



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Berlin Education Association,  
NEA-New Hampshire  
Complainant

v.

Berlin School District  
Respondent

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Case No. T-0201-14

Decision No. 2005-140

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Berlin Education Support Association, NEA-NH (hereinafter “the Association”) filed an improper practice charge on August 1, 2005 alleging that the Berlin School District (hereinafter “the District”) violated RSA 273-A:5, I (a), (e) and (h) by denying three (3) employees access to a sick bank established under the parties’ contract. In its complaint, the Union alleges that the Superintendent denied one such employee on three (3) occasions, and when asked for a reason following the third denial, the superintendent stated that it was a “pre-existing condition.” The Union asserts that there is no language within the contract providing that the sick bank does not cover pre-existing conditions. The Union submits that the sick bank is wholly voluntary and that a bargaining unit member who joins has already earned the sick days that they must donate into the bank in order to belong. According to the Union, each of the employees referenced in the complaint satisfied all conditions under the contract in order to draw time from the sick bank and yet were denied. The Union alleges that the District’s actions in this regard, by and through its superintendent, constitute an unlawful restraint from use of the sick leave bank that was obtained through good faith bargaining [RSA 273-A:5 I (a)], a lack of good faith bargaining [RSA 273-A:5 I (e)], and a violation of the CBA [RSA 273-A:5 I (h)].<sup>1</sup> As remedies, the Association requests that the PELRB make the three (3) effected employees whole for the days that were wrongfully denied from them based upon the superintendent’s abuse of discretion and failure to act in good faith.

<sup>1</sup> The Association states that because of language in the subject article (10-4.5), it has no recourse under the terms of the grievance procedure contained in the parties’ CBA.

The District filed a response to the Union's charge on August 12, 2005, wherein it stated that requests for the use of the Catastrophic Sick Leave Bank have been approved or denied by superintendents of the Berlin Public Schools based upon the language contained in the current CBA and in former agreements.

The undersigned-hearing officer conducted a pre-hearing conference at PELRB offices on November 2, 2005.

PARTICIPATING REPRESENTATIVES

For the Association: Jay Tolman, UniServ Director

For the District: John Moulis, Superintendent.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Did the District violate RSA 273-A:5, I (a), (e) and/or (h) by refusing to grant the use of the sick leave bank by the three bargaining unit members referenced in the Association's complaint?
- (2) If so, what shall be the remedy(ies)?

WITNESSES

For the Association:

1. Roland Simard, Association President

For the District:

1. John Moulis, Superintendent
2. Richard Steudle, Former Supt.
3. Bruce Mackay, Former Supt.

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. Collective Bargaining Agreement (2003-2006).
2. BEA letter to Board 5-9-05 (Employee name(s), other identifying info, redacted).
3. John Moulis letter to "Teacher A" 3-30-05 (Employee name, other identifying info, redacted).

4. John Moulis letter to "Teacher A" 3-22-05 (Employee name, other identifying info, redacted).
5. Jay Tolman Letter to John Moulis 3-21-05 (Employee names, other identifying info, redacted).
6. Fax copy of Doctor's Note 3-20-05 (Employee name, other identifying info, redacted).

For the Association:

None other than those marked as "Joint," above.

For the District:

None other than those marked as "Joint," above.

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. On or before **November 10, 2005**, the District shall file a supplemental answer with the Board, and a copy to the Association, wherein it shall provide a "clear and concise statement fairly meeting each allegation in the complaint, specifically denying or admitting and explaining each allegation of which the respondent has knowledge." See Pub. 201.03. On or before **November 10, 2005**, the District shall also notify the Board and the Association as to the identity of the individual who will conduct direct examination of the District's representative during that representative's testimony at hearing.
2. On or before **November 10, 2005**, the Association shall file a supplemental statement with the Board, and a copy to the District, referencing all employees on whose behalf relief is being sought, subject to Paragraph 4, below, and the actual amount of any make whole remedy for each.
3. The parties' representatives shall meet, or otherwise confer, on or before **November 10, 2005** in order to compose *a mutual statement of agreed facts and exhibits*. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file that document with the PELRB no later than **November 14, 2005**.

4. In order to protect the confidentiality of employee medical information, any and all identifying information set forth in medical records or other exhibits shall be redacted. Furthermore, in the interests of maintaining such medical confidentiality, the parties shall identify and refer to each employee who was denied or granted access to the sick leave bank as "Teacher A," "Teacher B," etc.
5. 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.*
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:

**November 17, 2005 @ 9:30 AM**

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

So ordered.

Signed this 7<sup>th</sup> day of November, 2005.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Jay Tolman, UniServ Director  
John Moulis, Superintendent