



State of New Hampshire
Public Employee Labor Relations Board

Wakefield Paraprofessionals' Union/NEA-NH

v.

Wakefield School District

Case No. E-0062-7

Decision No. 2022-208

Pre-Hearing Memorandum and Order

Date of Conference: December 8, 2022

Appearances: Peter Miller, UniServ Director, for the Complainant

Matthew H. Upton, Esq., for the Respondent

Background:

On November 8, 2022, the Wakefield Paraprofessionals' Union/NEA-NH (Union), filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the Wakefield School District (District) had violated 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"), (h) ("To breach a collective bargaining agreement"), and (i) ("To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule"). The Union alleges as follows: (1) the Union represents the District's paraprofessionals and speech assistants; (2) in the summer of 2022, the Union and the District discussed but did not reach agreement on certain changes, including Union-proposed salary increases, that would allow the

District to attract and retain qualified employees; (2) on August 19, 2022, the District contracted with Soliant Health, a private company, to obtain services of an ABA Tutor (Soliant ABA Tutor); (3) ABA Tutor is a bargaining unit paraprofessional position; (4) the District pays Soliant Health \$50 per hour for a minimum of 40 hours per week for the Soliant ABA Tutor's services; and (5) under the 2022-24 collective bargaining agreement (CBA), the District pays bargaining unit employees between \$15.69 and \$21.10 per hour to perform the same work as the Soliant ABA Tutor. The Union asserts that the District unilaterally subcontracted bargaining unit work during the term of the CBA and, therefore, committed an unfair labor practice. The Union requests that the PELRB order the District to cease and desist from violating the CBA; to "immediately terminate all contracts for third parties to provide services normally performed by bargaining unit employees"; to negotiate terms and conditions of employment that will allow the District to attract and retain qualified employees; and to make the Union whole.

The District denies the charges. According to the District, the Soliant ABA Tutor contract was necessary to ensure compliance with federal law and that the District's decision to secure the services of the Soliant ABA Tutor on a temporary basis is managerial policy within the exclusive prerogative of the District. The District maintains that the cost of the Soliant ABA Tutor contract is irrelevant to this dispute; that the Soliant ABA Tutor contract is a temporary measure; and that it will be discontinued once the District is able to hire necessary and qualified employees. 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

1. Whether the PELRB has jurisdiction over the Union's RSA 273-A:5, I (h) (breach of CBA) claim.

2. Whether the District violated RSA 273-A:5, I (a), (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. At the pre-hearing conference, the Union requested a continuance of the January 5, 2023 hearing. The District assented to this request. The parties proposed the following alternative hearing dates: 17th, 19th, 25th, and 26th of January, 2023. The assented to request to continue the hearing is granted. Accordingly, the January 5, 2023 hearing is cancelled. A new hearing date will be established in a subsequent notice.
3. 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.
4. A statement of stipulated facts shall be filed no later than 10 days prior to the date of the hearing. The parties shall also exchange and file with the PELRB final lists of witnesses no later than 10 days prior to the date of the hearing. 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.
5. The parties shall exchange and file with the PELRB final lists of exhibits no later than 10 days prior to the date of the hearing. Exhibits shall be pre-marked in the upper right-hand corner as Joint, Union, or District. Joint and Union exhibits shall be marked numerically. The District's exhibits shall be marked alphabetically. Exhibits pre-marked for identification only shall be marked as in the following example: "Union Ex.1 (ID)."

Exhibits to be admitted without objection shall be pre-marked as in the following example:

"Union Ex. 2." The exhibit lists must also indicate whether an exhibit is pre-marked for identification only or is to be admitted without objection as shown in the example below:

Union Exhibit List:

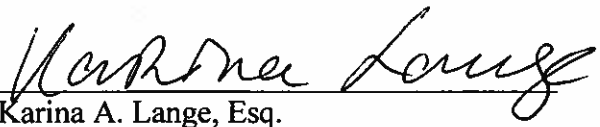
Union Ex. 1 (ID) Jan. 1 2001 email to District

Union Ex. 2 Jan 5, 2001 email to District

6. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended, and the parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall 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: 12/08/2022


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

Distribution: Peter Miller, UniServ Director
Matthew H. Upton, Esq.