



State of New Hampshire
Public Employee Labor Relations Board

Governor Wentworth Support Staff Association/NEA-New Hampshire

v.

Governor Wentworth Regional School District

Case No. E-0131-2
Decision No. 2024-061

Pre-Hearing Memorandum and Order

Date of Conference: April 18, 2024

Appearances: Peter Miller, UniServ Director, for the complainant

Peter C. Phillips, Esq., for the respondent

Background:

On March 4, 2024, the Governor Wentworth Support Staff Association/NEA-New Hampshire (Union), filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Governor Wentworth Regional School District (District). The Union alleges as follows: (1) the District hired Kathleen Gilbert as a Special Education Secretary on May 10, 2004; (2) later in 2004, the parties agreed to discontinue the wage schedule containing step increases and replace it with a COLA wage matrix; (3) in 2010, Gilbert took a SAU office position of Special Education Administrative Assistant at a higher pay rate; (4) the District treated the SAU Special Education Administrative Assistant position as a non-bargaining unit position; (5) under Gilbert's individual contract, she was entitled to be paid for unused vacation leave upon termination; (6) in 2023, Gilbert successfully applied for the bargaining unit position of Special Education Secretary, i.e., her previous position; (7) the District prohibited Gilbert from using the

accrued vacation leave before taking Special Education Secretary position and refused to compensate her for lost vacation leave; and (8) the parties' collective bargaining agreement (CBA) requires that "returning employees" be paid at the same rate they previously received plus a 4.5 % increase, but the District treated Gilbert as a new hire, not a "returning employee," and assigned her an incorrect and reduced pay rate. The Union claims that the District has violated RSA 273-A:5, I (e) ("To refuse to negotiate in good faith with the exclusive representative of a bargaining unit..."), (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") when it improperly reduced Gilbert's wage rate and denied her compensation for unused vacation days. The Union requests that the PELRB (1) find that the District committed an unfair labor practice; (2) order the District to cease and desist from violations; (3) order the District to restore Gilbert's vacation leave and restore her pay to its proper level in accordance with the CBA; (4) award her back pay to September, 2023; and (5) otherwise make Gilbert and the Union whole.

The District denies the charges. The District asserts that (1) Gilbert voluntarily applied for the Special Education Secretary position and signed an individual contract with the clearly stated pay rate in August, 2023; (2) Gilbert is not entitled to the pay rate applicable to non-bargaining unit positions; (3) the current pay rate was set pursuant to the CBA based upon Gilbert's years of experience with the District; (4) the complaint fails to state a claim upon which relief can be granted; (5) the PELRB lacks jurisdiction because the Union failed to follow a contractual grievance procedure; and (6) the complaint is barred by RSA 273-A:6, VI six-month limitation which was triggered by the signing of the individual contract on August 22, 2023. The District requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

1. Whether the complaint is barred by the RSA 273-A:6, VI six-month limitation period;
2. Whether the PELRB lacks jurisdiction because the complaint is based upon alleged violations of the parties' CBA that are subject to the grievance procedure;
3. Whether Gilbert was a bargaining unit employee during her employment as the SAU office Special Education Administrative Assistant; and
4. Whether the District violated RSA 273-A:5, I (e), (h) and/or (i) as charged by the Union.

Decision

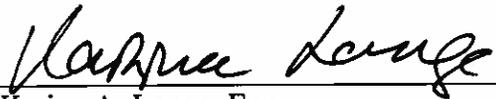
1. "Parties" means the Union, the District or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. During the per-hearing conference, the District indicated that it intends to file a motion to dismiss. As discussed at the pre-hearing conference, a motion to dismiss, if any, shall be filed on or before **April 25, 2024**. An objection to the motion to dismiss shall be filed no later than **May 6, 2024**.
3. The parties indicated their willingness to resolve this case by agreement and requested the postponement of the May 9, 2024 hearing. The parties provided June 5, 11, and 12, 2024 as alternative hearing dates. As discussed at the pre-hearing conference, the May 9, 2024 hearing is cancelled. A new hearing date will be established by a subsequent notice.
4. A statement of stipulated facts shall be filed no later than 10 days prior to the date of hearing. All non-disputed facts shall be included in this statement.
5. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits no later than 10 days prior to the date of 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 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 parties shall not submit duplicative exhibits. The parties shall bring an original and five copies of each exhibit to the hearing.

6. 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.¹
7. 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 5 days prior to the date of hearing.

So ordered.

Date: 04/19/2024



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

Distribution: Peter Miller, UniServ Director
Peter C. Phillips, Esq.

¹ "No employee serving as a witness or as counsel at a hearing shall suffer any loss of pay or benefits for having so appeared or served." Admin. Rule Pub 203.01(b).