



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Windham Education Association,
Affiliated with NHEA/NEA**

v.

Windham School District, SAU #95

**Case No. E-0111-3
Decision No. 2014-132**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: May 23, 2014

Appearances: James F. Allmendinger, Esq., for the Complainant

Michael S. Elwell, Esq., for the Respondent

Background:

On April 4, 2014 the Association filed an unfair labor practice complaint claiming that the District violated RSA 273-A:5, I (a), (e) and (g) when it unilaterally created six new administrative positions (Directors) for grades K-12 and 6-12 and assigned to the new Director positions bargaining unit work currently performed by Deans of existing departments such as the math, fine arts, guidance, and science departments. The Association also complains that the

District is creating a “Department Head” position, which according to the Association involves changing the duties of an existing teacher without bargaining.¹

The pre-hearing conference and the joint pre-hearing worksheet reflect that the District’s plan is to eliminate the Dean positions as the Director positions are filled and to treat the Directors as non-bargaining unit positions. The District has filled four Director positions, three by appointing current Deans. A fourth Dean did not apply, and an external hire has filled the fourth position. The District plans to appoint the remaining Director positions (directors of language arts and social studies) in the spring of 2015.

The Association requests that the PELRB issue a cease and desist order and in particular rule that the District may not unilaterally remove bargaining unit work from the unit and may not change the duties of existing teachers without bargaining.

The District denies the charges. The District states that the establishment of the Director positions is a change in organizational structure that is a proper exercise of managerial policy within the District’s exclusive prerogative. The District requests dismissal of the complaint.

ISSUE(S) FOR DECISION

Whether the District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (e), and (g) when it changed its organizational structure by creating six new director positions for grades K-12 and 6-12.

WITNESSES and EXHIBITS:

As listed 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

¹ The Association also complained that if the new Director positions are not filled by existing Deans a teaching position will be lost requiring a reduction in force action. However, as reviewed at the pre-hearing conference, this has not in fact occurred as to the four Director positions that have already been filled.

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. During the pre-hearing conference the undersigned reviewed the parties' stipulated and contested facts. On or before May 30, 2014 the parties shall file an updated stipulation in accordance with the further stipulations discussed and agreed to at the pre-hearing conference. The undersigned's notations made during the conference of the further stipulations agreed to will not be reproduced here but may subsequently be referenced to resolve any stipulation disagreements to the extent necessary.
3. The parties will exchange updated exhibit lists and exhibits on or before May 30, 2014.
4. The parties will exchange updated witness lists² on or before May 30, 2014.
5. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended.
6. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, 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.

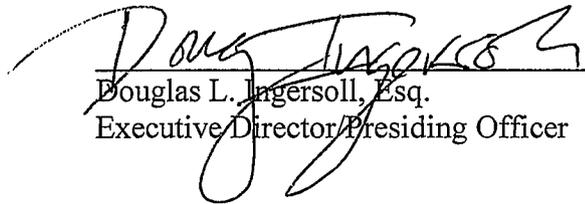
² It is noted that the full name of the first witness for the Association on the joint pre-hearing conference worksheet is "Mary Foley Anderson."

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **June 5, 2014 at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 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.

Date: 5-23-2014



Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

Distribution: James F. Allmendinger, Esq.
Michael S. Elwell, Esq.