



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**DERRY EDUCATION ASSOCIATION/
NEA-NEW HAMPSHIRE**

COMPLAINANT

v.

CASE NO. E-0073-1

DECISION NO. 2009-047

**DERRY COOPERATIVE SCHOOL
DISTRICT #1**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: March 9, 2009

Appearances: Complainant: Thomas Coish, UniServ Director
Respondent: Michael S. Elwell, Esq.

Background:

Derry Education Association/NEA-New Hampshire ("Union") filed an unfair labor practice complaint against Derry Cooperative School District #1 ("District") on November 24, 2008. The Union claims that the District breached Article 9, Section 9-08 of the parties' Collective Bargaining Agreement (CBA) by denying certain bargaining unit members access to a

sick leave bank on the ground that their sick leave applications did not involve extended illness or disability. The Union contends that, as a result, the District violated RSA 273-A:5, I (h).

The Union requests the PELRB to make whole the bargaining unit members whose sick leave applications were improperly denied and to direct the District not to violate the provisions of Article 9, Section 9-08 of the CBA.

On December 9, 2008, the District filed an answer denying the Union's allegations. The District claims that the CBA language, the parties' bargaining history, and the parties' past practice call for the sick leave bank to be used only for extended illnesses or disabilities. In addition, the District asserts that the Union failed to state a claim upon which relief may be granted, and that the complaint is barred by waiver, estoppel, laches, and unclean hands. The District further contends that the complaint is moot as to Dawn Chouinard, one of the bargaining unit members whose sick leave application has been purportedly denied.

The District requests that the PELRB dismiss the unfair labor practice complaint.

At the pre-hearing conference, the District indicated that the Union failed to disclose to the District the information regarding additional sick leave bank decisions on which the Union intends to rely to support its position. The Union confirmed that it intends to use sick leave bank decisions in addition to those previously provided to the District, and that it has not yet provided the information regarding additional sick leave bank decisions to the District. The District further indicated that it intends to file an Assented to Motion to Continue requesting the PELRB to continue the evidentiary hearing to April 15, 2009.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the District committed an unfair labor practice in violation of RSA 273-A:5, I (h) by denying the named bargaining unit members' applications to access the sick leave bank.
2. Whether the District's requirement that sick leave bank be used only for extended illnesses and disabilities constitutes a unilateral change in the terms of the parties' CBA.
3. Whether the Union's complaint is barred by waiver, estoppels, laches, and unclean hand, and whether it is moot as to Dawn Chouinard.

WITNESSES

For the Union:

1. Mary Streeter
2. Margaret Morse-Barry
3. Michele Procopio
4. Dawn Chouinard
5. Martha Raymond
6. Linda Jeserski
7. Richard Salcito
8. Kim Rivers
9. Donna Michaud
10. Kerri Dunham
11. Jean Callahan

For the District:

1. Mary Ellen Hannon
2. Kathleen Kennedy
3. David Jack
4. Robert Leslie

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is

understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

For the Union:

1. Collective Bargaining Agreement
2. District's list of 8 bargaining unit members and their sick leave bank usage
3. Communications between the District and the Union, including email messages of May 28, 2008, May 29, 2008, June 2, 2008, June 3, 2008 and July 18, 2008.

For the District:

1. Collective Bargaining Agreement
2. Leave/attendance records
3. Bargaining history documents
4. Past practice documents

Both parties reserve the right to amend their Lists 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. 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.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. The Union shall provide the District with a copy of the Sick Bank Committee Notebook and with information regarding additional sick leave bank decision on which the Union intends

to rely, including the names of sick leave bank applicants and the dates of decisions, no later than **March 17, 2009**.

3. Any Motion to Continue the currently scheduled evidentiary hearing shall be filed on or before **March 18, 2009** and shall contain the required information in accordance with Pub 201.07 (e); otherwise, the evidentiary hearing will be held as previously scheduled.

4. The parties shall prepare and file a Statement of Stipulated Facts no later than 5 days prior to the scheduled evidentiary hearing.

5. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than 5 days prior to the scheduled evidentiary hearing.

6. The parties shall 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.

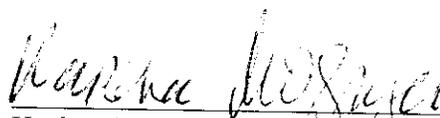
HEARING

Unless otherwise ordered as a result of the filing of a Motion to Continue or other motion, the evidentiary hearing between the parties will be held on **March 26, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled evidentiary hearing shall be continued, all time references as appear in paragraphs ## 4, 5, and 6 of the DECISION SECTION shall be based upon the rescheduled date for the evidentiary hearing. The time set aside for this hearing is 5 hours. If either party believes

that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

March 9, 2009



Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Thomas Coish, UniServ Director

Michael S. Elwell, Esq.