STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Berlin Education Association, NHEA/NEA

v.

Berlin Board of Education

Case No. E-0154-1
Decision No. 2014-045

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: February 21, 2014

Appearances: Jay Tolman, UniServ Director, for the Complainant

Barbara F. Loughman, Esq., for the Respondent

Background:

On January 21, 2014 the Berlin Education Association, NHEA/NEA (Association) filed an unfair labor practice complaint claiming that the Berlin Board of Education (District) breached the parties' collective bargaining agreement (CBA) in violation of RSA 273-A:5, I (h) when it requested an employee to provide reasons for emergency leave that had been previously approved and utilized. The Association alleges that (1) the CBA prohibits the District from asking the reasons for emergency leave except when leave is taken during the first and last week of any semester and the last work day preceding, or the first following, any holiday period; (2) that the employee took emergency leave on a day that was neither around a holiday period nor during the first or last week of a semester; that (3) the District Superintendent told the employee that if he failed to provide reasons for the leave, "he would be insubordinate"[1]; and (4) that, until

[1] See Joint Pre-Hearing Worksheet, Stipulation of Facts at 7.

recently, the Association was unaware that the District requested employees to provide reasons for emergency leave in violation of the CBA. The Association requests that the PELRB order the District to cease and desist from asking for reasons for the use of emergency leave at the end of the first and third quarters and at the start of the second and fourth quarters and order the District to make an announcement of the PELRB decision during the opening session with teachers at the start of the 2014-15 school year.

The District denies the charges and claims that the word "semester" in the parties' CBA means a period or quarter and that the District acted in accordance with the CBA when it requested an employee to provide reasons for emergency leave because the leave was taken during the first or last week of a "marking period." The District also claims that in the past employees have given reasons when requesting emergency leave during the first and/or last week of a marking period or quarter and that this established a "course of dealing" between the parties which expanded the meaning of the word "semester" beyond the dictionary definition. The District also argues that the complaint is not timely under RSA 273-A:6, VII because "the practice of requiring teachers to submit reasons for emergency leave requests made during the first and last week of a quarter or marking period has been in existence for more than six months." See Berlin Board of Education's Answer. The District requests that the PELRB dismiss the complaint.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over this case.
2. Whether the District violated RSA 273-A:5, I (h) as charged by the Association.

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 Pub 203.01. 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. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing.

DECISION

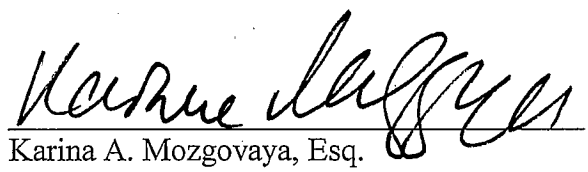
1. "Parties" means the Association, the District or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than **March 17, 2014**.
3. The parties shall pre-mark each exhibit and bring an original and five (5) copies of each exhibit to the hearing. 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 **March 25, 2014 at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 2 hours. If either party believes that additional time is required, a 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.

February 24, 2014



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

Distribution: Jay Tolman, UniServ Director
Barbara F. Loughman, Esq.
Corinne Cascadden, Superintendent