



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME Council 93, Local 1444**

v.

**Berlin School District**

**Case No. E-0020-3**

**Decision No. 2011-138**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: May 6, 2011<sup>1</sup>

Appearances: Karen E. Clemens, Esq. for the AFSCME Council 93, Local 1444  
Peter C. Phillips, Esq. for the Berlin School District

Background:

The Union filed an unfair labor practice complaint on April 18, 2011 claiming that the District violated RSA 273-A:5, I (a), (e), (h), and (i) when it required an employee to exhaust all accrued vacation leave before utilizing the sick leave bank. The Union contends that under the parties' collective bargaining agreement (CBA), an employee is required to exhaust accrued sick leave but not vacation leave. The Union requests that the PELRB find that the District has committed an unfair labor practice in violation of RSA 273-A:5, I (a), (e), (h), and (i) and order the District to reinstate the affected employee's vacation leave.

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<sup>1</sup> The parties filed a Joint Pre-Hearing Worksheet on May 5, 2011.

The District denies the charges and asserts that, under the past practice established between the parties, employees have been required to exhaust all leave before utilizing the sick leave bank and that the Union has waived any right to contest this matter by agreeing to exclude sick leave bank disputes from the CBA grievance procedure. The District requests that the PELRB dismiss the complaint.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the District violated RSA 273-A:5, I (a), (e), (h), and (i) when it required an employee to exhaust all accrued vacation leave before utilizing the sick leave bank.

#### WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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 witnesses appearing on their respective list will be available at the hearing. Copies of all exhibits are to be submitted to the presiding officer 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.

#### DECISION

1. "Parties" means the Union, the District, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The parties shall exchange and file their final witness and exhibit lists no later than 10 days prior to the date of hearing.

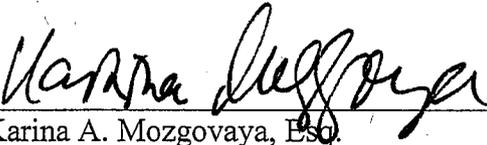
3. The parties shall prepare and file a final statement of stipulated facts no later than 10 days prior to the date of hearing.
4. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

### HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **September 7, 2011 at 9 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 2 hours.

So ordered.

May 9, 2011

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

Distribution:  
Peter C. Phillips, Esq.  
Karen E. Clemens, Esq.  
Michel Blair, Staff Representative, AFSCME  
Corinne Cascadden, Superintendent, Berlin School District