



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

School Administrative Unit 21

Complainant

v.

Seacoast Education Association, NEA-NH

Respondent

Case No. T-0257-9

Decision No. 2005-096

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Seacoast Administrative Unit 21 School Boards, (hereinafter "SAU 21") filed an improper practice charge on June 14, 2005 alleging that the Seacoast Education Association/NEA-NH (hereinafter "the Association") violated RSA 273-A:5, I (f) as a result of its actions relating to demanding arbitration of a grievance filed on behalf of Ms. Denise Gough ("grievant"). The grievant was employed as a school nurse by the Hampton School District until she was not offered a contract for the 2005-2006 school year. SAU 21 alleges, among other things, that her position is not included in either the PELRB certification, issued on December 7, 1976 and never modified, or the recognition clause contained in the parties' 2002-2005 collective bargaining agreement (CBA). Accordingly, SAU 21 asserts that her grievance challenging her non-reappointment cannot be processed and is inarbitrable under the CBA and New Hampshire law, citing, *inter alia*, *Appeal of Somersworth School District*, 142 N.H. 837 (1998).

SAU 21 further contends that even if the grievant is covered by the recognition clause of the parties' CBA, the grievance itself is still inarbitrable. As alleged by SAU 21, the parties have specifically agreed in Article 3-7.2 of the CBA that complaints arising by reason of a person "not being re-employed" or a complaint "occasioned...by lack of appointment to...or lack of retention in [a] position" shall not be "considered a proper subject for arbitration..." Therefore, as asserted by SAU 21, it can be said with positive assurance that the arbitration clause contained in the parties CBA is not susceptible of a reading that will cover the instant dispute, citing *Appeal of Westmoreland School Board*, 132 N.H. 103 (1989). As remedies, the SAU 21 requests, among other things, that the PELRB permanently restrain the Association from pursuing the instant grievance to arbitration on behalf of the grievant.

The Association filed its Answer to the unfair labor practice complaint on June 29, 2005, wherein it states that its demand for arbitration over the grievant's non-renewal is not a breach of the CBA and therefore does not constitute an unfair labor practice. The Association points out that Article 22-3 of the CBA states how salary and benefits are determined for nurses employed by the District. It states that there is similar language regarding salary and benefits for nurses in CBA's dating back to the 1970's. There is, as alleged by the Association, a longstanding history of the parties specifically bargaining over the nurses position. Accordingly, based upon this history, the Association contends that the nurse's position was effectively added to the recognition clause in the CBA and the instant facts are therefore distinguished from those in the case of *Appeal of Somersworth School District*, 142 N.H. 837 (1998). Moreover, given this history of both bargaining and practice, the Association states that it cannot be said with positive assurance that the arbitration clause is not susceptible of a reading that would permit the grievance to proceed to arbitration. The Association notes that school nurses are not covered by RSA 189:14-a (the non-renewal statute) and therefore the grievance procedure in the CBA provides the only potential remedy for the grievant. The Association requests that SAU 21's unfair labor practice charge be denied, and Ms. Gough's grievance be permitted to proceed to arbitration under Article 3-7.1 of the CBA.

A pre-hearing conference was conducted before the undersigned hearing officer at PELRB offices on July 27, 2005.

PARTICIPATING REPRESENTATIVES

For the Association: Steven R. Sacks, Esq.

For the Employer: Robert A. Casassa, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the Association has committed an unfair labor practice in violation of RSA 273-A:5, II (f) by pursuing a grievance to arbitration on behalf of a non-bargaining unit employee.

(Whether the grievant, Ms. Denise Gough, is covered by the recognition clause set forth in the parties' CBA.)

- (2) Whether the Association has otherwise committed an unfair labor practice in violation of RSA 273-A:5, II (f) by pursuing a grievance to arbitration that is excluded from coverage under the parties negotiated grievance procedure.

WITNESSES

For the Association:

1. Denise Gough, Grievant
2. Kevin Fleming, Grievance Chair

3. Len Barron, Teacher (Retired)
4. Les Shepard, Teacher, Bargaining Team Member
5. Ed Beattie, Teacher, Bargaining Team Member
6. Ruth Xavier, School Nurse (Retired), Bargaining Team Member
7. Dorothy Sullivan, Teacher (Retired)

For the Employer:

1. James F. Gaylord, Superintendent

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, 2002-2005.
2. Letter and attached grievance, dated May 2, 2005, from K. Fleming to J. Gaylord.
3. Letter dated May 20 2005 to K. Fleming from R. Casassa.
4. Unit Certification – Case No. T-0257, dated December 7, 1976.
5. Letter dated May 19, 2005 from S. Sacks to J. Coco (AAA).
6. Letter dated May 23, 2005 from R. Casassa to S. Sacks.

For the Association:

1. Other Collective Bargaining Agreements between the parties dating back to 1978.
2. Bargaining notes.
3. Nurse Contract(s)
4. Department of Education Rules re: Certification of Nurses

For the Employer:

1. Recognition Clause – Agreement between Seacoast Educ. Assoc. and SAU 21, dated February 18, 1973 , expiring June 30, 1976.
2. State Board of Education documentation regarding credentialing/certification and Denise Gough's failure to satisfy same.
3. Job Description of position held by Ms. Gough during 2004-2005 school year.
4. Information regarding credentials/licensure/certification held and not held by Ms. Gough.
5. Demand for Arbitration, dated May 19, 2005, filed with AAA by SEA.

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.

DECISION

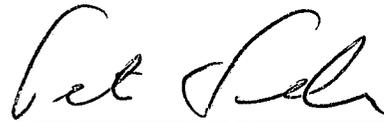
1. The parties' representatives shall meet, or otherwise confer, on or before **August 2, 2005** in order to compose a mutual statement of agreed facts and to further explore the feasibility of presenting the instant case through written submissions or, in the alternative, with limited testimony. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB by the close of business on **August 2, 2005**. In the event the parties reach agreement on presenting the instant case through written submissions and without the need for a hearing, they shall immediately notify the PELRB.
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:

August 4, 2005 @ 9:30 AM

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

So ordered.

Signed this 28th day of July, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Steven R. Sacks, Esq.
Robert Casassa, Esq.