



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Madison School District

v.

Madison Employees Association, NEA

Case No. E-0074-3

Decision No. 2012-211

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: September 19, 2012

Appearances: Matthew H. Upton, Esq. for the Complainant

Steven R. Sacks, Esq. for the Respondent

Background:

On August 7, 2012 the District filed an unfair labor practice complaint claiming that the Association violated RSA 273-A:5, II (a), (e), (f), and (g) by seeking to arbitrate a nonrenewal decision implemented pursuant to the District's nonarbitrable reduction in force policy. The District requests that the PELRB find that the Association committed an unfair labor practice and order the Association to cease and desist from seeking arbitration of the reduction in force grievance.

The Association denies the charges and requests that the PELRB deny the relief sought by the District.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the Association violated RSA 273-A:5, II (a), (e), (f), and (g) when it demanded arbitration of the District's reduction in force/nonrenewal decision.

WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists 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 and exhibits appearing on their respective lists will be available at the hearing.

DECISION

1. "Parties" means the Association, 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. At the pre-hearing conference, the District requested a continuance of the adjudicatory hearing currently scheduled for October 2, 2012 on the ground that it needs time to file a motion for summary disposition/motion in limine. The Association did not object to this request. However, the PELRB administrative rules do not provide for submission of motions for summary disposition. Cases are submitted for decision on the basis of a record established at adjudicatory hearing. Alternatively, the parties may agree to submit a case for decision on stipulated facts, exhibits, and briefs. Accordingly, the District's request to continue the hearing is denied.
3. The District may file a pre-hearing motion to exclude evidence. However, the hearing will not be delayed to allow for such a filing and any ruling on such a filing will likely be deferred to a hearing.

4. The parties may file a joint request to submit this case on stipulated facts, joint exhibits, and briefs. Any such request shall contain a proposed schedule for submission of stipulated facts, joint exhibits, and briefs.
5. At the pre-hearing conference the counsel for the Association indicated that the Association intends to offer witness testimony concerning the merits of the underlying reduction in force grievance. Because the resolution of this case involves a determination of whether the Association's grievance is arbitrable¹, the Association shall limit its evidence to the issue of arbitrability.
6. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than **September 24, 2012**.
7. 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, the adjudicatory hearing in this case will be held on **October 2, 2012, at 9:00 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 2 hours.

So ordered.

September 19, 2012


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

Distribution:
Matthew H. Upton, Esq.
Steven R. Sacks, Esq.

¹ If the underlying grievance is found to be arbitrable, the PELRB has no jurisdiction to decide the merits of the grievance as the parties' CBA, based on the parties' submissions, provides for binding arbitration. *See Appeal of the City of Manchester*, 153 N.H. 289, 293 (2006). If the underlying grievance is found to be nonarbitrable, the Association will be found to have committed an unfair labor practice, as alleged by the District.