



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Pinkerton Academy Teachers Association,
Steven Roderick, John Pelkey, and
NEA – New Hampshire

Petitioners/Complainants

v.

Case No(s): E-0008-1
E-0008-2

Pinkerton Academy

Respondent

Decision No. 2006-018

ORDER GRANTING RESPONDENT’S STAY OF PROCEEDINGS

The Board has reviewed the pending Motion to Stay Adjudicative Hearing, dated January 5, 2006 by the Respondent, Pinkerton Academy, reviewed the Association’s objection thereto, filed on January 19, 2006, and reviewed the Order of the Supreme Court, dated December 2, 2005 and has undertaken the following actions regarding these consolidated matters:

1. It noted that it had previously denied a previous request by the Respondent to stay proceedings (see PELRB Decision # 2005-117) filed on August 11, 2005.
2. It noted that at that time the Respondent’s appeal of its interim order was pending, however, the appeal had not been accepted and indeed the Supreme Court declined to accept the appeal by its decision dated October 19, 2005, Case No. 2005-0627.

3. It noted that both of the parties, having been informed by the PELRB on the morning of October 20, 2005 of the decision of the Supreme Court the day before, orally requested a continuation of the hearing on the merits of the Association's initial complaint of unfair labor practices and later filed a written joint motion on October 26, 2005 confirming the previous oral request for a continuation of the hearing on the merits of the Association's complaint that was granted by the PELRB.
4. In denying the previous request for a stay, the PELRB recognized its primary jurisdiction and responsibility to hear such matters concerning its jurisdiction and the merits of unfair labor practice complaints pursuant to RSA 273-A and render decisions necessary thereto. The PELRB also recognized in that previous order the role of the Supreme Court as the final arbiter and the court's authority to stay proceedings if it believes justice compels such action.
5. In reviewing the instant request to stay proceedings pending the decision of the Supreme Court, the majority of the Board finds that a significant and distinguishing event has occurred in the form of an infrequent Supreme Court decision to grant a reconsideration request by a party of its October 19, 2005 declination of appeal and its decision now to accept the appeal.
6. With present knowledge that the PELRB's earlier determination of jurisdiction is being reviewed by the Supreme Court and will result in a final order of affirmation or reversal, the majority of the Board finds it would not be appropriate to schedule the continuation of the adjudicative hearing in this matter until such time as the Supreme Court has had the opportunity to rule.
7. While the majority believes that its initial decision regarding its interpretation of RSA 273-A (Decision # 2005-062) is correct and will be affirmed by the Supreme Court, the majority does not believe that judicial economy would be served by conducting further evidentiary hearings at this time.
8. Additionally, the majority is reluctant in this particular case to create a situation by which there could be conflicting decisions by two forums that would have direct and immediate impact upon the parties that would make it difficult, if not impossible, to restore the *status quo ante*. (see PELRB Decision #2005-
9. Further, the majority does not find that the public interest, to the extent it has been articulated by the Association as the "threat of further disciplinary action against [the employees] hangs ever present" outweighs, at a minimum, the modification of personnel rules or the application of existing personnel rules throughout the Respondent's administration *vis a vis* educational personnel.

10. In addition, the alleged conduct that has given rise to the underlying complaint by the Association occurred over one and one half years ago and there has been no allegation via supplemental filings that such conduct has continued or that the same or other individuals have been subject to similar conduct.
11. Lastly, the majority agrees that in this case where the PELRB's original jurisdiction is at issue, where its authority to interpret a "definitional" term within its own statute is also called into question, labor relations jurisprudence is served and therefore, also, the public's interest in harmonious labor relations and the orderly and uninterrupted operation of government services by ordering as follows:

A. The Respondent's Motion to Stay these proceedings is GRANTED.

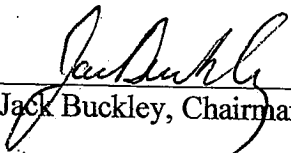
B. The parties shall maintain the status quo until such time as the Supreme Court shall issue its order.

C. This stay shall toll the limitations on actions as contemplated in RSA 273-A: 6 VII until the Supreme Court issues its order.

D. This matter shall remain pending on the PELRB Docket and, if appropriate following the Supreme court's order, the hearing on the merits of the Association's complaint shall be scheduled forthwith.

So Ordered.

Signed this 1st day of February, 2006



Jack Buckley, Chairman

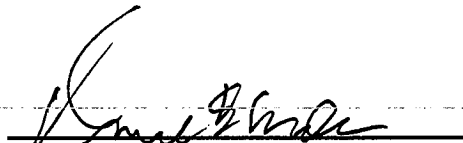
By majority vote. Chairman Jack Buckley presiding, with Board Member Seymour Osman also voting with the majority. Member Richard E. Molan dissenting.

MINORITY DECISION

The undersigned member has reviewed the pending Motion to Stay Adjudicative Hearing, dated January 5, 2006 by the Respondent, Pinkerton Academy; reviewed the Association's Objection thereto, filed on January 19, 2006; and reviewed the Order of the Supreme Court dated December 2, 2005 and opines as follows:

1. This Board issued an Interim Decision and Order on May 18, 2005 (PELRB Dec. No. 2005-062) and *inter alia*, ordered that "... [a] notice of the continuation of this hearing to consider the issues raised by the unfair labor practice complaint will be issued to the parties in due course." *Id.* pg. 11.
2. After a series of motions, the Respondent filed an appeal pursuant to RSA 541 with the New Hampshire Supreme Court.
3. The Respondent also requested a stay of proceedings of the Board which was denied by the Board on August 11, 2005. (See, PELRB Dec. No. 2005-117).
4. Thereafter, the Respondent filed a motion with the New Hampshire Supreme Court seeking a suspension of the Order pursuant to RSA 541:18 on September 20, 2005. The Court denied the requested suspension of the Order on October 6, 2005.
5. The Court declined to accept the appeal by the Respondent by a decision dated October 19, 2005, Case No. 2005-0627.
6. Thereafter, the Court, on a motion for reconsideration, agreed to hear the appeal on December 2, 2005.
7. The Respondent again renews its motion to suspend the order of the Board and the majority finds that the intervening acceptance of the appeal by the New Hampshire Supreme Court militates in favor of granting the current request for a stay of proceedings.
8. While the undersigned member has sympathy for the Board's desire to conserve the very limited resources of this Board in a judicious manner, the Board's long-held policy has been to defer such requests for a stay of proceedings to the New Hampshire Supreme Court where it rightfully belongs pursuant to RSA 541:18.

9. **RSA 541:18 Suspension of Order** states in pertinent part that “[n]o appeal or other proceedings taken from an order of the commission *shall* suspend the operation of such order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension;....” (Emphasis supplied).
10. Because this member believes that the jurisdiction over suspension of the proceedings has now shifted to the Supreme Court, any stay granted by this Board would be done so improvidently.
11. This member offers no opinion as to whether or not the Supreme Court should order a suspension of further proceedings although the question of original jurisdiction may offer merit to the request but bases this opinion on the belief that the jurisdiction to suspend further proceedings in this matter lies with the Court and not with the Board. Therefore, this member would deny the Respondent’s Motion to Stay these proceedings and order the continued hearing to be scheduled.



Richard E. Molan, Member

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