



State of New Hampshire
Public Employee Labor Relations Board

Manchester Education Association/NEA-NH

v.

Manchester School District

Case No. E-0140-11
Decision No. 2021-202

Pre-Hearing Memorandum and Order

Date of Conference: November 30, 2021

Appearances: Esther Kane Dickinson, Esq., and Ignacio Sanchez, UniServ
Director, for the Complainant

Matthew H. Upton, Esq., for the Respondent

Background:

On August 3, 2021, the Manchester Education Association/NEA-NH (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Manchester School District (District). The Association alleges, among other things, that: (1) in January, 2018, the Association filed a complaint against Principal McCafferty with the District; (2) in November, 2018, the District informed the Association that the District found the allegations of misconduct unfounded; (3) on January 30, 2019, the Association called a meeting to discuss the outcome of a "Culture and Climate" survey it conducted in December, 2018; (4) during the January 30, 2019 meeting, some attendees attempted to "overtake the meeting and divert the agenda for the purposes of airing grievances" about the Association and its leadership and to demand that the Association stop any further investigation into, or advocacy against, McCafferty's conduct; and

(5) the Association did not learn until April, 2021 that this strategy was designed by Principal McCafferty. According to the Association, he, among other things, (1) directed the employees attending the meeting to work "the crowd into a fury" in order to restrain, coerce and interfere with the Association's and bargaining unit members' statutory rights; (2) discouraged membership in the union by encouraging the employees to "temporarily" quit the Association, which resulted in a drop in union membership; and (3) interfered with the union administration by attempting to influence the selection of union leaders. The Association contends that as a result of Principal McCafferty's conduct, the District has committed an unfair labor practice in violation of the following sub-sections of RSA 273-A:5, I:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (c) To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization;
- (d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter; and
- (g) To fail to comply with this chapter or any rule adopted under this chapter

The Association requests that the PELRB (1) find that the District committed an unfair labor practice; (2) order the District to cease and desist from further violations; (3) "specifically admonish the actions of Principal McCafferty as a bad example of management in a union environment"; and (4) order the District to train administrators and supervisors to comply with RSA 273-A.

The District does not dispute the Association's factual allegations but denies the charges. The District "admits that Principal McCafferty strategized with a group of employees who were planning to attend a union meeting and encouraged them to push back and disrupt those in attendance who might try to attack the administration and/or be critical of the school climate." However, the District claims that "neither Principal McCafferty nor anyone attending the relevant union meeting was authorized to act on the District's behalf or was acting with its prior knowledge or direction." The District requests that the PELRB find that no unfair labor practice has been committed by the District and deny the Association's request for relief.

Issues for Determination by the Board

Whether the District violated RSA 273-A:5, I (a), (b), (c), (d), and/or (g) 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. The parties requested that this case be submitted on stipulated facts, exhibits, and briefs and provided a proposed filing schedule. Based on the parties' pleadings and the discussion at the pre-hearing conference, it appears that there are no issues of relevant and material fact in dispute in this case and the parties agree that the hearing is unnecessary. See Admin Rules Pub 201.06 (a) and Pub 203.05 (b). The parties' request to submit this case on stipulated facts, exhibits, and briefs is granted and the proposed briefing schedule is approved.
3. During the pre-hearing conference, there was discussion about certain District investigation documents or reports addressing, discussing, or otherwise relating to

Principal McCafferty's actions. The parties are directed to resolve any issues relating to the exchange of these documents on their own, with the understanding that if one party chooses to include them with other documents submitted into the record for decision, they are subject to any relevancy objections the other party may make. Such relevancy objections should be raised before the document is submitted as an exhibit into the record, and should be reflected on the document by marking the exhibit for identification (ID). The relevancy and other bases for any objection, should then be fully addressed and explained in the briefs.

4. This case shall proceed according to the following schedule:

December 28, 2021: Parties shall exchange any affidavits and proposed exhibits;

January 4, 2022: Any disputes about the exchange of affidavits and proposed exhibits shall be raised with the PELRB by an appropriate filing, and a hearing will be scheduled for **January 25, 2022, at 10:00 a.m.** to resolve the disputes.

January 28, 2022: Deadline to file opening briefs.

February 4, 2022: Deadline to file reply briefs, if any.

Note: If a hearing on January 25, 2022 is necessary, either party may request an extension of the briefing deadlines at that hearing and the deadlines will be extended as necessary and appropriate.

So ordered.

Date: 12/02/2021



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

Distribution: Esther Kane Dickinson, Esq.
Ignacio Sanchez, UniServ Director
Matthew H. Upton, Esq.