



State of New Hampshire
Public Employee Labor Relations Board

Manchester Education Association, NEA-NH

v.

Manchester School District

Case No. E-0140-10

Decision No. 2019-093

Order

On April 17, 2019 the Association filed an unfair labor practice charge asserting the District has violated RSA 273-A:5, I (a), (g), (h) and (i).¹ In particular, the Association complains that 1) the District improperly denied employee leave requests submitted under Article 21 of the 2015-18 Collective Bargaining Agreement (CBA) for the observance of a religious holiday on April 19, 2019 (e.g. Good Friday and Passover); and 2) on April 16, 2019 the Superintendent adopted a rule that violates Article 21 and also violates the District's bargaining obligations. Also on April 17, 2019 the Association filed a motion for a cease and desist order, requesting that the board issue an order directing the Superintendent to "immediately cease its violation of the collective bargaining agreement" and "to follow the collective bargaining agreement and grant the properly requested religious observance leave prior to the April 19, 2019 holidays." Counsel for the parties participated in a conference call

¹ Given time constraints this order includes only an abbreviated summary of the pleadings and the case.

with the board's executive director on April 17, 2019 to discuss the issues and the Association's pending motion. Thereafter the District filed its objection to the Association's motion.

The board's authority to issue a cease and desist order pending a hearing on an unfair labor practice charge is set forth by statute and administrative rule, relevant portions of which are as follows:

RSA 273-A:6 Violations.

I. The board shall have primary jurisdiction of all violations of RSA 273-A:5...

II. *The board may issue a cease and desist order if it deems one necessary in the public interest, pending the hearing.*

Pub 304.02 Interim Orders.

(a) When the board considers it to be in the public interest, it shall issue a cease and desist order under RSA 273-A:6, III pending a hearing under Pub 201.05.

(b) The board shall issue such an order for reasons to include, but not limited to:

- (1) Protection of the public safety;
- (2) To avoid prejudice to one party or another; or
- (3) To avoid irreparable harm.

In this case, the Association's filings indicate it has filed a class action grievance on behalf of eight employees and "any other similarly situated employees." The Association argues that affected employees will suffer irreparable harm unless a cease and desist order issues because employees "cannot recapture attending Good Friday services or observing the beginning of Passover."

The District argues the board lacks jurisdiction under the *Appeal of Silverstein*, 163 N.H. 192 (2012) line of cases, and that under Article 21 the leave requests are invalid because they will extend the school vacation which begins on April 22, 2019.

After review of the pleadings the board assumes, but does not decide, that it has authority to act on the pending motion, and further notes that the District's jurisdictional arguments will be addressed more fully as necessary and appropriate as this case proceeds.

As to the Association's motion, we find there is insufficient evidence in the record to support a finding of irreparable harm. Essentially, the Association is equating the alleged violation of Article 21 with irreparable harm. We believe a stronger showing of, and more detail about, how individual employees will suffer irreparable harm is needed to justify the requested cease and desist order. We are concerned about the language included at the end of the Superintendent's April 16, 2019 letter, and whether it constitutes a rule in conflict with Article 21, or a new term and condition of employment which has not been bargained. However, these concerns do not justify the requested cease and desist order, and we defer further consideration and analysis of these and other matters to the hearing, which will be scheduled in due course.

Upon review, and in accordance with the foregoing, the Association's motion is denied.

Date: 4/18/19


Peter G. Callaghan, Esq., Chair

By unanimous vote of Alternate Chair Peter G. Callaghan and Board Members Carol M. Granfield and Senator Mark Hounsell.

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