



State of New Hampshire
Public Employee Labor Relations Board

Newmarket Support Staff/NH-NEA

v.

Newmarket School District
Case No. E-0231-2

and

Newmarket School District

v.

Newmarket Support Staff/NH-NEA
Case No. E-0231-3
(Consolidated Cases)

Decision No. 2021-183

Pre-Hearing Memorandum and Order

Date of Conference: October 25, 2021

Appearances: Sean List, Esq., for the Newmarket Support Staff/NH-NEA
Peter C. Phillips, Esq., for the Newmarket School District

Background:

On August 3, 2021, the Newmarket Support Staff/NH-NEA (Association) filed an unfair labor practice (ULP) complaint under the Public Employee Labor Relations Act in Case No. E-0231-2. The Association claims that the Newmarket School District (District) violated RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and (i) and the parties' collective bargaining agreement (CBA) and a Memorandum of Agreement (MOA) when, in early spring of 2021, it unilaterally directed bargaining unit employees to work for the Town Recreation Center. The Association claims that the District was obligated to, but did not, bargain this change in terms and conditions of

employment. The Association charges that the District then retaliated against bargaining unit employees who refused to work at the Center by auditing their timecards. The Association also claims that the District violated RSA 273-A:5, I (a), (b), (c), (d), and (g) when it retaliated against the Association leaders for their union activity by including comments about their performance as union representatives in their performance evaluations. The Association requests, among other things, that the PELRB (1) find that the District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and (i); (2) order the District to cease and desist from further violations and to remove all references to the union activity and/or employees' Association roles from all employee evaluations; and (3) encourage the District to "foster harmonious labor relations with the Association rather than seeking to undermine and intimidate its leaders and membership."

The District denies the charges and asserts as follows: (1) the Association's complaint violates the six-month statute of limitations set forth in RSA 273-A:6, VII; (2) the PELRB lacks jurisdiction to hear the complaint because the Association failed to follow the contractual grievance procedure which includes binding arbitration; and (3) the complaint fails to state a claim upon which relief may be granted. The District states that the employees were not ordered to work at the Town Recreation Center but instead were asked to volunteer; that no employee suffered loss of pay as a result of a timecard "audit"; and that the District acted within its managerial rights. The District requests that the PELRB dismiss the complaint and deny all requests for relief.

On September 24, 2021, the District filed its unfair labor practice complaint against the Association in Case No. E-0231-3. The District claims that the Association violated RSA 273-A:5, II (b), (d), (f), and (g) when the Association filed an unfair labor practice charge two days before the August 5, 2021 School Board meeting involving the District Superintendent's employment contract renewal and when the Association's co-presidents appeared "without warning or notice"

and criticized the Superintendent during the "public comment" portion of the August 5, 2021 School Board meeting. The District claims that, by expressing their concerns directly to the School Board at the August 5, 2021 meeting, the Association circumvented the contractual grievance process and that the Association's actions constitute a breach of the CBA, an interference with the District's selection of its agent to represent it in labor negotiations and settlement of grievances, and a refusal to negotiate in good faith. The District requests that the PELRB find that the Association committed an unfair labor practice and order the Association to cease and desist and to pay the costs incurred by the District in pursuing this complaint as well as responding to the Association's complaint, including all legal fees.

The Association denies the charges. The Association asserts that the appearance of employees at the School Board public meeting was outside their work hours and the employees were entitled to communicate their concerns regarding District administration to the School Board, "just as any other member of the public is entitled" to do. The Association argues that the employees' conduct is protected under RSA 273-A, RSA 98-E, RSA 91-A, and provisions of the State and Federal Constitutions. The Association also claims that: (1) the District filed its complaint in retaliation for the Association's protected activity, including the filing of the ULP complaint; (2) the District's complaint fails to state a claim upon which relief may be granted; and (3) the employees' actions did not interfere with the District's selection of a collective bargaining agent because the meeting concerned an employment contract and not a selection of a bargaining agent and because the School Board maintained and utilized its exclusive discretion regarding the Superintendent's employment contract at all relevant times. The Association requests that the PELRB dismiss the District's complaint.

On October 5, 2021, the parties' joint motion to consolidate was granted and these cases were consolidated for purposes of hearing and decision. See PELRB Decision No. 2021-172.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Association's breach of the CBA/MOA claim (Case No. E-0231-2).
2. Whether the Association's complaint, or a portion thereof, is barred by RSA 273-A:6, VII (Case No. E-0231-2).
3. Whether the District violated RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and/or (i) as charged by the Association (Case No. E-0231-2).
4. Whether the Association violated RSA 273-A:5, II (b), (d), (f), and/or (g) as charged by the District (Case No. E-0231-3).

Decision

1. "Parties" means the Association, the District, and/or their counsel/representatives appearing in these consolidated cases. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The parties shall confer and inform the PELRB on or before **November 1, 2021** whether these cases, or a portion(s) thereof, can be submitted on stipulated facts, exhibits, and briefs and shall proposed dates for submissions of stipulated facts, exhibits, opening briefs, and reply briefs. Any party may include in their brief a relevancy objection to any stipulated fact, but such objections are not grounds for refusal to enter stipulations.
3. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits no later than **November 3, 2021**. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement." The list of non-agreed exhibits shall contain bases for objections. 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 record of any School Board meeting shall be offered through a written transcript accepted by both parties.
5. On or before **November 3, 2021**, the parties shall file a detailed statement of stipulated facts, including, for example, any non-disputed background information, any relevant experience of witnesses, and a description of duties and responsibilities of all bargaining unit positions.
6. Any motion to dismiss shall be filed no later than **October 29, 2021**. Any objection to the motion to dismiss shall be filed not later than **November 4, 2021**.
7. 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 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 these cases will be held on **November 8, 2021, 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 shall be filed with the PELRB at least 10 days prior to the date of hearing.

So ordered.

Date: 10/26/2021



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

Distribution: Sean List, Esq.
Peter C. Phillips, Esq.

