NH Supreme Court affirmed this decision on July 1, 1985, Slip Opinion No. 83-509, 126 N.H. 685 (1985).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EXETER POLICE ASSOCIATION OF NEW HAMPSHIRE, INC. Complainant v. TOWN OF EXETER EXETER, NEW HAMPSHIRE Respondent	CASE NO. P-0718:3 DECISION NO. 83-46

APPEARANCES

Representing Exeter Police Association

William P. Briggs, Esquire
State Employees Association

Representing Town of Exeter

David C. Engel, Esquire

BACKGROUND

This case arises out of unfair labor charges brought by the State Employee's Association ("SEA") on behalf of the Exeter Police Association ("EPA") against the town of Exeter ("Exeter") who cross-filed in their answer. The Union alleges that the Town has violated RSA 273-A:5 (e) by not bargaining in good faith. Specifically, it is alleged that Exeter has not complied with the requirements of RSA 273-A:3, I, by refusing to meet with the SEA at reasonable times and places in order to reach an agreement with the EPA. Exeter responded to the charge by denying that it committed an unfair labor practice, and by alleging that the Union has committed an unfair labor practice under 273-A:5, II (g) which reads "It shall be prohibited practice for the exclusive representative of any public employee: (g) To fail to comply with this chapter or any rule adopted hereunder." Exeter alleges that it is the Union which is not following the requirements of RSA 273-A:3 I, which reads "I. It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. 'Good faith' negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession."

On August 9, 1982, the EPA notified the Town of its desire to enter into collective bargaining. On September 27, 1982, the Town received a proposed set of ground rules for the upcoming collective bargaining. The proposal included a rule restricting either party from making any public statements about the negotiations until a contract had been agreed to. At an October 13, 1982 meeting, the parties disagreed about the restriction on public statements and discussions

were broken off. Exeter wanted negotiating sessions open to the public while the EPA wanted the sessions closed. On November 3, 1982, the EPA, in a letter to Exeter, asked for another meeting on the ground rules for collective bargaining. In December, 1982, Exeter's counsel, in a telephone call to the EPA's counsel, stated that in place of a moratorium on public statements, each party should be allowed to issue a press release on its own twenty-four hours after any negotiation session. The town alleges that the EPA accepted this "compromise," while the EPA claims no agreement was reached. Subsequent to Exeter's suggestion, the SEA became affiliated with the EPA in order to conduct the negotiations. Exeter claims that the SEA revoked the "compromise" on public statements.

The Union filed its unfair labor charge on February 24, 1983. Exeter filed its answer on March 10, 1983. A Board hearing was held on May 12, 1983.

FINDINGS OF FACT AND RULINGS OF LAW

The EPA cites Talbot v. Concord Union School District, 114 N.H. 532 (1974), for the proposition that New Hampshire law calls for collective bargaining to be conducted in private. This is a misreading of Talbot. Nothing in the Supreme Court's holding denies parties the right to agree to hold negotiating sessions in public or issue public statements about these sessions. Nor does New Hampshire law prohibit parties from agreeing to bargain in private. It is clear that the State "right-to-know" law, RSA 91-A, does not apply to such negotiations, however. The major issue facing the Board, then, is whether the parties agreed to the "compromise" suggested by the town. If so, then the SEA, as the EPA's agent, will be bound by the "compromise" and must allow the Town to issue press releases twenty-four hours after a bargaining session.

The Board finds that the parties did not reach an agreement on the "compromise" offered by the respondent. The EPA claims that the press releases envisioned under the "compromise" would not contain any substantive bargaining matters, while Exeter claims that the releases could include any and all matters. Clearly the parties did not reach an agreement or a "meeting of the minds" on what the compromise actually involved.

In the absence of an agreement to the contrary, the Board finds that the parties must return to the bargaining table and hold their negotiations in private. In Talbot v. Concord Union School District, supra, the Supreme Court stated that "there is substantial authority in support of (the argument) that the delicate mechanisms of collective bargaining would be thrown awry if viewed prematurely by the public." 114 N.H. at 535. It is clear that if collective bargaining is conducted in private, it will produce a freer exchange of ideas and be brought to a swifter conclusion than collective bargaining done in public. That is the reason such matters are exempt from the "right to know","sunshine" and "freedom of information" laws. The Board wishes to make clear, however, that parties may agree to hold negotiations in public no matter what practical problems this may present to reaching agreement. Such an agreement should be clear as to its application.

Due to confusion of the parties as to the scope or existence of any agreement in this case, the Board does not feel it would advance the course of harmonious relations to sustain either charge. Therefore, the Board issues the following order:

ORDER

1. The Exeter Police Association's unfair labor practice charge is dismissed.

2. The Town of Exeter's unfair labor practice charge is dismissed.

3. The parties are ordered to schedule a session within thirty (30) days of the issuance of this order to negotiate the ground rules for their collective bargaining sessions. Neither party may insist on open or public negotiations or statements thereon as a precondition for substantive negotiations if the other party does not consent. Absent such an agreement, negotiation sessions shall be held in private.

Robert E. Craig

ROBERT E. CRAIG, Chairman

Signed this 26th day of September, 1983.

By unanimous vote. Chairman, Robert E. Craig presiding; members Seymour Osman and James Anderson present and voting. Also in attendance, Evelyn C. LeBrun, Executive Director.