



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Monadnock Education Support Staff Association,
NEA-New Hampshire

Complainant

v.

Monadnock Regional School District

Respondent

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Case No. M-0752-3

Decision No. 2004-113

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Monadnock Education Support Staff Association, NEA-NH (hereinafter "the Association") filed an improper practice charge on May 27, 2004 alleging that the Monadnock Regional School District (hereinafter "the District") violated RSA 273-A:5, I (a), (c), (g), (h) and (i) as a result of its actions relating to the placement of a new hire onto the negotiated wage scale. More specifically, the Association states that Appendix A to the parties' collective bargaining agreement (CBA) establishes the manner for placement onto the wage scale is determined for new hires. Further, the Association notes that the language in Appendix A describes the circumstances in which an off schedule placement may occur (i.e., placement into a higher pay step based upon years of experience or special qualifications). The Association claims that despite these specific rules for off schedule placement, the District has nonetheless failed to follow these provisions and has elevated new employees above current employees in salary. In this case, the Association specifically cites a "Ms. B" who instead of being placed at Step I was placed at Step IX. Due to the general nature of the certain allegations raised in its complaint, the PELRB hearing officer directed the Association to file an amended complaint, wherein it shall describe its allegations with greater specificity (see Decision below). As remedies, the Association requests that the PELRB order the District to cease violating the CBA, raise the salary steps of all current employees to the level of the new hires or, in the alternative, reduce the salary of the new hires to contract complaint levels, and make employees whole for all losses suffered.

The District filed its Motion to Dismiss and Answer on June 10, 2004, wherein it denied all of the Association's charges and requested that they be dismissed. First of all, the District states that the Association's complaint violates the six (6) month statute of limitations contained in RSA 273-A:6. It avers that the instant dispute commenced on December 3, 2003, when the Association filed a grievance on the pay schedule placement issue. Since, as claimed by the District, the grievance itself references a date of November 21, 2003 as the date of the violation, the instant complaint was not filed within six (6) months thereafter and must therefore be dismissed. Secondly, the District asserts that the Association has failed to exhaust its administrative remedies. The District states that while the Association filed a grievance and pursued it to the level of the School Board, it thereafter elected not to request arbitration. The District contends that such conduct constitutes acceptance by the Association of the School Board's decision and a waiver of any further right to pursue the matter. Finally, as to the merits of the Association's charge, the District acknowledges certain chronological events, but denies that it has committed any violation of RSA 273-A:5 I. In this regard, it specifically calls attention to language contained in Appendix A,C.3 that states that the School Board ultimately retains the right to assign an adjusted wage. Accordingly, the District requests that the Association's unfair labor practice charge be dismissed.

A pre-hearing conference was conducted at PELRB offices on July 19, 2004 at which representative of both parties were present.

PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: Margaret-Ann Moran, 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) Should the Association's complaint be dismissed based upon the District's claim that the Association failed to exhaust its administrative remedies?
- (3) Did the District violate RSA 273-A:5, I (a), (c), (g), (h) and/or (i) as a result of its alleged failure to properly place a new hire onto the standard wage schedule, in accordance with Appendix A of the parties' CBA, and in its conduct related thereto?

WITNESSES

For the Association:

1. Mary E. Gaul, UniServ Director
2. Henry Cobb, Association President
3. Rose Amato, Association Vice-President.
4. Lisa Fisk, Association Immediate Past-President

For the District:

1. Dr. Robin Marra, School Board Chair
2. Winston Wright, School Board Vice-Chair
3. Curtis Cardine, Superintendent
4. Kenneth Dassau, Assistant Superintendent
5. Larry Biron, Business Manager
6. Dan Lafleur

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. Parties CBA, dated 2003-2006
2. Payroll records
3. Letter dated May 16, 2004 from Marra to Cobb and Gaul.
4. Other correspondence between representatives of Association and School Board.

For the Association:

1. Parties' prior CBA.

For the District:

1. School Board decision dated April 20, 2004.
2. Exhibits submitted at Level C hearing.

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

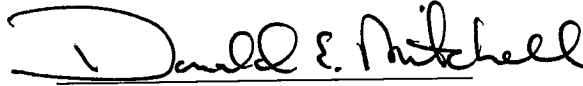
1. As discussed with the PELRB Hearing officer during the course of the pre-hearing conference, the Association shall file a written response to the District's Motion to Dismiss on or before **August 3, 2004**. Moreover, the Association shall also file by **August 3, 2004** its amended complaint, clarifying the nature of its claims against the District, including, but not necessarily limited to, which employee(s) have been improperly placed off schedule and an allegation of bad faith bargaining, raised during the course of the pre-hearing conference, regarding the District's "backing out of an agreement." The District's response to the Association's amended complaint shall be filed on or before **August 23, 2004**.
2. The parties' representatives shall meet, or otherwise confer, on or before **September 14, 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.
3. 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.
4. 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.
5. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
6. 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:

September 28, 2004 @ 9:30 AM

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

So ordered.

Signed this 23rd day of July, 2004.



Donald E. Mitchell
Executive Director

Distribution:

Mary E. Gaul, UniServ Director, NEA-NH
Margaret-Ann Moran, Esquire