



State of New Hampshire
Public Employee Labor Relations Board

Wakefield Paraprofessionals' Union/NEA-NH

v.

Wakefield School District

Case No. E-0062-6

Decision No. 2021-214

Pre-Hearing Memorandum and Order

Date of Conference: December 20, 2021

Appearances: Peter Miller, UniServ Director, for the Complainant

Matthew H. Upton, Esq., for the Respondent

Background:

On November 19, 2021, the Wakefield Paraprofessionals' Union/NEA-NH (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Wakefield School District (District). The Union alleges as follows: (1) the District created a Behavioral Interventionist position and appointed a bargaining unit employee to this position without posting the position and "without the knowledge or involvement of the Union"; (2) the Behavioral Interventionist position has the same duties and responsibilities as the positions currently in the bargaining unit; (3) the District unilaterally assigned a wage rate to this position outside the wage schedule set forth in the collective bargaining agreement (CBA); and (4) by its actions, the District breached Article 10.2 of the CBA, which requires it to notify the Union president and post a notice of a vacancy for a bargaining unit position, and breached its duty to

negotiate in good faith over a bargaining unit position's wages, in violation RSA 273-A:5, I (h) and (e), respectively. The Union also argues that "subcontracting bargaining unit work to a non-bargaining unit position" is an unfair labor practice in violation of RSA 273-A, I (a), (e), and (g); and that "excluding the union from discussion and decision making about a position performing bargaining unit work" violates RSA 273-A:5, I (a), (e), (g), and (i). The Union requests that the PELRB order the District (1) to cease and desist from violating the CBA; (2) to pay the Behavioral Interventionist according to the negotiated wage schedule; (3) to negotiate any changes to the terms and conditions of employment; (4) to post the position according to Article 10.2 of the CBA; (5) to vacate the position of Behavioral Interventionist until this dispute is resolved; and (6) make the Union whole.

The District denies the charges and asserts that the Behavioral Interventionist position is a newly-created non-unit position with duties and responsibilities that differ significantly from those of bargaining unit employees; and that the District has no obligation to follow the requirements of CBA Article 10.2 or otherwise notify or involve the Union in the hiring of an employee into a non-unit position. The District also alleges that if the Union wished to petition the PELRB for inclusion of this position in the existing bargaining unit, the District would likely consent and, if included, the District would then bargain with the Union over the position's terms and conditions of employment. The District requests that the PELRB find that the District did not commit an unfair labor practice and deny the Union's requested relief.

Issues for Determination by the Board

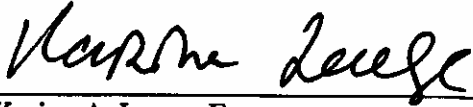
Whether the District violated RSA 273-A:5, I (a), (e), (g), (h), and/or (i) as charged by the Union.

Decision

1. "Parties" means the Union, 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 agreed to submit this case 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 does not appear at this time that there are any issues of relevant and material fact in dispute in this case or that an evidentiary hearing is necessary. See Admin Rules Pub 201.06 (a) and Pub 203.05 (b). The parties' agreed upon request to submit this case on stipulated facts, exhibits, and briefs is granted and the proposed briefing schedule is approved. Accordingly, the January 11, 2022 hearing is cancelled.
3. This case shall proceed according to the following schedule:
January 11, 2022: Deadline to file stipulated facts, joint exhibits, and affidavits.
January 25, 2022: Deadline to file opening briefs.
January 31, 2022: Deadline to file reply briefs, if any.
4. Any motion to dismiss on jurisdictional grounds shall be filed no later than **January 11, 2022**, and an objection to any such motion shall be filed within 15 days.

So ordered.

Date: 12/21/21



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

Distribution: Peter Miller, UniServ Director
Matthew Upton, Esq.
Pamela Stiles, Superintendent

