



State of New Hampshire
Public Employee Labor Relations Board

Gilford Education Association/NEA-New Hampshire

v.

Gilford School District

Case No. E-0209-2
Decision No. 2018-122

Order

On March 2, 2018, the Gilford Education Association/NEA-New Hampshire (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act (Act). The Association claims that as a result of non-classroom teacher personnel changes, middle school classroom teachers were assigned study hall duty during the 2017-18 school during team preparation time, which reduced team preparation time from five days per week to four days per week.

Under the Act, it is a prohibited practice for any public employer:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (c) To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization;
- (d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter;
- (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;

- (f) To invoke a lockout;
- (g) To fail to comply with this chapter or any rule adopted under this chapter;
- (h) To breach a collective bargaining agreement;
- (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

The Association charges that the District improperly and unilaterally reduced team preparation time and has violated sub-sections (a), (b), (c), (e), (g), (h), and (i). The Association requests, among other things, that the board find that the District has committed an unfair labor practice and order the District to: 1) reinstate the eliminated team preparation time; 2) comply with the terms and conditions of the collective bargaining agreement (CBA) and existing past practice; and 3) cease and desist from requiring the Middle School teachers to monitor study hall.

The District denies the charges. The District disputes the Association claims on the merits, and also argues the complaint is barred by the six month limitation period set forth in RSA 273-A:6, VII, which provides that “[t]he board shall summarily dismiss any complaint of an alleged violation of RSA 273-A:5 which occurred more than 6 months prior to the filing of the complaint with the body having original jurisdiction of that complaint.

On April 20, 2018 the District filed a motion to dismiss, raising the 6 month limitation period, among other points. The Association duly filed an objection, and the undersigned board held a hearing on the complaint on May 22, 2018. The board took the pending motion to dismiss under advisement at the outset of the hearing, following which both parties presented evidence in support of their case. Post-hearing briefs have been filed.

Finding of Fact

1. The District is a public employer within the meaning of RSA 273-A:1, X.

2. The Association is the certified exclusive bargaining representative for teachers and intervention specialists employed in the District. See PELRB Decision No. 2017-134 (July 25, 2017).

3. The parties' current collective bargaining agreement covers the period from July 1, 2017 to June 30, 2020 (2017-20 CBA)

4. The District middle school consists of grades 5-8, and there are currently six periods during each school day. Classroom teachers teach for four of the six periods.

5. All classroom teachers are part of a team (e.g. 5th grade team, 6th grade team, etc.). Each team has a team leader, and all team leaders are members of the bargaining unit.

6. Article 3 of the 2017-20 CBA is titled "Preparation Periods & Duty-Free Lunch Period." Section 3.4 provides that classroom teachers are entitled to daily preparation time (individual preparation time) during which they are not assigned to other duties. Classroom teachers take daily individual preparation time during what is known on the schedule as the daily "UA" (Uniform Arts) period.

7. Article 4 of the 2017-20 CBA is titled "Middle and High School Teacher Load." Section 4.1 A provides as follows:

Middle School: Teachers shall teach no more than five (5) classes per semester or six (6) when there is agreement among the administration and said teacher. If agreement has been made, the teacher will receive the contracted amount for an additional fifth for teaching a sixth class. The teacher who has elected to teach a sixth class will not be exempt from doing assigned responsibilities such as lunch, study hall, or hall monitoring during the work day.

8. During the 2016-17 school year, and for a number of prior school years, the teams (with all classroom teachers in attendance) met five days per week for team preparation, or team time, during what is known as the "PE/B/C" period, which is when students were scheduled for

activities like physical education, band, chorus, or study hall. Team time is not specifically addressed in the 2017-20 CBA.

9. During the 2016-17 school year, and during a number of prior school years, classroom teachers were not assigned study hall duty. During these years the District employed two non-bargaining unit personnel whose workload including providing coverage for study hall (the study hall monitors).

10. By the end of the 2016-17 school year, two library aides had retired, and one of the study hall monitors was reassigned to cover library aide duties. The remaining study hall monitor could not provide all necessary study hall coverage alone, and the District did not hire a new employee to provide the needed study hall coverage.

11. On May 4, 2017 the middle school principal met with the grade 5-8 team leaders and informed them that “one teacher on each of the four teams will be scheduled to supervise students in a structured study hall once each week during the 2018-19 school year.” The principal informed team leaders that teachers may have to cover up to 12 study halls a year. Team leaders were responsible for informing classroom teachers on their teams of this change. See District Exhibit 4; Affidavit of Peter Sawyer, filed with the District’s Motion to Dismiss.

12. On August 23, 2017 the middle school principal met with the grade 5-8 team leaders and again discussed study hall coverage, among other topics. He distributed the administration’s study hall schedule calling for classroom teachers to supervise study hall as outlined in the schedule. Team leaders were responsible for informing classroom teachers on their teams about the schedule. See District Exhibit 5; Affidavit of Peter Sawyer.

13. At the August 28, 2017 middle school faculty meeting the middle school principal reviewed classroom teacher study hall assignments with all middle school classroom teachers.

Affidavit of Peter Sawyer

14. The first three days of the 2017-18 school year were August 30, 31 and September 1, 2017. Based on the Affidavit of Peter Sawyer, and the testimony provided at hearing, middle school classroom teachers had study hall duty during each of these three days and continued to have study hall duty throughout the rest of the school year. (See also paragraphs 27 and 42 of the Association's post hearing brief). When a classroom teacher has study hall duty it means the full team for that classroom teacher's grade cannot meet, which reduced the number of team time meetings per school week from five days per week to four days per week. The assignment of classroom teachers to study hall duty had no impact on classroom teacher individual preparation time.

Decision and Order

Decision Summary

The six month limitation period set forth in RSA 273-A:6, VII began to run, at the latest, on August 30, 2017. The Association filed the complaint in this case on March 2, 2018, which is more than six months after the limitations period began to run. The complaint is therefore time-barred, and the District's motion to dismiss is granted.

Jurisdiction

The board's has jurisdiction over unfair labor practice charges pursuant to RSA 273-A:6.

Discussion

The District argues the Association is complaining about District conduct that occurred more than six months prior to the filing of the complaint. The District cites the two meetings the

middle school principal had with team leaders (May 4, 2017 and August 23, 2017), the August 28, 2017 faculty meeting, and the fact that classroom teachers were assigned to, and actually performed study hall duty, beginning with the first day of school and continuously thereafter. The record does not clearly address what information the team leaders subsequently shared with their respective teams about study hall duties following their meetings with the middle school principal on May 4 and August 23, 2017. However, all classroom teachers were directly informed about the assignment of study hall duties to classroom teachers at the August 28, 2017 faculty meeting.

In its objection to the motion to dismiss the Association argues that “the six month limitation period was triggered, at the earliest, at the time the new study hall directive went into effect and not when the principal allegedly informed the teachers.” In its post-hearing brief the Association clarified how it believes the board should determine the triggering event:

The District asserts that the six-month limitation period was triggered, at the earliest, when the first teacher monitored a study hall, that is, August 30, 2017. However, until the loss of the team preparation time was applied not only to one teacher, but to several teams, the Union had no way of knowing how this change would affect bargaining unit employees and the functioning of the team preparation periods, particularly in light of the fact that during the first two to three weeks of school teachers’ work schedules changed with the change in overall student enrollment, changes in student class registration, changes in teaching assignments, and changes in staff. Had the teams been able to function during the team preparation time with the absence of one of the team members, there would not have been any adverse impact upon the bargaining unit members. However, even the principal testified that team time is lost when a team member teacher is covering study hall.

See paragraph 68 of Association post hearing brief. The Association also cites *Robin Mongeon et al. v. Thomas S. Burack, DES Commissioner and Gary Smith, President, SEA/SEIU Local 1984*, PELRB Decision No. 2009-018 (February 20, 2009) as precedent the board should follow in determining the trigger event in this case. In *Mongeon*, the board dismissed an unfair labor practice charge filed by state employees on March 21, 2008 based upon the institution of agency

fees pursuant to the collective bargaining agreement effective on August 18, 2006, and first deducted from employee paychecks dated September 15, 2006:

The parties agree that the effective date of the agency fee contribution was August 18, 2006 with the actual deduction appearing in their paychecks dated September 15, 2006 due to the method by which the state pays its employees. To avoid duplication we have selected the earliest filing date from among the three groups of complainants which is March 21, 2008 for the Mongeon group.

Under the provisions of RSA 273-A:6, VII the action giving rise to the charge, the so-called "triggering event," has to have occurred later than September 21, 2007. From among all of the various dates that the parties have provided to the board, we find that the latest possible relevant date on which the triggering event could reasonably be said to have occurred would be the date of the actual collection, September 15, 2006.

Id. We conclude the date of the triggering event in this case is August 30, 2018, at the latest. Therefore, the six month limitation period expired before March 2, 2018, the date the Association filed the complaint. The record indicates the District administration implemented classroom teacher study hall on the first day of school, and such study hall duties continued thereafter, all as planned and previewed by the middle school principal in his meetings with team leaders and faculty. As noted by the Association in its post-hearing brief, the effect on team time is immediate and obvious (team time is lost when a team member teacher is covering study hall).

Based on the foregoing, the District's motion to dismiss is granted. The Association's unfair labor practice complaint is dismissed.

So ordered.

August 9, 2018

/s/ Andrew Eills
Andrew Eills, Esq., Chair

By unanimous vote of Chair Andrew Eills, Esq., Board Member Carol M. Granfield, and Board Member Senator Mark Hounsell

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