



State of New Hampshire
Public Employee Labor Relations Board

Windham Education Association, Affiliated with NHEA/NEA

v.

Windham School District, SAU #95

Case No. E-0111-6
Decision No. 2020-061

Pre-Hearing Memorandum and Order

Date of Conference: March 13, 2020

Appearances: Lorri Hayes, UniServ Director, for the Complainant
Michael S. Elwell, Esq., for the Respondent

Background:

On February 11, 2020, the Windham Education Association, Affiliated with NHEA/NEA (Association) filed an unfair labor practice complaint against the Windham School District under the Public Employee Labor Relations Act claiming that the District had violated RSA 273-A:5, I (a), (b), (e), (g) and RSA 273-A:12, I (a) (2) when it engaged in direct dealing with the bargaining unit employees. The Association alleges, among other things, that: (1) the parties entered into negotiations in October, 2019 and declared impasse by November 26, 2019; (2) on November 27, 2019, the District, without seeking the Association's prior consent, sent an email directly to all bargaining unit employees describing the proposals the District made to the Association during negotiations; (3) on January 9, 2020, the Association submitted a letter to the Eagle Tribune newspaper describing negotiations; (4) on January 24, 2020, the District sent

another email directly to the bargaining unit employees in which it discussed issues related to the bargaining process, described bargaining proposals, and suggested that the Association inaccurately portrayed what occurred in negotiations; and (5) the District's actions had a negative impact on the Association's ability to represent bargaining unit employees and constituted impermissible direct dealing, interference with the rights of the employees and the Association, and a refusal to negotiate in good faith. The Association requests that the PELRB find that the District has violated RSA 273-A:5, I (a), (b), (e), (g) and RSA 273-A:12, I (a) (2) and order the District (1) to cease and desist from further violations; (2) to notify the bargaining unit members that it violated law; and (3) to bargain in good faith.

The District denies the charges and asserts, among other things, that: (1) the Association failed to state a claim upon which relief may be granted; (2) the District did not engage in unlawful direct dealing because the "general public, all employees of the District, and parents of all students" received the public releases; (3) the public releases pertained to failed past negotiation, responded to the Association's inaccurate letter, and were permitted by the bargaining ground rules. The District requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

Whether the District violated RSA 273-A:5, I (a), (b), (e), (g) and/or RSA 273-A:12, I (a) (2) 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. At the pre-hearing conference, the parties indicated that they were exploring a possibility of submitting this case for decision on stipulated facts, joint exhibit, and briefs. Any request to submit this case for decision on stipulated facts, joint exhibit, and briefs shall be filed no later than **March 25, 2020** and shall contain a proposed schedule for the filing of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.
3. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a comprehensive statement of stipulated facts no later 10 days prior to the date of hearing. All non-joint exhibits on the lists of exhibits shall be pre-marked as either "ID" (if objected to) or "Full by Agreement."
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.

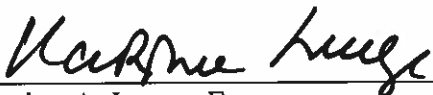
Hearing

Unless otherwise ordered, the hearing in this case will be held on **April 1, 2020, at 8:30 a.m.**, at the offices of the PELRB in Concord. 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: 3/16/2020



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

Distribution: Lorri Hayes, UniServ Director
Michael S. Elwell, Esq.