



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Conway School District

v.

Conway Education Association/NEA-NH

Case No. E-0077-5

Decision No. 2010-205

Appearances:

John F. Teague, Esq., Upton & Hatfield, LLP for the Complainant

Jay Tolman, UniServe Director, Conway Education Association/NEA-NH for the Respondent

Background:

On July 28, 2010 the District filed an unfair labor practice charge, claiming the Association violated RSA 273-A:3, I and RSA 273-A:5, II (d) & (f) when on July 14, 2010 it filed a grievance concerning the school year starting date. The Association denies the charge and contends it is entitled to maintain the grievance under the parties 2007-09 collective bargaining agreement (2007-09 CBA).

The parties agreed to submit this case for decision on stipulated facts and exhibits and briefs.¹

¹ The parties' stipulated facts and exhibits are the basis for this decision but are not reproduced herein.

Decision and Order

Decision Summary:

The complaint is dismissed. The “arbitrability” of the Association’s grievance is not subject to review at the current stage of the grievance proceedings. Additionally, even if review at this time is appropriate the dispute over the start of the 2010-11 teacher work year is subject to the grievance procedure, which concludes in final and binding arbitration. For these reasons the Board does not have jurisdiction over the unfair labor practice charge and the complaint is dismissed.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6, but does not have jurisdiction over the District’s complaint in this case.

Discussion:

The record reflects that on July 14, 2010 the Association filed a grievance under the parties 2007-09 CBA alleging that the Superintendent’s notice that the 2010-11 school year would begin on September 2, 2010 violated Article 9.1.1 of the CBA. On July 28, 2010 the District filed this unfair labor practice complaint arguing that the disputed starting date was agreed upon pursuant to a document entitled “Side Bar Agreement 2010-11 Conway Education Association Contract Agreement” signed in December, 2009 (2010-11 Side Bar Agreement). The 2010-11 Side Bar Agreement was negotiated in conjunction with a tentative successor collective bargaining agreement for 2010-2012 (tentative 2010-2012 CBA). The legislative body did not approve the cost of the tentative 2010-2010 CBA.

The parties’ positions in this matter are set forth in their stipulations of fact as follows:

Stipulation 13: The (Association’s) primary contention is that the 2010-2011 Side Bar Agreement...expired when the legislative body voted down the proposed 2010-2012 CBA as memorialized in the Memorandum of Agreement because the Side Bar was dependent on passage of a new CBA...

Stipulation 14: The District's primary contention is that the Side Bar Agreement is a separate contract that amended the prior 2007-2009 CBA, which is the contract in effect under the status quo doctrine.

The start of the school year is the subject of Article 9 of the 2007-09 CBA, titled "Teacher Work Year." Article 9-1.1 provides that "[t]here shall be three work days immediately prior to students beginning school, but the Friday before Labor Day will not be a scheduled work day." Article 3 of the 2007-09 CBA is the Grievance Procedure, and Article 3-1 defines a grievance as follows:

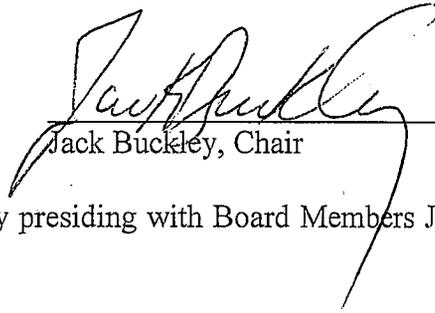
A "Grievance" shall mean an alleged violation, misinterpretation, or misapplication with respect to one or more teachers, of any provision of this agreement governing teachers. A grievance to be considered under this procedure must be initiated by the teacher within twenty (20) works of its occurrence.

The last step of the parties' grievance procedure is arbitration, and Article 3-4.3 provides that the "findings of the arbitrator shall be final and binding."

The Board finds that it does not have jurisdiction over this complaint for several reasons. The District has, in substance, raised an "arbitrability" question at the outset of the grievance process. The Association has not yet completed the steps which precede grievance arbitration. The Board concludes that on this basis the District's complaint is premature and the Board lacks jurisdiction. Public employers have the right to maintain an unfair labor practice complaint based upon an alleged wrongful demand for arbitration, *See School District #42 of Nashua v. Murray*, 128 N.H. 417 (1986), but procedurally the parties have not yet arrived at that point in the grievance procedure. Additionally, even assuming the question of arbitrability has been properly raised at this juncture in the grievance proceedings, the Board still lacks jurisdiction because the Board cannot determine with positive assurance that the 2007-09 CBA "is not susceptible of an interpretation that covers the dispute" in this case. *See Appeal of Town of Bedford*, 142 N.H. 637, 640 (1998).

So ordered.

November 12, 2010.



Jack Buckley, Chair

By unanimous vote. Chair Jack Buckley presiding with Board Members James M. O'Mara, Jr. and Kevin E. Cash also voting.

Distribution:

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