

Windham Education Association, Affiliated with NHEA/NEA v. Windham School District, SAU #95, Decision No. 2014-237 (Case No. E-0111-3).

Background: The Union claimed that the District violated RSA 273-A:5, I (a), (e) & (g) when it unilaterally created six new Director positions for grades K-12 and 6-12 and assigned to the new positions bargaining unit work currently performed by Deans of existing departments. The Union also complained that the District was creating a “Department Head” position, which according to the Union involved changing the duties of an existing teacher without bargaining. The District denied the charges and claimed that the establishment of the Director positions was a change in organizational structure that was a proper exercise of managerial policy within the District’s exclusive prerogative.

Decision: The Hearing Officer found that the District committed an unfair labor practice when it unilaterally removed subject positions from the existing bargaining unit. Under both the PELRB certification and the Recognition clause of the parties’ CBA, the bargaining unit included “all certificated staff” of the District. The subject positions, whether they were modified existing positions or newly created positions, are teaching/guidance positions requiring NH State certification and, therefore, fell within the definition of the “certificated staff” and were not specifically excluded from the unit. Therefore, these positions could be removed from the existing bargaining unit only through the utilization of the Pub 302.05 modification procedure; and until and unless these positions were removed pursuant to the modification procedure, the District was required to negotiate any changes in terms and conditions of employment, including, among others, such terms and conditions as wages, length of the work year, number of hours, work locations, and benefits.

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.