



**State of New Hampshire**  
**Public Employee Labor Relations Board**

**Concord School District**

**v.**

**Concord Education Association,  
Affiliated with NEA/NH**

**Case No. E-0206-3  
Decision No. 2019-245**

**Pre-Hearing Memorandum and Order**

**Date of Conference:** October 16, 2019

**Appearances:** Edward M. Kaplan, Esq., and Marrielle B. Van Rossum, Esq., for  
the Complainant

James F. Allmendinger, Esq., for the Respondent

**Background:**

On September 5, 2019, the District filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Association had violated RSA 273-A:5, II (b)(to restrain, coerce or otherwise interfere with public employers in their selection of agents to represent them in collective bargaining negotiations or settlement of grievances) and (f)(to breach a collective bargaining agreement). The District alleges, among other things, that (1) although a teacher told the principal that she would "meet with parents who wanted to discuss her teaching style before their child was placed in a class for the next school year," she later refused to do so informing the family that the Association advised her against the meeting because it would violate the school handbook; (2) the teacher failed to inform the principal that she would no longer meet with the family thereby creating confusion for the parents; (3) the

principal placed a letter in the teacher's personnel file "that documented his expectations for future communication," later agreeing to remove the letter from the file in one year, provided there were no further incidents; (4) the Association grieved the issuance of the letter and the grievance was denied at each pre-arbitration step of the grievance procedure; (5) after the School Board Communications Committee (SBCC) denied the grievance but before requesting arbitration thereof, the Association President sent an email to Superintendent Forsten with a copy to every member of the school board allegedly "with the purpose of modifying the SBCC's decision through direct communication with the school board"; and (6) in his email, the Association President stated that the Association intended to proceed with arbitration, calling it "an unnecessary expense for taxpayers," and threatened to "go public to let the Concord community judge whether special allowances were given to parents seeking to shop for their child's teacher in violation of the school handbook." (Internal quotations marks removed.) The District claims that the Association President's email is "a circumvention of the agreed-upon grievance process" and an effort to interfere with the public employer in its selection of agents to represent it in the settlement of grievances. The District requests that the PELRB rule that the Association President's "attempt to circumvent the agreed-upon grievance procedure in the collective bargaining agreement" (CBA) is a breach of the CBA and, therefore, is an unfair labor practice and order the Association to "refrain from further inappropriate and unlawful communications to the School Board."

The Association denies the charges and asserts, among other things, that the Association President was at all times acting within the scope of his duties and within his rights, including the RSA 273-A:11, I (a) right to "represent employees in the settlement of grievances." The Association further asserts that the President was acting in conformance with the CBA provisions and that his actions are also protected by the First Amendment of the United States

Constitution and RSA 98-E. The Association claims that the subject email to Superintendent Forsten did not contain a specific request that the grievance decision be overturned nor did it contain any request that the District change its selected agent to settle the grievance but, rather, "it sought to provide the Superintendent and the Board with information that the union was not entrenched in its position to arbitrate" should the District wish to enter into settlement negotiations prior to arbitration. The Association further asserts that one of the reasons the President copied the School Board was that the relationship between Superintendent Forsten and the Association had deteriorated to the point of mistrust as to whether the Superintendent accurately conveyed the Association's positions to the Board. The Association also claims that the expenditure of public money and the efficient operation of government are matters of public interest and the Association has a right to inform the School Board and the public when it believes the District is acting in a wasteful or ineffective manner. The Association further asserts that this case is moot because the arbitration hearing for the underlying grievance had been scheduled for September 11, 2019 and the parties settled the grievance on September 10, 2019.

#### Issues for Determination by the Board

Whether the Association violated 273-A:5, II (b) and/or (f) as charged by the District.

#### 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 District, the Association 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 Association moved to continue the hearing currently scheduled for October 29, 2019. The District assented to this motion. The Association's motion to continue is granted. The hearing scheduled for October 29, 2019 is cancelled. As discussed at the conference, on or before **October 31, 2019**, the parties shall submit to the PELRB at least four proposed hearing dates acceptable to both parties for the three-week period commencing on November 18, 2019.
3. It appears that there are no facts in dispute in this case and, therefore, this case is likely suitable for submission on stipulated facts, joint exhibits, and briefs. The parties are, therefore, directed to consider submitting this case for disposition on this basis, and shall notify the Board of their decision on or before **October 31, 2019**. A schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs will then be established as necessary.
4. In the event the parties elect to proceed to a hearing, 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."
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.

6. 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, 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: 10/16/2019



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

Distribution: Edward M. Kaplan, Esq.  
Marrielle B. Van Rossum, Esq.  
James F. Allmendinger, Esq.

