



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hinsdale School District

Complainant

v.

Hinsdale Federation of Teachers/NEA-NH

Respondent

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Case No: T-0386-8

Decision No. 2004-192

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Hinsdale School District (hereinafter "the District") filed an unfair labor practice complaint on November 4, 2004 alleging that the Hinsdale Federation of Teachers, NEA-New Hampshire (hereinafter "the Union") committed an unfair labor practice in violation of RSA 273-A:5 II (f) by attempting to arbitrate a grievance that is non-arbitrable under the parties' collective bargaining agreement (CBA). More specifically, the District states that on or about May 21, 2004 and May 28, 2004, the Union filed grievances regarding involuntary teacher re-assignments. The relief sought, as quoted by the District, included that "any teacher involuntarily re-assigned be allowed to remain at their present position if they desire." The District asserts that pursuant to the parties' CBA, and specifically Articles II, Section B, V, Section F, and VII, the re-assignment of teachers is not subject to the grievance and arbitration provisions contained in the CBA. In this regard, the District references the language contained in Article V, Section F, that reads:

[e]xcept in unusual circumstances, teachers shall be notified of their teaching assignment on or before May 1 for the ensuing school year....No teacher shall be involuntarily re-assigned, except in unusual circumstances, (such as an enrollment change) which require(s) any such change....In any event, the Superintendent shall make the final determination and such action(s) shall not be subject to the grievance and arbitration provisions of the Agreement."

As remedies, the District requested in its complaint that the PELRB (1) issue an ex parte temporary cease and desist order, pursuant to RSA 273-A:6, III, prohibiting the arbitration of the Union's grievance pending the PELRB's determination; (2) find the grievances to be non arbitrable; (3) determine that the Union has committed an unfair labor practice pursuant to RSA 273-A:5, II (f); (4) issue a permanent cease and desist order prohibiting the arbitration of the Union's grievance; and (5)

award the District its attorney's fees and costs incurred in filing the instant charge. In a letter dated November 8, 2004, the District withdrew its request for an ex parte temporary cease and desist order.

A pre-hearing conference was conducted on December 6, 2004 before the undersigned hearing officer. As of that date, the Union had yet to file a responsive answer to the District's complaint. Following discussion at the pre-hearing conference, the Union indicated that it would file an answer by December 7, 2004, to which the District did not object. The hearing officer was also informed that the parties were presently awaiting an arbitrator's decision with respect to the issue of arbitrability in this case.

In its answer, subsequently filed with the Board, the Union requests that the District's charges be denied and that the grievances be found to be arbitrable. It is the Union's position that the District violated the CBA when it failed to notify the grievants of their change in assignments by May 1 and that it then involuntarily reassigned these teachers without unusual circumstances being present. The Union maintains that in applying the Courts holding in *Appeal of Westmoreland School Board*, 132 N.H. 103 (1989), the instant CBA is susceptible to an interpretation that covers the dispute and that the merits of its grievances may therefore be arbitrated.

PARTICIPATING REPRESENTATIVES

For the Union: Mary E. Gaul, UniServ Director

For the District: Thomas Barry, Esq., on behalf of Margaret-Ann Moran, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether or not the Union has committed an unfair labor practice, in violation of RSA 273-A: 5 II (f), by seeking arbitration of a matter that is not arbitrable under the parties' CBA?
- (2) If so, what shall be the appropriate remedy?

WITNESSES

For the District:

1. Margaret Sullivan, Asst. Superintendent
2. Helene Bickford, Principal

For the Union:

1. Linda Delong
3. Donna Foster
4. Mary Jane Hescocock
5. Victoria Jordan
6. Susan Kent

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. 03-06 Collective bargaining agreement
2. 5/20/04 Grievance
3. 6/3/04 Response to Superintendent
4. 6/6/04 Memo to school board
5. 5/28/04 grievance
6. 6/8/04 Response of Superintendent
7. 6/22/04 Response of school board chair
8. 10/29/04 Motion to dismiss filed @ arbitration
9. 6/28/04 Demand for arbitration
10. Decision of Arbitrator on arbitrability
11. Motion to postpone arbitration hearing

For the District:

None other than those marked as "Joint"

For the Union:

1. 1986-89 CBA
2. 1989-91 CBA
3. Bargaining Notes
4. July 26, 1998 Letters
5. Bargaining proposals and counter proposals
6. First draft of 1989-91 CBA (defeated)

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 set aside for this hearing will be one-half (½) 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 AND ORDER

1. The union's representative shall send a copy of the arbitrator's award regarding arbitrability to the Board immediately upon receipt. In the event that the arbitrator's ruling

resolves the instant matter, the parties' representatives shall notify the Board as soon as possible.

2. If the instant matter is not resolved by the arbitrator's award, the parties' representatives shall meet, or otherwise confer, on or before **January 11, 2005** in order to compose a mutual statement of agreed facts, exchange exhibits and witness lists. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB, postmarked, by **January 11, 2005**.

3. During the course of the pre-hearing conference, the District indicated its intent to file a Motion for Summary Judgment. Said motion shall be filed with the PELRB on or before **January 21, 2005**. The Union's response to the City's motion shall be filed with the PELRB on or before **February 4, 2005**.

4. 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.

~~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:

Thursday, February 10, 2005 @ 9:30 AM

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

So ordered.

Signed this 10th day of December, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Mary E. Gaul, UniServ Director
Margaret Ann Moran, Esq.