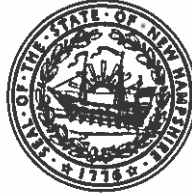


NH Supreme Court affirmed this decision on March 15, 1993, Slip Op. No. 92-288.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMHERST EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. T-0299:5
	:	
AMHERST SCHOOL BOARD	:	DECISION NO. 92-52
	:	
Respondent	:	
	:	

APPEARANCES

Representing Amherst Education Association/NEA-NH:

Marc Benson, UniServ Director

Representing Amherst School Board:

Bradley F. Kidder, Esq., Counsel
Harry S. Gale, Consultant

Also appearing:

Ethel Murphy, A.E.A.
Patrick Dubreuil, A.E.A.
James Banghart, School Board

BACKGROUND

On December 11, 1991 the Amherst Education Association, NEA-NH, filed unfair labor practice charges against the Amherst School Board alleging violations of RSA 273-A:5, I (a), (e) and (g). The Board, through its counsel, Bradley F. Kidder, Esq., filed an answer on December 16, 1991. The matter was then set for hearing and heard by the PELRB on March 10, 1992.

This case involves a complaint by the Association that the employer failed to respond to demands from the Association to meet at the various times, some of which were during a portion of the

employees' school day as is required, in the opinion of the Association, under the provisions of RSA 273-A:3 and RSA 273-A:11, II. Those provisions provide, respectively, as follows:

"Good faith" negotiations involve meeting at reasonable times and places in an effort to reach agreement on the terms of employment....

"A reasonable number of employees who act as representatives of the bargaining unit shall be given a reasonable opportunity to meet with the employer or his representatives during work hours without loss of compensation or benefits."

Through pleadings and responses thereto, the parties have agreed that negotiations for a successor collective bargaining agreement commenced on October 24, 1991 and that during those negotiations the Association requested that some sessions begin during school hours. The Association claims that Harry Gale, a representative of the Board, informed bargaining representative Marc Benson on December 4, 1991 that the Board would not agree to any negotiations sessions during school hours. This matter is denied in the Board's answer to the complaint. Mr. Gale did not testify on behalf of either party at the hearing. Thus, we move to our findings of fact.

FINDINGS OF FACT

1. The Amherst School Board is a public employer, as defined by RSA 273-A:1, of teachers represented by the Amherst Education Association, NEA-NH.
2. The Amherst Education Association/NEA-NH is the duly certified bargaining agent of teachers and other employees employed by the Amherst School Board.
3. The parties commenced negotiations for a successor collective bargaining agreement on October 24, 1991.
4. During these negotiations, the Association requested of the Board that some sessions begin during school hours.
5. There were six bargaining sessions, four of which could be categorized as negotiations sessions and two of which could be categorized as mediation sessions. The negotiation sessions were held on October 24, 1991

commencing at 3:30 p.m., on November 14, 1991 commencing at 7:30 p.m., on November 21, 1991 commencing at 3:30 p.m. and on December 11, 1991 commencing at 3:00 p.m. The two mediation sessions were conducted on January 3, 1992 and January 27, 1992, both commencing at 10:00 a.m.; however, it is noted that management representatives did not appear at the January 27, 1992 mediation session until approximately noon for Mr. Banghart and mid-afternoon for Ms. Adams.

6. Board negotiators were present for the remainder of the mediation session on January 27, 1992 which lasted until 10:00 p.m. and for the mediation session of January 3, 1992 which lasted from 10:00 a.m. through 5:00 p.m.
7. Members of the Board who were board negotiators were James Banghart, a program manager at Sanders Lockheed Corporation whose hours extended from 8:00 a.m. to 5:00 p.m. and who took leave time when he had to be away from his occupational duties during his normally defined workday, and Janice Adams a pre-school teacher who operates her own pre-school activity and who must cancel her classes in order to make herself available for negotiations during those hours when she would otherwise be conducting pre-school activities as a private (non-public sector) teacher.
8. The Amherst Education Association negotiating team consisted of Pat Dubreuil, a foreign language teacher, and three special education teachers, namely, Nancy Head of the Clark School, Richard Gordon of the Wilkins School, and Pam McGovern of the Middle School. McGovern runs a resource room; therefore, there are other teaching personnel present in that facility should she be absent from the room, whether engaged in negotiations activities or otherwise. Ethel Murphy is the president of the Amherst Education Association and is replaced by the same substitute each time she is required to be absent, whether for negotiations activities or otherwise.
9. On January 27, 1992 the parties reached a settlement through the use of mediation and executed a "settlement agreement" to that effect in the presence of mediator Greenbaum. That agreement

subsequently was not ratified by one or both of the principals; therefore, the parties will be returning to further bargaining. Under these circumstances, the issue of when the parties will meet for negotiations is not moot and the respondent's motion to dismiss this case as being moot is denied, as noted in our "Decision" below.

10. During negotiations which occurred in the 1985-86 school year, the parties met some thirteen times, eleven of which commenced between 7:00 p.m. and 7:45 p.m., one of which commenced at 1:10 p.m. (during Christmas recess) and one of which occurred at 10:00 a.m. on a Saturday.
11. During negotiations of which occurred during the 1988-89 the school year, the parties met some thirteen times, eight of which commenced between 3:00 p.m. and 3:25 p.m., three of which commenced between 7:10 p.m. and 8:00 p.m. and two of which commenced at 8:20 a.m. and 9:24 a.m., respectively.

DECISION AND ORDER

Given that this is not a case of first impression, the tactics utilized by the employer in an attempt to control the time when the parties might meet to negotiate represents a flagrant disregard of the statutory obligations found in RSA 273-A. Moreover, given the very capable representation of both a professional negotiator and, subsequently, counsel specializing in public sector labor relations matters, we find it inconceivable that the consistent message of our prior decisions could be misunderstood by management negotiators.

Statutory requirements are not only unequivocal, but also appear in two places. RSA 273-A:3 I specifically defines "good faith" negotiations as involving "meeting at reasonable times and places in an effort to reach agreement on the terms of employment..." RSA 273-A:11, II provides that "a reasonable number of employees who act as representatives of the bargaining unit shall be given a reasonable opportunity to meet with the employer...during working hours without loss of compensation or benefits." (Emphasis added). While it was argued that use of the term "meet" was intentionally broad to permit meetings for handling grievances, administrative matters, and the normal business which normally transpires between an employer and its employees, we cannot and do not accept any notion that "meet" was intended to exclude meetings at which negotiations occurred. Our prior decisions reflect this.

We find further evidence of bad faith by the fact that management negotiators were able to and did participate in mediation sessions held "during working hours." If this be the case, we must inquire why this was not possible during the negotiations which were double in number and none of which commenced before 3:00 p.m. It appears that there is an underlying issue of control relative to negotiation sessions and that that control issue is violative of RSA 273-A:5 I (e).

The message conveyed in our earlier decisions is equally succinct.

The question before PELRB is whether or not the obligation to bargain, as established by RSA 273-A:3, I, i.e., "good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement (emphasis added) requires that possibly some of these meetings take place during normal working hours? We hold that it does. When meetings between two parties are subject to a "mutually agreed" upon process, neither party has the ability to exclude whole blocks of times or places; since such behavior is unreasonable, given efforts by both sides to find a mutually accommodating time (and place) in busy schedules. (Emphasis in original)

Educational Support Personnel Assn. of Portsmouth
(Decision 84-84, November 21, 1984)

Under RSA 273-A:3, the requirement is to "negotiate in good faith" and we have interpreted this to mean that neither side can dictate the meeting schedule, but rather that a mixture of time and/or dates would demonstrate a willingness on the part of both sides to accommodate each other and likely bring about the necessary atmosphere for them to "negotiate in good faith." (Emphasis in original)

AFSCME, Council 68 v. Wolfboro (Decision No. 85-07,
January 18, 1985)

We have already indicated that RSA 273-A:11 applies to negotiation meetings as well as other meetings, e.g., grievance and administrative meetings.

Various times and dates were proposed by the Association however none of the earlier times were agreed to by the District [which] only agreed to 3:00 p.m., 5:00 p.m., 6:00 p.m.

during the workweek and 9:00 a.m. on Saturdays.

* * * *

RSA 273-A:11 grants certain rights to the exclusive representative of a bargaining unit ...among those rights is that a "reasonable" number of employees who act as representative of the bargaining unit shall be given a "reasonable" opportunity to meet with the employer or his representative during the working hours without loss of compensation or benefits.

Keene Education Assn (Decision No. 89-24,
March 23, 1989)

"Reasonable" must include a give and take to recognize the needs and convenience of both parties. The "good faith" standard cannot be preserved by one party controlling or dominating the scheduling of negotiations meetings to the detriment of the other. The conduct of the Amherst School Board cannot be condoned.

We are mindful that one's participation on a negotiating team may create inconvenience and/or may be sacrificial in nature. Conversely, these obligations should not be and are not undertaken lightly. They must be recognized and accepted when a negotiator undertakes that responsibility on behalf of his/her constituents.

It is unreasonable to expect teachers to always meet evenings and weekends and it is unreasonable for board members to always meet between 7:00 a.m. and 3:00 p.m. It must be understood, however, that person seeking public office, such as school board member, should be cognizant of the obligations inherent with such public office.

Keene Education Association (Decision No.
90-70, September 5, 1990)

We do not believe the signals could be any clearer in our prior decisions. By our decision herein we reaffirm those decisions and direct appropriate remedies. We also speak to the issue of recurring, flagrant violations of pre-existing policy by admonishing the parties to adhere to their collective bargaining obligations or face penalties more severe than a bargaining order as contained herein.

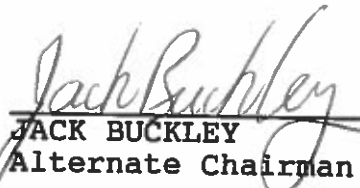
The Board directs:

1. That the Board's Motion to Dismiss made at hearing on March 10, 1992 be DENIED.

2. That the Board, by its conduct in refusing to negotiate "during working hours" violated RSA 273-A:3 and RSA 273-A:5, I (e) and (g).
3. That the Board CEASE and DESIST from refusing to negotiate "during working hours," as determined by the parties.
4. That all or part of the next negotiations session be held "during working hours," as determined by the parties.
5. That bargaining meetings after the next meeting reflect a "mixture" of times and date reflecting the needs and conveniences of both parties, per Wolfeboro, supra.

So ordered.

Signed this 16th day of March, 1992.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Richard W. Roulx and E. Vincent Hall present and voting.