



State of New Hampshire
Public Employee Labor Relations Board

Mascenic Regional School District

v.

Mascenic Education Association, NEA-NH

Case No. E-0196-2
Decision No. 2018-188

Pre-Hearing Memorandum and Order

Date of Conference: October 9, 2018

Appearances: Peter C. Phillips, Esq., for the Complainant

Lauren Snow Chadwick, Esq., for the Respondent

Background:

On September 7, 2018, the Mascenic Regional School District (District) filed an unfair labor practice complaint under the Public Employee Labor Relations Act alleging that the Mascenic Education Association, NEA-NH (Association) had violated RSA 273-A:5, II (d), (f), and (g) when it attempted to arbitrate a procedurally and substantively non-arbitrable grievance concerning the placement of an employee in the "Teacher Support Phase" of an improvement plan; and when it acted in bad faith and in violation of the parties' collective bargaining agreement (CBA) during the prosecution of this grievance. The District asserts, among other things, that the Association's April 27, 2018 grievance was untimely because the Association knew or should have known in March, 2018 that the grievant was being moved to the "Teacher Support Phase" of the improvement plan; and that the Association's request for arbitration was also filed late. The District also claims that the grievance fails to state a claim upon which relief

may be granted because it fails to adequately describe in what manner the CBA Article 7 had been violated and because the Association's claims are not covered by the CBA. The District also alleges that the Association acted in bad faith because the grievance was filed by the Association's UniServe Director "without involving the Association" despite the fact that the Association local President and District representatives were actively involved in developing the subject improvement plan; and because the Association has applied a system of "musical chairs" in its pursuit of the grievance, having the grievant, the UniServe Director, and the local President at various times communicating with the District concerning the grievance. The District requests, among other things, that the PELRB declare that the Association's attempt to arbitrate the subject grievance and its grievance-related actions are unfair labor practices in violation of RSA 273-A:5, II (d), (f), and (g); order the Association to cease and desist from attempting to arbitrate the grievance; order the Association to act in good faith in its dealings with District officials and School Board members; and stay the arbitration of the grievance pending a final decision in this case.

The Association denies the charges and asserts, among other things, that the April 27, 2018 grievance was timely because it was filed within 20 days from the implementation of the "Support Phase" on April 9, 2018, as required under the CBA, and that it otherwise followed the contractual grievance procedure schedule despite the fact that the District allegedly failed to timely respond to the grievance at every step. The Association also claims that the grievance is substantively arbitrable as it falls under Article 7 of the CBA, which is not excluded from the contractual grievance procedure. The Association further asserts that the grievant had the right to, and did, request that the Association UniServe Director represent her in prosecution of the grievance and that the grievant sent correspondences to the District representatives to preserve her right to advance to the next step of the grievance procedure. The Association requests that

the PELRB dismiss the complaint and order the District to proceed to arbitration on the underlying grievance.

Issues for Determination by the Board

Whether the Association violated RSA 273-A:5, II (d), (f), and/or (g) as charged by the District.

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 District, the Association 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 Association indicated that it intends to seek a continuance of the hearing scheduled for October 24, 2018. Any such request shall be submitted in writing no later than October 17, 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. All requests for specific relief, such as a stay or dismissal, shall be presented by means of a written motion. See Admin. Rule Pub 203.04 (a) and (b). See also Admin. Rule Pub 201.01 (j).
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. 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 **October 24, 2018, 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: 10/9/2018



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

Distribution: Peter C. Phillips, Esq.
Lauren Snow Chadwick, Esq.