



State of New Hampshire
Public Employee Labor Relations Board

Exeter Education Association, Affiliated with NEA-NH

v.

Exeter Region Cooperative School Board/District, SAU 16

Case No. E-0057-3
Decision No. 2019-226

Pre-Hearing Memorandum and Order

Date of Conference: September 26, 2019

Appearances: Nicole Argraves, UniServ Director, for the Complainant
Kathleen C. Peahl, Esq., for the Respondent

Background:

On August 6, 2019, the Association filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the District had violated RSA 273-A:5, I (a), (b), (c) and (g) when it disciplined the union president in retaliation for union activity. The Association also claims that the District breached the collective bargaining agreement (CBA), in violation of RSA 273-A:5, I (h), when it disciplined the union president without "just cause." The Association alleges, among other things, that (1) several bargaining unit members expressed their concerns to the union president regarding the District's instruction to teachers to conduct an "active shooter" response training; (2) in response to these concerns, the union president sought to meet with the District's administration and sent an email informing the bargaining unit members of the upcoming meeting with the administration to discuss their concerns; (3) on

January 14, 2019, the union president, along with other bargaining unit members, participated in the meeting with the Superintendent and other members of the District administration to discuss the employees' concerns about conducting the training; (4) on January 17, 2019, the union leadership send an email to bargaining unit members advising them to comply with the administration's instructions to present the training to students; (5) on February 11, 2019, the Superintendent recommended disciplinary action against the union president for allegedly "direct[ing] fellow employees to willfully disregard the instructions of the school principal;" and (6) the bases for the discipline were the union president's statements at the January 14 meeting and her email to the membership. The Association further asserts that the union president never directed employees to disobey the Principal's/Superintendent's instructions; that the District wrongfully failed to inform the union president that the January 14 meeting was disciplinary in nature; that the email which served as a basis for the discipline was a confidential internal union communication to union membership; and that the District disciplined the union president in retaliation for engaging in protected concerted activity. The Association grieved the issuance of the discipline. The Association requests that the PELRB order the District to cease its violation of the CBA and to cease interfering with union administration and internal affairs, and order the District to rescind the discipline issued to the union president.

The District denies the charges and argues that the PELRB lacks jurisdiction over Union's claims because the CBA provides for final and binding arbitration and the parties are currently in arbitration. The District also asserts (1) that the January 14 meeting was not disciplinary but fact-finding in nature; (2) that the District relied on the union president's admissions at the January 14 meeting as the basis for the discipline and not on email communications with union membership; (3) that the union president has no authority, either as a District employee or as a union president, to instruct bargaining unit members to disregard

instructions from the school administration; and (4) that the union president was not disciplined because the original letter of reprimand was withdrawn and replaced by a "letter of concern" which was not placed into her personnel file. The District requests that the PELRB dismiss the complaint.

The District filed a motion to dismiss the complaint on the grounds that the PELRB lacks jurisdiction over the breach of contract claim and that, with respect to the remaining claims, there is no evidence that the District took any action for the purpose of restraining or coercing employees or interfering with administration of the union. The Association objected to the motion.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Association's claims.
2. Whether the District violated 273-A:5, I (a), (b), (c), (g), and/or (h) 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. 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.

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 10 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."

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 hearing in this case will be held on **October 22, 2019**, at **1:00 p.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, together with a detailed explanation of the basis for the request, shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 9/26/2019



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

Distribution: Nicole Argraves, UniServ Director
Kathleen C. Peahl, Esq.
Abby Tucker, Esq.