



State of New Hampshire

Public Employee Labor Relations Board

New Hampshire Higher Education Union

v.

Community College System of New Hampshire

Case No. E-0165-8

Decision No. 2024-205

Pre-Hearing Memorandum and Order

Date of Conference: October 8, 2024

Appearances: Peter Perroni, Esq., for the Complainant

Joseph P. McConnell, Esq., for the Respondent

Background:

On September 5, 2024, the New Hampshire Higher Education Union (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Community College System of New Hampshire (CCSNH) claiming that it violated RSA 273-A:12 and RSA 273-A:5, I (a) (“To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter”), (b) (“To dominate or to interfere in the formation or administration of any employee organization”), (e) (“To refuse to negotiate in good faith with the exclusive representative of a bargaining unit...”), and (g) (“To fail to comply with this chapter or any rule adopted under this chapter”). The Union alleges as follows: (1) the parties have been engaged in successor contract negotiations and RSA 273-A:12 dispute resolution procedures; (2) as part of the RSA 273-A:12 dispute resolution, the parties engaged in factfinding; (3) the factfinder issued the report and recommendations on August 26, 2024; (4) RSA 273-A:12, I (b)

provides that the factfinder's "findings and recommendations shall not be made public until the negotiating teams shall have considered them for 10 days"; (4) on August 29, 2024, three days after the factfinding report was issued, the CCSNH Chancellor (a negotiating team member) notified the Union that the CCSNH Board of Trustees had voted to reject the factfinder's recommendations; and (5) on August 30, 2024, the Chancellor informed the bargaining unit employees that the Board of Trustees rejected the factfinder's recommendations. The Union argues that the CCSNH improperly published the factfinder's report to the Trustees, who are not members of the negotiating team, within three days of the issuance of the report, "deliberately corrupted the dispute resolution process," engaged in bad faith bargaining, and improperly communicated directly with bargaining unit employees. The Union requests that the PELRB order the CCSNH (1) to rescind, cease, and desist from its unlawful actions; (2) to notify the bargaining unit employees and the public that it has violated the law by its actions; and (3) to pay all costs incurred by the Union in factfinding and this unfair labor practice action.

The CCSNH denies the charges. Although the CCSNH does not dispute that the factfinder's report was published to the Trustees, i.e. people outside the negotiating team, within three days of its issuance, the CCSNH claims that this action does not violate the statute because the Board of Trustees is the employer and because the outcome would have been the same even if the CCSNH had waited for 10 days before providing the report to the Board of Trustees. The CCSNH asserts, among other things, that (1) the Union failed to state a claim upon which relief can be granted; (2) the Union's charge is barred because the CCSNH's actions were "within its inherent, nondelegable managerial rights"; and (3) the charge is barred because bargaining unit employees have not suffered any adverse action or damages as a result of any alleged CCSNH conduct. The CCSNH requests that the PELRB dismiss the complaint.

Issues for Determination by the Board

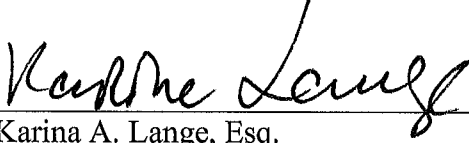
Whether the CCSNH violated of RSA 273-A:12 and RSA 273-A:5, I (a), (b), (e), and (g) as charged by the Union.

Decision

1. "Parties" means the Union, the CCSNH or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the parties requested continuance of the October 25, 2024 hearing. The request is granted. Accordingly, the October 25, 2024 hearing and associated filing deadlines are cancelled.
3. Based upon the parties' pleadings and the discussion at the pre-hearing conference, it does not appear at this time that there are any issues of relevant and material fact in dispute in this case or that an evidentiary hearing is necessary. See Admin. R. Pub 201.06 (a) and Pub 203.05 (b). As discussed at the pre-hearing conference, on or before **October 18, 2024**, the parties shall file either a request to submit this case for decision on stipulated facts, exhibits, and briefs or four alternative hearing dates in December or January acceptable to both parties. Any request to submit this case on briefs shall include a proposed schedule to file stipulated facts and exhibits, opening briefs, and reply briefs, if any.

So ordered.

Date: October 8, 2024



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

Distribution: Peter Perroni, Esq.
Joseph P. McConnell, Esq.