



State of New Hampshire
Public Employee Labor Relations Board

Elizabeth Arsenault

v.

Chester School District, SAU #82

Case No. E-0226-1

Decision No. 2018-152

Pre-Hearing Memorandum and Order

Date of Telephonic Conference:¹ September 5, 2018

Appearances: Leslie C. Nixon, Esq., for the Complainant

Peter C. Phillips, Esq., for the Respondent

Background:

On July 30, 2018, Elizabeth Arsenault filed an unfair labor practice complaint under the Public Employee Labor Relations Act alleging that the Chester School District (District) violated RSA 273-A:5, I (h) when it breached a collective bargaining agreement (CBA) between the District and the Chester Educational Support Personnel Association, NEA-NH. Ms. Arsenault claims, among other things, that she was terminated in violation of the “just cause” provision in the CBA; that her termination was not in writing despite the CBA requirement that all discharges “be in writing with the reasons stated”; and that when she attempted to file a grievance concerning her termination, the District Principal responded that there was no justification for

¹ See PELRB Decision No. 2018-138 (August 30, 2018).

her request to file a grievance. Ms. Arsenault also claims that her request for a review of her termination by the school board was denied by the Superintendent. Ms. Arsenault asserts that these actions constitute a breach of the CBA and requests that the PELRB order that the District reinstate her and pay her lost wages, attorney's fees, and compensation for emotional distress.

The District denies the charges and asserts, among other things, that the PELRB lacks jurisdiction over Ms. Arsenault's claim because the CBA provides for binding arbitration and Ms. Arsenault failed to follow the contractual grievance procedure.² The District also argues that the complaint fails to state a claim upon which relief may be granted. The District requests that the PELRB dismiss the complaint and deny all requests for relief.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Complainant's claim.
2. Whether the District violated RSA 273-A:5, I (h) as charged by the Complainant.

Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01 and this order.

Decision

1. "Parties" means the Complainant, 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 telephonic pre-hearing conference, the parties indicated that they intend to seek a continuance of the hearing scheduled for September 17, 2018. Any such request shall be

²During the telephonic pre-hearing conference, Ms. Arsenault's counsel acknowledged that Ms. Arsenault has not requested arbitration.

submitted in writing no later than September 10, 2018, shall include at least 3 alternative hearing dates that are acceptable to both parties, and shall otherwise satisfy the requirements set forth in Admin. Rule Pub 201.08.

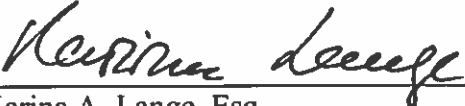
3. The District filed a motion to dismiss the complaint on September 5, 2018. An objection to the motion to dismiss, if any, shall be filed no later than September 20, 2018. The parties may submit exhibits in support of the motion to dismiss or the objection. Any such exhibits shall be filed no later than September 20, 2018.
4. The parties shall exchange final lists of witnesses and exhibits no later than 10 days prior to the date of hearing. 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.
5. The parties shall file with the PELRB final lists of witnesses and exhibits no later than 7 days prior to the date of hearing. As discussed at the pre-hearing conference, all non-joint exhibits on the lists shall be pre-marked as either ID (if objected to) or Full by Agreement.
6. The parties shall file a joint statement of stipulated facts no later than 7 days prior to the date of hearing.
7. The requirement that the parties file copies of proposed hearing exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. 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 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 **September 17, 2018, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 6 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: 9/6/2018



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

Distribution: Leslie C. Nixon, Esq.
Peter C. Phillips, Esq.