



State of New Hampshire
Public Employee Labor Relations Board

Derry Education Association/NEA-NH

v.

Derry School District

Case No. E-0073-7
Decision No. 2024-150

Pre-Hearing Memorandum and Order

Date of Conference: July 30, 2024

Appearances: Lauren Snow Chadwick, Esq., and Callan Sullivan, Esq., for the complainant

Peter C. Phillips, Esq., for the respondent

Background:

On May 23, 2024, the Derry Education Association/NEA-NH (Association), filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the District Superintendent Austin Garofalo. The Union alleges, among other things, as follows: (1) the parties had been engaged in impact bargaining over the District's reorganization plan since August, 2023; (2) at the November 28, 2023 school board meeting, the Association Vice President (VP) David Levesque read a statement on behalf of the Association relating to the parties' difficulties in agreeing to the reorganization plan; (3) the Association signed the reorganization-related MOU on December 11, 2023; (4) at the December 12, 2023 school board meeting, the Superintendent Garofalo addressed the Association's position and VP Levesque's statements describing them as "an unprovoked attack" and among other things responded to VP Levesque's speech with inaccurate statements; (5) after the meeting, in front of several witnesses, including bargaining unit

members, the Superintendent approached Mr. Levesque in the parking lot yelling in an aggressive manner, put his hand on Levesque's shoulder/back area, and upon making physical contact stated "now you know how it feels to have a knife in your back," despite Levesque's demand not to touch him; and (6) the Superintendent's actions negatively affected Mr. Levesque's ability to effectively represent the bargaining unit as a VP. The Association asserts that the Superintendent, in his capacity as an agent of the District, has interfered with the statutory rights of employees and the Association in violation of RSA 273-A:5, I (a), (b), and (g). The Association requests that the PELRB find that the Superintendent has violated RSA 273-A and order the Superintendent to cease and desist from "this intimidating behavior and actions, and from interfering with the Association's rights under RSA 273-A."

The District denies the charges. The District asserts that (1) the Association failed to state a claim upon which relief can be granted; (2) Superintendent Garofalo is not a "public employer" within the meaning of RSA 273-A:1, X; (3) the Superintendent did not intimidate and/or physically and verbally attack Mr. Levesque in order to restrain, coerce, or interfere with his rights; (4) the Association "has restrained, coerced, or otherwise interfered with the District in its selection of its agents to represent it" in collective bargaining negotiations. The District also argues that the PELRB lacks jurisdiction over the complaint because of the Association's pending grievance and because the parties' contractual grievance procedure provides for final and binding arbitration. The District requests that the PELRB dismiss the complaint and deny requests for relief, and order the Association to reimburse the District for all costs and attorney's fees incurred as a result of its filing of the this complaint.

Issues for Determination by the Board

1. Whether the respondent is a "public employer" within RSA 273-A:1, X;
2. Whether the PELRB lacks jurisdiction over the complaint; and

3. Whether the District violated RSA 273-A:5, I (a), (b), and/or (g) as charged by the Association.


Decision

1. "Parties" means the Association, 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 pre-hearing conference, the District requested continuance of the August 27, 2024 hearing. The Association assented to this motion. The motion to continue is granted. Accordingly, the August 27, 2024 hearing is cancelled. A new hearing date will be established by a subsequent notice.
3. As discussed at the pre-hearing conference, on or before **August 6, 2024**, the parties shall provide to the PELRB at least 3 alternative hearing dates acceptable to both parties.
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, Association, or District. Joint and Union exhibits shall be marked numerically. The District exhibits shall be marked alphabetically. The parties shall bring an original and five copies of each exhibit to the hearing.
6. As discussed at the pre-hearing, any relevant video exhibit shall be submitted on a flash drive and shall contain only a portion of the video relevant to the parties' claims. The parties shall bring with them a device to run the video exhibit (e.g. a laptop).
7. 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.

8. 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.

So ordered.

Date: 07/30/2024



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

Distribution: Callan Sullivan, Esq.
Lauren Snow Chadwick, Esq.
Peter C. Phillips, Esq.