



State of New Hampshire
Public Employee Labor Relations Board

Berlin Education Association, NEA-NH

v.

Berlin Board of Education

Case No. E-0154-2
Decision No. 2019-154

Pre-Hearing Memorandum and Order

Date of Conference: July 2, 2019

Appearances: Michelle McCord, UniServ Director, for the Complainant
Peter C. Phillips, Esq., for the Respondent

Background:

On June 4, 2019, the Berlin Education Association, NEA-NH (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Berlin Board of Education (School Board) had violated RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and (i) when it denied a bargaining unit employee's request for 50 days from the sick leave bank. The Association alleges, among other things, that (1) Article 10-4.2 of the parties' collective bargaining agreement (CBA) allows employees to receive "up to fifty days" from the sick leave bank; (2) due to illness, a bargaining unit employee requested 50 days from the bank during the 2018-2019 school year; (3) the Superintendent denied her request on the ground that this employee has already received 50 days from the sick leave bank during the 2013-2014 school

year; (4) the Superintendent unilaterally interpreted CBA Article 10-4.2 to limit the number of days available to each employee from the sick leave bank to 50 days per the entire employment history, and not per school year; and (5) the School Board unsuccessfully attempted to negotiate the inclusion of this cap on sick leave bank use into the CBA in 2015. The Association asserts that the decision to cap the sick leave bank eligibility to one time per employment history is a mandatory subject of bargaining, and that the School Board's actions constitute, among other things, a breach of the CBA, a unilateral change in terms and conditions of employment, and a failure to negotiate in good faith. The Association requests that the PELRB (1) find that the School Board committed an unfair labor practice; (2) order the School Board to grant the subject employee 50 days from the sick leave bank; (3) order the School Board to cease and desist from violating RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and (i); and (4) order the School Board to make the Association and its members whole.

The School Board denies the charges and asserts, among other things, that Article 10-4.5 of the CBA gives the Superintendent discretion to "approve or disapprove the request" and provides that the Superintendent's decision is "final and not subject to the grievance procedure." The School Board also claims that the facts alleged by the Association do not support claims of violation of subsections (b), (c), (e), (g), and (i) of RSA 273-A:5, I. The School Board requests that the PELRB dismiss the complaint and deny all requests for relief.

Issues for Determination by the Board

Whether the School Board violated RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and/or (i) 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 School Board or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. On July 1, 2019, the parties filed a joint motion to continue the hearing in this case. The parties' motion is granted. The hearing scheduled for July 18, 2019 is cancelled. The parties indicated that they are available for a hearing on August 13, 14, 19, 21, and 22, 2019. A new hearing date shall be established by a subsequent notice.
3. On or before **July 16, 2019**, the parties shall inform the PELRB whether they prefer to submit this case for decision on stipulated facts, joint exhibits, and briefs. Any request for such a submission shall contain a proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.
4. The time set aside for the hearing in this case 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.
5. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts 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.
6. 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.

So ordered.

Date: July 2, 2019

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

Distribution: Michelle McCord, UniServ Director
Peter C. Phillips, Esq.