

**Farmington Education Support Professional United, NEA-NH v. Farmington School District**, Decision No. 2014-080 (Case No. E-0047-6).

**Background:** The Union claimed that the District violated RSA 273-A:5, I (a), (e), (g), & (h) because it did not negotiate its decision to outsource/privatize food services at the start of the 2013-14 school year, after the expiration of the parties' latest collective bargaining agreement (CBA). The Union contended that the District had, as a result, unilaterally and improperly changed the terms and conditions of employment of District food service workers during the status quo period. The District denied the charges and claimed that it had the contractual authority to privatize food services pursuant to the "management rights" clause in the expired 2012-13 CBA; and that it was not otherwise obligated to bargain its decision to privatize food services under the *Appeal of State* three-part test. The District contended that its privatization decision primarily affected matters of broad managerial policy and also that requiring the District to negotiate its decision with the Union would interfere with public control of governmental functions.

**Decision:** The Hearing Officer found that the District's privatization of its food services constituted an improper unilateral change in the terms and conditions of employment which in the circumstances of this case could not be justified by the District's managerial prerogative. Decision to outsource was a mandatory subject of bargaining based on the three-part test in *Appeal of State*, and based on Supreme Court decisions in *Appeal of Hillsboro-Deering School District*, 144 N.H. 27 (1999) and *Appeal of City of Nashua Bd. of Educ*, 141 N.H. 768, 773 (1997). The decision to outsource primarily affected terms and conditions of employment: wages and benefits of food service employees. The employer's motivation was to save money by avoiding the wage and benefit structure imposed by collective bargaining, to be accomplished by hiring a third party, while maintaining the same work force performing the same duties. Like in *Hillsboro-Deering* and *Nashua Bd. of Educ*, there was no plan or intent to implement any substantive changes to the food services. The Hearing Officer also found that requiring the District to negotiate its decision and actions would not interfere with public control of government operations because the District's basic operations were not altered. The District violated RSA 273-A, I (a), (e), & (g) by refusing to negotiate in good faith all mandatory subjects of bargaining and by making unilateral changes in a terms and conditions of employment. The District was ordered, among other things, to restore all lost benefits and employment to the affected food services employees.

***Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.***