



State of New Hampshire
Public Employee Labor Relations Board

Keene Education Association, NEA-NH

v.

Keene School District

Case No. E-0120-11

Decision No. 2020-022

Pre-Hearing Memorandum and Order

Date of Conference: January 23, 2020

Appearances: Rachel Hawkinson, UniServ Director, for the Complainant

Nathan C. Midolo, Esq., for the Respondent

Background:

On December 3, 2019, the Keene Education Association, NEA-NH (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Keene School District (District) had violated RSA 273-A:5, I (a), (b), (e), (g), and (h) when it unilaterally changed the method for calculating what constitutes an 80% part time bargaining unit position. The Association alleges that: (1) the bargaining unit contains full time (100%) and part time (80% or more) positions; (2) in the past, the parties used the number of blocks worked (instructional, advisory, and prep-time), not minutes, to calculate what constitutes full time and 80% part time; (3) in the past, the parties agreed that an 80% part time employee was assigned two instructional blocks, one advisory/I-time block, and one prep-time block; (4) on July 2, 2019 a Chinese Language teacher, whose position was previously considered to be an 80% part time,

was notified that her position was actually 67% position and that she would be assigned 13% more work in order to remain in the bargaining unit and continue to receive certain benefits; (5) the District also unilaterally changed a document called "KHS Part Time Employee Responsibilities by Time and Assignment" (Document) which relates to the method of calculating part time; (6) the Association grieved both the changes to the Chinese Language teacher's work assignment and to the Document; and (7) the District's unilateral changes constitute an unfair labor practice. The Association requests, among other things, that the PELRB (1) find that the District improperly changed the terms and conditions of employment "by unilaterally reducing an assignment previously classified as an 80% ... position to a 67% position and/or adding 13% to the workload of this assignment" without a proportionate increase in compensation; (2) find that the District unilaterally changed an existing term or condition of employment when it changed the method for calculating what constitutes a full time (100%) position; (3) order the District to cease and desist from dominating or interfering with the administration of the Association and with the rights of the bargaining unit employees; (4) order the District to make the Association and bargaining unit employees whole; and (5) order the District to restore the Chinese Language teacher position to its previous workload at 80% or adjust its full time equivalency to 93% with a corresponding increase in compensation.

The District denies the charge and asserts, among other things, that: (1) in 2014, the Chinese Language teacher's position was "erroneously recategorized as an 80% position" instead of 67%; (2) a full work day (100%) is 361 minutes; (3) two instructional blocks (160 min.), one advisory or I-time block (41min.), and one prep-time block (40 min.) constitute 201 teaching minutes per day or 67% of full time; (4) under New Hampshire law, the District was entitled to correct its error; and (5) the District has not yet reduced the Chinese Language teacher's position to below 80%. The District also claims that: (1) the complaint fails to state a claim upon which

relief can be granted in conformance with Admin. R. Pub 201.02(b)(4); (2) the complaint is barred by the doctrines of estoppel, laches, and waiver; (3) “the complaint is barred, in whole or in part, by the applicable statute of limitations”; (4) the complaint is not ripe because the District has not reduced the subject position to below 80%; (5) the complaint “is barred because the allegations are subject to the grievance arbitration under the terms of the CBA,” the Association has failed to avail itself of the grievance process culminating in “advisory arbitration,” and the PELRB lacks jurisdiction at this time. The District requests that the PELRB dismiss the complaint and/or stay adjudication of the issues raised by the Association until arbitration is completed.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Association’s claims.
2. Whether the District violated RSA 273-A:5, I (a), (b), (e), (g), and/or (h) as charged by the Association.

Decision

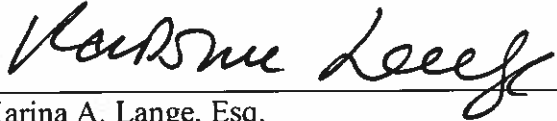
1. “Parties” means the Association, the District or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. On December 6, 2019, the PELRB granted the District’s assented to motion to continue the January 17, 2020 hearing. See PELRB Decision No. 2019-281. As discussed at the pre-hearing conference, on or before **January 30, 2020** the parties shall provide to the PELRB at least 4 proposed hearing dates in April, 2020 acceptable to both parties. A new hearing date will be established in a subsequent notice. 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 shall be filed with the PELRB at least 10 days prior to the date of hearing.

3. As discussed at the pre-hearing conference, the parties shall supplement their stipulations and hearing exhibits to provide sufficient factual basis for the Board to determine, among other things, what constitutes a 100% (full time) work load for bargaining unit positions. 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. 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.
4. 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: 1/27/2020


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

Distribution: Rachel Hawkinson, UniServ Director
Nathan C. Midolo, Esq.
Brooke Lovett Shilo, Esq.