



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Laconia Education Association, NEA-NH and
Education Assistants of Laconia, NEA-NH

Complainant

v.

Laconia School District

Respondent

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Case No. T-0239-25

Decision No. 2005-016

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Laconia Education Association, NEA-NH (hereinafter "LEA") and the Education Assistants of Laconia, NEA-NH (hereinafter "EAL") (or the "Associations") filed an improper practice charge on December 9, 2004 alleging that the Laconia School District (hereinafter "District") has violated RSA 273-A:5, I (a) and (e) by refusing to provide the LEA and EAL with information regarding employee health insurance coverages. The Associations have requested the information as part of, and relevant to, their current round of collective bargaining negotiations with the District, which commenced in July 2004. They seek to know the precise health insurance coverages and costs of employees in order to be fully prepared for such negotiations. As remedy, the Associations petition the PELRB to order the District to provide the requested information.

The District filed its Answer on December 20, 2004, wherein it denied the charges of the LEA and EAL. At the outset, the District submits that it is a neutral party in this matter, in that it is not opposed to the release of the requested information but rather that it is prohibited by federal law, most notably the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable statutes, regulations, and case decisions from releasing such confidential health information to the Union. In this regard, the District maintains that its' good faith refusal to provide the requested information does not constitute a violation of RSA 273-A:5 I (a), and, moreover, that it has not refused to negotiate in good faith in violation of RSA 273-A:5 I (e). The District contends that the requested detail of information sought by the unions is not necessary for them to perform their statutory duties in connection with collective bargaining

since the same information, without specific identifying information, serves the Union's purposes equally well. Accordingly, the District requests that the improper practice charge be dismissed.

A pre-hearing conference was conducted on February 4, 2005 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the LEA/EAL: James F. Allmendinger, Esq.

For the District: Paul T. Fitzgerald, Esq..

ISSUES FOR CONSIDERATION BY THE BOARD

- (1) Did the District violate RSA 273-A:5, I (a) and (e) by refusing to provide information requested by the LEA and EAL regarding employee health insurance coverages? If so, what shall be the remedy?
- (2) If it was determined that the information must be provided, do the actions of the District necessarily rise to the level of an unfair labor practice within the meaning of RSA 273-A:5, I (a) and/or (e)?

WITNESSES

For the Association:

1. Bob Gunther, Bargaining Team member, LEA
2. Patti Clauss, President and bargaining team member, EAL
3. Jan Paddleford, Uniserve Director

For the District:

1. Robert Champlin, Superintendent of Schools
2. Edward Emond, Business Manager
3. Richard Dwyer, NH Municipal Trust
4. Tom Mahan, Primex

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. Bargaining Notes regarding HIPAA & request for information.
2. Correspondence, e-mails & memos between the parties regarding HIPAA and requests for information.
3. Applicable statute and regulations regarding HIPAA.

For the Association:

1. None other than those identified as joint, above.

For the District:

1. Relevant Federal and State statutes including but not limited to RSA 91-A, and sections of the health insurance portability and accountability act.
2. Selected portions of the Code of Federal Regulations.
3. Respondent's HIPAA notice of privacy practices.
4. Respondent's Privacy mission statement.
5. Specimen or actual Business Associate Agreement between self-insured insurance plan and qualified associates.
6. Correspondence and release document dated December 1, 2004.
7. Similar Correspondence to members of the Laconia Education Association.

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 ten (10) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives, shall meet, or otherwise confer, on or before **February 15, 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, along with any attached joint exhibits, by said date. In the event that agreement is reached to submit the case by written submissions only, and without the need of oral testimony, the parties shall forthwith file a joint

statement indicating such agreement, to include a proposed schedule for the parties' filings.

2. 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.
3. 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:

February 24, 2005 @ 9:30 AM

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

So ordered.

Signed this 8th day of February, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
James F. Allmendinger, Esq.
Paul T. Fitzgerald, Esq.