, an evidentiary hearing between the parties will be held on:

October 14, 2004 @ 9:30 AM

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

So ordered.

Signed this 23rd day of June, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Mary E. Gaul, UniServ Director, NEA-NH
Douglas S. Hatfield, Esquire