

NH Supreme Court dismissed appeal of this decision on September 10, 1986, NH Supreme Court Case No. 86-229.



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK VALLEY FEDERATION OF *
TEACHERS *

Complainant *

v. *

MERRIMACK VALLEY SCHOOL DISTRICT *

Respondent *

CASE NO. T-0313:6

MERRIMACK VALLEY SCHOOL DISTRICT *

Complainant *

v. *

MERRIMACK VALLEY FEDERATION OF *
TEACHERS *

Respondent *

CASE NO. T-0313:7

DECISION NO. 86-10

APPEARANCES

REPRESENTING MERRIMACK VALLEY FEDERATION OF TEACHERS

Emmanuel Krasner, Esquire

REPRESENTING MERRIMACK VALLEY SCHOOL DISTRICT

Donald J. Pfundstein, Esquire

Also in Attendance

- William Baston
- Raymond C. Cummings
- Theodore Wells
- Thomas Dimitriadis
- Lois Genovese
- Suzanne D. Ives

BACKGROUND

On October 4, 1985 the Merrimack Valley Federation of Teachers (Federation) filed a complaint of unfair labor practices against the Merrimack Valley School District (District).

The Federation charged that the District refused to bargain in good faith in that it refused to provide "...a concrete proposal on the subject of compensation

of the employees"; specifically, that it proposed a "performance" pay plan but "...never committed itself to any formula for the said plan which would allow the representatives of the employees to determine what they would receive for compensation under the proposed plan"; that it has proposed a new "three-tier" performance pay plan which would be supplemented by additional pay from a fund set up for this purpose. The actual plan for the distribution of this money was to be worked at after the negotiations, by a committee, but the final determination always would be up to the District. The District has maintained its position and having failed to reach agreement, has implemented the plan unilaterally, contrary to RSA 273-A:5, I (a) (e) throughout negotiations, mediation and factfinding contrary to RSA 273-A:5, I, (a) (e).

The Federation also charged that the District had committed a series of unfair labor practices during negotiations, going back over the past year and inter alia, that it failed to submit the factfinder's report to the legislative body of the public employer as mandated by RSA 273-A:12, III.

The District responded with its answer and "motion to dismiss or in the alternative for further specification" and denied any breach of RSA 273-A. It stated that it had consistently sought to "...discuss evaluative criteria and mechanisms for the implementation of said performance-based plan, including, but not limited to, the committee proposed by the School Board for that purpose", and denied it had refused to negotiate salary and states it has been negotiating since October of 1984. The District argued that it is management's right to have the final say in the evaluation process but did admit that it had not submitted the factfinder's report to the legislative body but argued it had the legal right to act this way since the necessary funds have already been appropriated.

The District further asked that several charges be dismissed since many of them fell outside of the six (6) month requirement of RSA 273-A:6, III.

On October 17, 1985, the Merrimack Valley School District also filed a complaint of unfair labor practices against the Merrimack Valley Federation of Teachers, NHFT, AFL-CIO, charging that the Federation failed to negotiate in good faith contrary to RSA 273-A:5, II, (d). Specifically, the District charged that the Federation "...has unequivocally refused to meet with the School Board during and about June, July and August of 1985, and continuing thereafter, although requested on countless occasions to do so". It also charged that the Federation representative, Executive Director, Theodore Wells, had refused to negotiate in good faith and had "...engaged in tactics of delay and deceit".

In its answer, the Federation denied any breach of RSA 273-A.

A hearing was held at the PELRB office in Concord, N.H. on October 29, 1985 for the consideration of opening motions only. Subsequently, hearings on the full merits of the complaints were held on November 14, 1985 and November 26, 1985 with all parties represented.

HEARING OF OCTOBER 29, 1985

This hearing was for the purpose of opening motions only. The District moved to dismiss or for further specification. The District argued that several items in the Federation's complaint (4A, 4B, 4C and 4D) took place over six (6) months prior to the complaint and were therefore beyond the time limit under RSA 273-A:6, VII. The Federation argued that the events referred to were part of a continuing pattern of refusal to negotiate, which now includes paying teachers and refusing to negotiate.

The PELRB denied the motion to dismiss and ruled that Sections 4A thru 4E of the Federation's complaint were untimely under RSA 273-A:6, VII as specific unfair labor practices and would not be treated as such. PELRB further ruled that a hearing be scheduled confined to the charges of (1) failure to negotiate in good faith, and (2) refusal to submit the factfinder's report to the legislative body of the employer.

HEARING OF NOVEMBER 14, 1985

FINDINGS OF FACT

1. Negotiations have been conducted since October of 1984 for a successor agreement for this, their third, contract which subsequently expired August 31, 1985.
2. The parties have bargained to impasse, undergone mediation and factfinding and the factfinder's report was issued June 17, 1985.
3. The Federation accepted the Factfinder's report, and the School Board rejected it. The School Board did not submit the factfinder's report to its legislative body and argued that it is not required to do so since the money for implementation of its "last offer" has already been appropriated and is at hand, rendering the submission to the legislative body a moot issue.
4. Re: "Bad faith" of Theodore Wells at May 3, 1985 meeting with Attorney Pfundstein and Bruce Fraser: Mr. Wells testified he always had to clear items with the negotiating committee, and couldn't make final agreement. We find that Attorney Pfundstein and Mr. Wells simply disagree over how much authority negotiators must/should have to reach agreements on their own.
5. After reaching impasse, briefs were submitted to the factfinder, who also conducted some mediation prior to factfinding, and the process was completed by May 30, 1985. The factfinder issued his report on June 17, 1985, the Federation accepted the report, School Board did not, and never submitted it to legislative body. By August, 1985 the Federation requested mediation again, but School Board wanted direct negotiation, not mediation.
6. Re: Issue of contracts in spring, 1985. The School Board issued individual contracts for teachers in the spring of 1985 including an "addendum" stating that negotiations were continuing and the salary may change as result. The teachers were upset and the union added another addendum but were persuaded it might void the contracts so teachers were advised to discard the union addendum and they did.
7. Re: "Career Ladder" or "Performance Pay" proposals: Federation negotiators testified that they never proposed "career ladders" or "performance pay" proposals that no such plan of theirs was proposed. The Federation negotiators indicated a wish to take more time to work on evaluation criteria and didn't want a new three-tier pay plan with a (unspecified) merit plan in a multi-year contract. The Federation negotiators testified that they were not clear about the proposal since it also contained a "pool of money" (which may grow every year) and they didn't know if the money must

be spent or some spent, voters change the amount, or what? The School Board plan would set up a committee to decide on this (merit) "pool money" after the contract was ratified. The teachers' negotiators proposed a "short contract" with a set pay, and time to discuss "merit pay", "career ladders", or whatever. At the time impasse was reached, they had agreed to set no criteria for evaluation, no implementation plans and could not tell specifically what any person would be paid the following school year. The School Board plan would retain the right to overrule the implementation (evaluation) committee, however that committee was constituted. Teacher negotiators felt they were being asked to accept a pay plan "sight unseen", since they didn't know how it was going to work.

HEARING OF NOVEMBER 26, 1985

FINDINGS OF FACT

8. Re: District's "Pay Performance Plan":
The teachers pointed out some ambiguities in the plan of the District, including the exact pay problem, evaluation methods, work of committee, etc. Teachers refused to surrender their right to negotiate salary.

9. Re: Difficulties of negotiating:
The teachers' negotiator (Thomas Dimitriadis) established that many attempts had been made to meet with the District negotiator, not all of which were possible. He also established that teachers preferred a certain pay plan to an ambiguous one and that he was working for that goal, participating in negotiations, mediation and factfinding.

The District negotiator (Attorney Pfundstein) established that any original difficulties with salary information was simply his concern over privacy which turned out to be no problem at all and was resolved. He (Attorney Pfundstein) agreed that "career ladders" was never a teacher proposal but asserted that the District proposal is a plan and that there had been plenty of discussion about it. He (Attorney Pfundstein) established clearly that an evaluation procedure already exists and that the new "committee" would simply begin with it. The 1985-86 salaries were implemented and are simply a straight pay raise (last offer) and were not performance based and that the merit based system will start 1986-87. The District negotiator established that there were two different subjects here, evaluation and salary and that the District believes it must negotiate salary but that it is not necessary to negotiate evaluation criteria, but that the "committee" is a means of addressing evaluation concerns, after the contract agreement (wanted a merit pay agreement before the contract and evaluation criteria went into effect) and that the School Board is not bound to accept any or all committee recommendations that the committee can't bind the School Board and that the current evaluation system was not designed for a "performance pay" system, that the Board is not necessarily committed to paying out all of the merit pool and that it is also possible that if all teachers improve then each may get less of a raise.

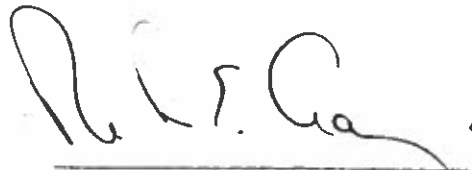
10. The PELRB finds that the breakdown in this process, normally a difficult one anyway, was exacerbated when the legally prescribed dispute resolution system was implemented unilaterally by the District in its refusal to submit all of the factfinder's reports as required by law.

RULINGS OF LAW

1. The PELRB finds the School District guilty of an unfair labor practice for not submitting the factfinder's report to the legislative body as required by RSA 273-A:12, III, "If either of the (parties) rejects the neutral party's recommendations, his findings and recommendations (emphasis added) shall be submitted to the legislative body of the public employer".

ORDER

1. The PELRB orders the School District to submit the factfinder's report to the legislative body of the District at the earliest appropriate date and proceed with all additional steps required by RSA 273-A and to report its plans to do so to PELRB within 14 working days of the issuance of this order.
2. The PELRB declines to make further findings in this case at this time.



ROBERT E. CRAIG, Chairman

Signed this 23rd day of January, 1986.

By unanimous vote. Robert E. Craig, Chairman, presiding. Members Seymour Osman, Richard Roulx and Russell Verney present and voting. Also present Evelyn C. LeBrun, Executive Director.