



State of New Hampshire
Public Employee Labor Relations Board

AFSCME Council 93, Local 1801, AFL-CIO

v.

Derry Cooperative School District

Case No. E-0230-2
Decision No. 2019-023

Pre-Hearing Memorandum and Order

Date of Conference: January 29, 2019

Appearances: Sean Cronin, Esq., for the Complainant
Peter C. Phillips, Esq., for the Respondent

Background:

On December 31, 2018, the AFSCME Council 93, Local 1801, AFL-CIO (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Derry Cooperative School District (District) had violated RSA 273-A:5, I (a), (b), (c), (d), and (e)¹ when it discharged an employee in retaliation for her union organizing activity.² The Union alleges, among other things, that Helen Stowell was at the forefront of the Union's organizing efforts and was instrumental in securing the required certification petition authorization cards. The Union also alleges that the District was aware of Ms. Stowell's organizing activity; that the District removed Ms. Stowell from her position as a custodian the

¹See Decision section at 2 below.

² The Union filed a petition for certification seeking to represent the bargaining unit consisting of District custodians and head custodians on November 30, 2018.

day after she informed the Union that she had the requisite number of authorization cards and, later, terminated her employment; and that the District's actions were designed to discourage other employees from organizing or joining the Union. The Union requests that the PELRB find that the District committed an unfair labor practice and order the District, among other things, to reinstate Ms. Stowell with back pay and all benefits, to cease and desist from retaliatory practices, to publicly post the PELRB's findings, and to make the Union whole for all costs incurred to pursue this charge.

The District denies the charge and asserts that it was not aware of Ms. Stowell's organizing activity and that she was removed from her position pursuant to RSA 189:31 as a result of an investigation into her alleged misconduct (smoking on school property and filing a false timesheet) and not in retaliation for her union activity. The District requests that the PELRB dismiss the Union's complaint and deny all requests for relief.

Issues for Determination by the Board.

Whether the District violated RSA 273-A:5, I (a), (b), (c), and/or (d).

Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. See Decision section at 3 below. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01.

Decision

1. "Parties" means the Union, 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 pre-hearing conference, the District's counsel questioned the Union's allegation that the District violated RSA 273-A:5, I (e) ("[i]t shall be a prohibited practice ... [t]o refuse to negotiate in good faith with the exclusive representative of a bargaining unit..."). The Union's counsel indicated that subsection (e) claim was filed in error. Furthermore, as discussed at the pre-hearing conference, at the time of the conference, the Union's petition for certification has not yet been granted and, therefore, the Union has not yet been certified as the "exclusive representative" of the proposed bargaining unit and no order to negotiate has yet been issued. Based on the foregoing, the claim of subsection (e) violation is removed from the list of claims to be heard on February 12, 2019. See Admin. Rule Pub 202.01 (d)(2).
3. In the Joint Pre-Hearing Worksheet, the District listed "security camera footage" as an exhibit. As discussed at the pre-hearing conference, any relevant video footage shall be submitted through stipulations, transcribed excerpts, or photographs.
4. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than February 6, 2019. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." 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 requirement that the parties file copies of proposed 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 **February 12, 2019, 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 5 days prior to the date of hearing.

So ordered.

Date: 2/4/2019


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

Distribution: Sean Cronin, Esq.
Peter C. Phillips, Esq.