



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Tamworth Educational Support Personnel
Association/NEA-NH

Complainant

v.

Tamworth School District

Respondent

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Case No: E-0025-1

Decision No. 2006-212

ORDER ON PETITIONER'S MOTION TO AMEND

BACKGROUND

The Tamworth Educational Support Personnel Association/NEA-NH ("the Union") filed an unfair labor practice complaint on May 24, 2006 alleging that the Tamworth School District ("the District") violated RSA 273-A:5 I (a), (c), (d) and (h) by terminating head cook Margaret DeLong. The Union claims the District retaliated and discriminated against Ms. DeLong because of her union activities. The District denies the allegations. The hearing on the merits was originally scheduled for September 7, 2006 but was rescheduled to November 30, 2006. Further detail concerning the background of this case is contained in the pre-hearing order of July 19, 2006. See PELRB Decision No. 2006-108.

On August 18, 2006 the Association filed a motion to amend its complaint, seeking to add a claim that the District violated RSA 273-A:5, I (g) or the collective bargaining agreement ("CBA") between the parties by dismissing Ms. DeLong without just cause. The District filed its objection on August 31, 2006. Among other things, the District asserts that the applicable CBA does not have a just cause standard and that past practice does not establish a just cause standard. The District also claims the PELRB cannot infer a just cause standard where no such language appears in the CBA. The District also contends that under Article II of the CBA the District has the right to "suspend, discharge or take other disciplinary action against employees in accordance with this agreement."

The undersigned hearing office conducted a telephone conference on November 21, 2006 concerning the pending motion and the November 30, 2006 hearing date. The participating

representatives were James Allmendinger, Esq. for the Union and Mark T. Broth, Esq. for the District.

DECISION

1. Pursuant to Admin. Rule Pub 201.04 the Union's motion to amend is granted. The Union is required to prove all elements of the just cause claim added by this amendment. In particular, the Union must establish that a just cause standard applies in this case. The decision to grant the motion to amend is not a finding that the District's decision to terminate Ms. DeLong was subject to a just cause standard.
2. The party representatives shall forward any amendments to their Witness and Exhibit lists to the opposing representative or counsel, and to the PELRB, relating to the just cause claim on or before November 22, 2006 in the case of the Union and on or before November 28, 2006 in the case of the District, together with a brief summary of the anticipated testimony of witnesses listed on such amendments and the purpose of exhibits identified on such amendments. It is noted that the parties briefly discussed the likely content of any such amendments during the course of the November 21, 2006 telephone conference.
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, as previously scheduled, on:

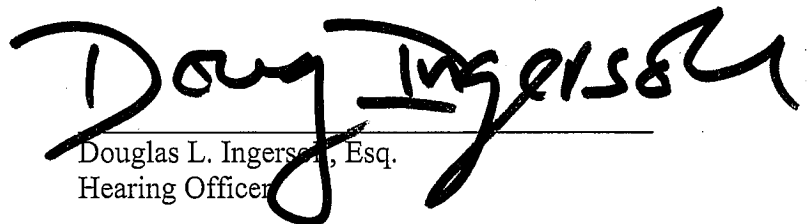
November 30, 2006 @ 9:30 a.m.

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

So ordered.

November 22, 2006.

Distribution:
James F. Allmendinger, Esq.
Mark T. Broth, Esq.


Douglas L. Ingersoll, Esq.
Hearing Officer