



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Sanborn Regional School District

Complainant

v.

Sanborn Regional Education Association/NEA-NH

Respondent

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Case No: T-0256-23

Decision No. 2005-123

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Sanborn Regional School District ("the District") filed an unfair labor practice complaint on July 22, 2005 alleging that the Sanborn Regional Education Association/NEA-New Hampshire ("the Association") committed an unfair labor practice in violation of RSA 273-A:5 II (d), (f) and (g) by demanding arbitration of a grievance resulting from the non-renewal of second year teacher Lee Wilson. The District submits that RSA 273-A:4 and RSA 189:14-b prohibit arbitration of grievances which result from teacher non-renewals. As specifically referenced by the District, RSA 273-A:4 states that any arbitration provision in a collective bargaining agreement that was in force on the effective date of that section (August 29, 2003) "shall be null and void upon the expiration date of that collective bargaining agreement." According to the District, the parties' 2002-2005 collective bargaining agreement was in effect on August 29, 2003 and expired on June 30, 2005. As a result, the District contends that the grievance that resulted from Ms. Wilson's non-renewal is not arbitrable and the Association's attempt to arbitrate it violates RSA 273-A:5 II (d), (f) and (g). As remedies, the District requests that the PELRB (1) declare that the Association's instant attempt to arbitrate does violate these sections of the law, (2) order the Association to permanently cease and desist from attempting to arbitrate the grievance; (3) stay the arbitration of the grievance pending the board's decision in this case, and (4) grant such other relief as it deems appropriate.

The Association filed its answer denying the District's complaint on August 8, 2005. The Association asserts, among other things, that the instant grievance arises from the parties' 2002-2005 collective bargaining agreement, and because that agreement was in effect prior to August 29, 2003, the matter is arbitrable. It also states that insofar as the

grievance alleges matters in addition to Ms. Wilson's non-renewal, it remains arbitrable notwithstanding the August 29, 2003 amendments to RSA 273-A. The Association asks that the PELRB conclude that the matter is arbitrable and order such further relief as is just and proper.

A pre-hearing conference was conducted before the undersigned hearing officer on September 15, 2005 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the District: Abigail J. Sykas, Esq.

For the Association: James F. Allmendinger, Esq.

ISSUES TO BE PRESENTED FOR BOARD REVIEW

- (1) Should the Association's grievance in arbitration be stayed pending the Board's consideration of the District's unfair labor practice (ULP) charge?¹
- (2) Has the Union committed an unfair labor practice in violation of RSA 273-A: 5 II (d), (f) and/or (g) by demanding arbitration of a grievance pertaining to the non-renewal of a teacher?

If so, what shall be the remedy?

WITNESSES

For the District:

1. Frank Scala, Superintendent

For the Association:

1. Lee Wilson, Grievant
2. Bruce Stern, Pres., SREA
3. Greg Andruschkevich, NEA-NH Uniserv Director

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.

¹ Counsel for the District indicated during the pre-hearing conference that a Motion to Stay the arbitration case would be filed within the week. In accordance with Board practice, Counsel for the Association will file his objections to the motion within 15 days of its filing.

EXHIBITS

Joint Exhibits:

1. 2002-2005 Collective bargaining agreement
2. Documents Relating to the Grievance of Ms. Wilson
3. Notice of Non-Renewal
4. Documents Relating to grievant's "tenure" status

For the District:

None other than those marked as "Joint."

For the Association:

None other than those marked as "Joint."

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

In accordance with the Decision section below, no adjudicative hearing is scheduled at this time.

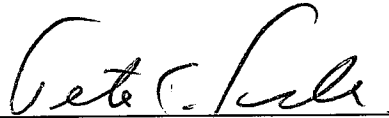
DECISION

1. Upon discussion between the parties' counsel and the hearing officer during the pre-hearing conference, the parties stipulated to presenting the instant matter through written submissions. Accordingly, the adjudicative hearing scheduled for September 28, 2005 is hereby cancelled.
2. It was further stipulated that the parties' counsel shall meet, or otherwise confer, in order to compose a mutual statement of agreed facts and exhibits. The parties' counsel shall both execute the "Joint Stipulation of Facts and Exhibits" and file said document with the PELRB on or before **September 28, 2005**.
3. The parties' counsel shall thereafter file their respective supporting memorandums of law with the Board on or before **October 7, 2005**.

4. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined that a hearing is necessary prior to a final determination on the merits.
5. In the event that it is determined that an evidentiary hearing is necessary, the parties' counsel shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing 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.

So ordered.

Signed this 15th day of September, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

James F. Allmendinger, Esq.

Abigail J. Sykas, Esq.