



State of New Hampshire
Public Employee Labor Relations Board

**Milford Educational Personnel Association,
NEA-New Hampshire**

v.

Milford School Board

**Case No. E-0233-1
Decision No. 2019-076**

Pre-Hearing Memorandum and Order

Date of Conference: April 5, 2019

Appearances: Lorri Hayes, UniServ Director,¹ for the Complainant
Thomas M. Closson, Esq., for the Respondent

Background:

On March 5, 2019, the Milford Educational Personnel Association, NEA-New Hampshire (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the Milford School Board (District) had violated RSA 273-A:5, I (a), (b), (c), (e), and (g) when it failed to negotiate with the Association over the wages of a bargaining unit employee. The Association alleges (1) that, on August 30, 2018, the District Superintendent, the Human Resources Director, and the Business Administrator discussed with Ernest Ross, a bargaining unit employee, their request that he temporarily assume the duties of the Director of Facilities and Maintenance (a non-bargaining unit employee) and his wages for

¹ UniServ Director Hayes participated in the pre-hearing conference telephonically.

performing this task; (2) that when the Director of Facilities and Maintenance returned from leave in September of 2018, he refused to pay the wages Mr. Ross negotiated with the District; (3) that the District engaged in impermissible direct dealing with Mr. Ross on numerous occasions in the past without the Association's knowledge; and (4) that the District's actions constitute, among other things, a failure to bargain in good faith with the Association over the employee's wages, a mandatory subject of bargaining. The Association requests, among other things, that the PELRB order the District to cease and desist from the impermissible direct dealing with the bargaining unit employees and from its refusal to negotiate in good faith with the Association. The Association also requests that the PELRB order the District to negotiate with the Association over the wages to be paid to Mr. Ross for performing the tasks on August 30-September 5, 2018.

The District denies the charge and asserts, among other things, that the District did not negotiate with Mr. Ross over his wages for temporarily acting as a point of contact for the Superintendent in the absence of the Director of Facilities and Maintenance. The District also filed a motion to dismiss the complaint on the ground that the Association's complaint is untimely under RSA 273-A:6, VII because the complaint has been filed more than six month after the alleged negotiation with the employee took place on August 30, 2018.² The Association objected to this motion claiming that it did not know that the impermissible direct dealing occurred until September 10, 2018, when the Director of Building and Maintenance refused to pay Mr. Ross the negotiated wages.

²The District also argues in its answer and the motion to dismiss that the PELRB lacks jurisdiction over the Association's claim because the parties' collective bargaining agreement (CBA) provides for a final and binding resolution. However, during the pre-hearing conference, the District indicated that it does not intend to pursue its grievance procedure-based jurisdictional objection because the parties' CBA provides for an advisory, and not final and binding, arbitration.

Issues for Determination by the Board

1. Whether the complaint was timely under RSA 273-A:6, VII and Admin. R. Pub 201.02 (a).
2. Whether the District violated RSA 273-A:5, I (a), (b), (c), (e), and/or (g) as charged by the Association.

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.

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. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than **April 15, 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.
3. 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, the adjudicatory hearing in this case will be held on **April 23, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 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: 4/5/2019


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

Distribution: Lorri Hayes, UniServ Director
Thomas M. Closson, Esq.