

Newmarket Support Staff/NH-NEA v. Newmarket School District (Case No. E-0231-2) and **Newmarket School District v. Newmarket Support Staff/NH-NEA** (Case No. E-0231-3), Decision No. 2022-021 (Consolidated Cases)

Background:

Case No. E-0231-2: The Association claimed that the District violated RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and (i), the collective bargaining agreement (CBA), and a Memorandum of Agreement (MOA) when, in early spring of 2021, it unilaterally directed bargaining unit employees to work for the Town Recreation Center. The Association asserted that the District failed to bargain this change in terms and conditions of employment and that the District then retaliated against bargaining unit employees who refused to work at the Rec. Center by auditing their timecards. The Association also claimed that the District violated RSA 273-A:5, I (a), (b), (c), (d), and (g) when it retaliated against the Association's leaders for their union activity by including comments about their performance as union representatives in their work performance evaluations. The District denied the charges and asserted that: (1) the complaint violated the six-month statute of limitations set forth in RSA 273-A:6, VII; (2) the PELRB lacked jurisdiction to hear the complaint because the Association failed to follow the contractual grievance procedure which included binding arbitration; and (3) the complaint failed to state a claim upon which relief may be granted. The District claimed that the employees were not ordered to work at the Rec. Center but instead were asked to volunteer; that no employee suffered loss of pay as a result of a timecard audit" and that the District acted within its managerial rights. The District filed a motion to dismiss.

Case No. E-0231-3: District claimed that the Association violated RSA 273-A:5, II (b), (d), (f), and (g) when it filed an unfair labor practice charge two days before the School Board meeting concerning the District Superintendent's employment contract renewal and when the Association's co-presidents appeared "without warning or notice" and criticized the Superintendent during the "public comment" portion of the meeting. The District claimed that the Association circumvented the contractual grievance process and that the Association's actions constituted a breach of the CBA, an interference with the District's selection of its agent to represent it in labor negotiations and settlement of grievances, and a refusal to negotiate in good faith. The Association denied the charges and claimed that the employees were entitled to communicate their concerns regarding District administration to the School Board, just like any other member of the public. The Association also argued that the employees' conduct was protected under RSA 273-A, RSA 98-E, RSA 91-A, and the State and Federal Constitutions. The Association also claimed that the District filed its complaint in retaliation for protected union activity, including the Association's filing of its complaint. The Association filed a motion to dismiss.

These cases were consolidated for purposes of hearing and decision

Decision:

Case E-0231-2: The District's motion to dismiss was granted as to any claims based on events that occurred more than 6 months prior to the filing of the complaint and as to any breach of contract claims. The District did not commit an unfair labor practice when it asked paraprofessionals to

volunteer to work at the Town Rec. Center or when it questioned the timecards of some paraprofessionals for the remote learning period. The Association's claims related to these events were denied. The District did commit an unfair labor practice in violation RSA 273-A, I (a), (b), and (g) when it commented on Association representatives' union activity/leadership in their work performance evaluations. The District was ordered to cease and desist from further violations and to remove any reference to their support staff leadership role from affected employees' evaluations and personnel files.

Case E-0231-3: The Association's motion to dismiss was denied. As to the merits, the District's complaint against the Association was dismissed because the evidence was insufficient to prove that the Association violated RSA 273-A:5, II (b), (d), (f), and/or (g) when it filed an unfair labor practice complaint or when Association representatives spoke during the public comment portion of the School Board meeting.

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.