



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK VALLEY FEDERATION OF TEACHERS, *
AMERICAN FEDERATION OF TEACHERS *

Petitioner *

and *

MERRIMACK VALLEY SCHOOL BOARD *

Respondent *

CASE NO. T-0313:6 and T-0313:7

DECISION NO. 86-34

APPEARANCES

Representing Federation of Teachers:

Emmanuel Krasner, Esq.
Ted Wells, Field Representation, AFT

Representing Merrimack Valley School Board

Donald Pfundstein, Esq.
William Baston, Superintendent
Raymond C. Cummings, School Board Member

BACKGROUND

This case came before the Public Employee Labor Relations Board and was the subject of Decision #86-10 which ordered a full factfinder's report to be submitted to the School District Meeting of the Merrimack Valley School District, the legislative body thereof. Briefly restated, the background of this matter is that the parties negotiated in October of 1984 through June of 1985 going through to factfinding. No resolution of the dispute was agreed upon by the parties, although a factfinder's report was issued. The original order of this Board was that the factfinder's report be submitted to the legislative body. However, doubt was expressed by the school board as to whether the full factfinder's

report was to be submitted or whether only "cost items" were to be submitted. Also, the rehearing was sought since requests for findings of fact and rulings of law were not specifically made after the first hearing, notwithstanding a submission by the school board Attorney. During the interim period, various motions for contempt were filed by the parties against each other due to certain activities publicizing the factfinder's report, summarizing it or taking action in connection with an interim order agreed to by the parties and issued by the Public Employee Labor Relations Board concerning the conduct of the regular School District Meeting which was held March 6, 1986. The Public Employee Labor Relations Board held a rehearing on March 27, 1986 at which all parties had an opportunity to present evidence and legal argument concerning the appropriate submission to be made to the School District Meeting under statute when a factfinder's report had been issued but the school board itself had not accepted the report and the union had not accepted the report, as well. It is the position of the union that the statute requires the submission of the full factfinder's report under the provisions of RSA 273-A:12 III, which states, in full:

- III. If either the full membership of the employee organization or the board of the Public Employer rejects the neutral party's recommendations, his findings and recommendations shall be submitted to the legislative body of the Public Employer, which shall vote to accept or reject so much of his recommendations as otherwise is permitted by law.

It is the position of the union that this requires the submission of the full factfinder's report. On the other hand, the school board states that only the cost items of the factfinders report need to be submitted to the legislative body and, in the particular case of the negotiation at the Merrimack Valley school board, the legislative body had already voted to fund the contract sufficiently to take care of the cost items, this negating the need to submit the matter to the legislative body. Further, the school board argues that the authority and purpose of having a school board negotiating would be taken away should the entire factfinder's report be submitted. The school board points to the provisions of RSA 273-A:3 II (b) which states:

Only cost items shall be submitted to the legislative body of the Public Employer for approval. If the legislative body rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost items submitted to it, either party may reopen negotiations on all or part of the entire agreement.

This, it alleges, is "so much of his recommendations as otherwise is permitted by law" under RSA 273-A:12 III, and modifies that section.

FINDINGS OF FACT AND RULINGS OF LAW

This Board understands from testimony at the hearings, communications received by it from interested parties and its review of the record that there is confusion concerning the meaning of its first order. More importantly, there is confusion about the requirements for submissions to legislative bodies in various circumstances. The Board has had reported to it inconsistent interpretations of prior decisions of the Board in various cases which are alleged to be inconsistent and contradictory in interpreting the requirements of the statute. Therefore, the Board has agreed to reconsider its earlier decision.

The purpose of submission of items to the legislative body for approval is central to the resolution of disputes in the statute. Several different sets of circumstances can present themselves.

First, the parties could negotiate, fail to agree, go to mediation and factfinding as set forth in the statute. In such event, both the boards of the employer and union consider and vote on the report of the factfinder. If both accept the recommendations, there is no need for submission of the entire report to the legislative body for approval. Likewise, if the parties negotiate an agreement without a factfinder, there is no need to submit the entire agreement to the legislative body, the need merely being for cost items to be submitted to the legislative body which has the power to fund an agreement or agreed upon factfinder's recommendations. This is the purpose and intent of the provisions of RSA 273-A:3 II (b) which covers agreements and not disagreements.

On the other hand, if the parties have not agreed to a factfinder's report or have not reached an agreement (which is a precondition to having a factfinder's report in the first place), the full membership of the union or the legislative body of the public employer have a need to consider the entire factfinder's report. When there is no agreement, the reasoning behind this need goes beyond merely funding cost items. The entire report becomes relevant since it is the recommendations of the factfinder for the resolution of all outstanding issues and the legislative body then has to deal with the entire recommendation and desirability of adopting the report, notwithstanding the position of the school board or other executive body. This is the purpose of RSA 273-A:12 III.

In the case before the Board, the school board has rejected the factfinder's report. It would be incongruous, therefore, for only cost items to be submitted to the legislative body since there is no agreement to fund. The role of the legislative body in this case is to consider the entire factfinder's report to see whether the legislative body wishes to accept it, notwithstanding the action of the school board or the union. In this case, if the legislative body agree, the dispute is at an end. If not, the other provisions of statute require returning to negotiations.

Because there has apparently been confusion concerning this requirement, the Board states that any prior decisions inconsistent with this decision or interpretations varying from this decision, are hereby overruled in connection with submissions to be made to legislative bodies.

Therefore, the Board finds that the legislative body must receive the full factfinder's report. This will require a special School District Meeting in the Merrimack Valley School District with the warrant stating that the meeting will discuss the entire factfinder's report. The entire factfinder's report must be made available in sufficient quantities and locations so that the voters have an opportunity to review and consider it prior to the meeting. The factfinder's report must be distributed without comment or editorial materials prepared by either party. Nothing in this decision, however, precludes either party from attempting to influence the voters separately by distributing commentaries about the factfinder's report.

Turning to the requests for findings of contempt filed in this case, the Board feels that the circumstances surrounding the School District Meeting of March 6, the practical and human problems connected with implementation of a Board order and the need for a lessening of tension and the need to focus on the issues of reaching an agreement all argue against any finding of contempt. The Board finds that the parties have been acting in good faith in connection with attempting to follow through with implementation of the interim order of the Board and therefore will not find any party to have been in contempt, notwithstanding what very possibly may have been minor infractions or technical violations of the interim order concerning distribution of materials and/or discussion of the factfinder's report at that earlier meeting.

The remaining findings in the earlier decision not inconsistent herewith are reaffirmed.

In connection with the earlier request for findings of fact and rulings of law submitted on behalf of the school board, the Board makes the following specific findings:

The following requests are granted: 1-5, 10-14, 17-19, 22-24, 29-45.

The following requests are denied: 6,7,8,9,25,26, 27, 28, 46, 49, 50, 51.

The following requests are specially decided:

15-16 granted that this is a portion of school board's position on its proposal.

20 granted but this doesn't preclude a multi-year agreement.

21 granted in general but merit pay is subject to negotiations.

47 granted but only applicable consistent with this opinion.

48 granted without capital letters and only consistent with this opinion.

ORDER

The Board affirms its earlier decision in this case as amended by this decision on rehearing. The Board orders the following:

1. The Merrimack Valley School District is ordered to hold a special School District Meeting and to state in the warrant that at least one item of business to be decided at said meeting is consideration of the full factfinder's report.
2. The Board is ordered to submit the entire factfinder's report to the School District Meeting.
3. The Board is ordered to distribute the full factfinder's report consistent with this opinion.
4. The Board is ordered to report compliance with this order to the offices of the Public Employee Relations Board within twenty (20) days from the date of this order.


ROBERT E. CRAIG, CHAIRMAN

Signed this 13th day of May, 1986.

Board members Anderson and Roulx also voting. All concurred.
Also present Evelyn c. LeBrun, Executive Director.