



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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MERRIMACK VALLEY FEDERATION OF TEACHERS \*

Petitioner \*

CASE NO. T-0310:6, :7, :8

v. \*

MERRIMACK VALLEY SCHOOL DISTRICT \*

Respondent \*

DECISION NO. 86-51

\*\*\*\*\*

#### APPEARANCES

##### Representing Merrimack Valley Federation of Teachers:

Emmanuel Krasner, Esq., Counsel

##### Representing Merrimack Valley School District:

Donald Pfundstein, Esq., Counsel

##### Also in Attendance:

William Baston, Superintendent

Raymond C. Cummings, School Board Member

Margaret Pyszka, President

Ted Wells, N.H. Representative NHFT/AFT

Ted Comstock, Director NHSBA

#### BACKGROUND

This case arises as part of the ongoing saga of problems between the Merrimack Valley Federation of Teachers and the Merrimack Valley School District. Prior cases have involved disputes concerning the failure to submit a factfinder's report to the voters who are the legislative body of the School District along with allegations that unilateral implementation of policies have been made by the employer during the course of negotiations for a new contract which is alleged to be an unfair labor practice violating the provisions of RSA 273-A:5 I, presumably Sections (a), (b), (e), and (g). The Public Employee Labor Relations Board issued a decision in Case No. T-0313:6 which involved only consideration of the failure to submit the factfinder's report to the legislative body. Other matters raised by the parties were not ruled on "at this time" when that decision was rendered because it was felt by the Board that resolution of the factfinder's report submission might result in a resolution of all other questions. That initial decision, No. 86-10, was subject of a Motion for Reconsideration, which reconsideration was made and resulted in a new decision, Decision No. 86-34, which reaffirmed the earlier findings as to the factfinder's report submission but again made no findings on the allegation of unfair labor practice because of unilateral adoption rules by the School District.

In its complaint in Case No. T-0313:8, the Merrimack Valley Federation of Teachers has renewed its requests and repeated its allegations of unfair labor practice because of unilateral adoption of policies by the employer. A hearing on its complaint was held at the offices of the Public Employee Labor Relations Board on July 24, 1986. At the hearing, the School District

raised defenses of res judicata and statute of limitations, claiming that the allegations in Case No. T-0313:8 were more than six months old and therefore were barred by provisions of statute, RSA 273-A:6. Further, the School Board said that it did not commit an unfair labor practice because there was no collective bargaining agreement in effect between the parties at the time new rules and regulations were adopted by it, namely September 1, 1985, after the last collective bargaining agreement had expired. The Board pointed out that the prior collective bargaining agreement contained the following language:

. . . shall remain in effect until August 31, 1985 when it shall expire unless an extension is agreed to by both parties expressed in writing prior to such date . . .

The quoted language is alleged by the School District to allow it to adopt whatever policies and regulations it desires.

At the hearing, procedural matters were addressed and a stipulation entered into by the parties that indeed the Merrimack Valley District adopted a policy for operation of the Merrimack Valley School District of September 1, 1985,, which contained twelve articles and ran 17 pages in length. It was conceded and stipulated that this policy also represented the last offer put forth by the employer in negotiations prior to impasse, which negotiations were the subject of the factfinder's report which the Board had ordered submitted to the legislative body. That decision has been stayed by the New Hampshire Supreme Court in connection with an appeal by the School Board.

Further stipulations agreed to by the parties at the hearing were that the School District paid its teachers during the 1985-86 school year in accordance with the policies unilaterally adopted on September 1, 1985, and that in March 1986, contracts for teachers were issued in accordance with that policy which included so-called "merit pay", disproportionate raises and, in at least one case, a teacher receiving no raise. In addition, policies including preparation periods, health benefits and other matters had been changed unilaterally from prior contract provisions.

There being no dispute on the facts at the hearing, the parties were allowed to make legal argument and submit requests for findings of fact and rulings of law to the PELRB.

#### FINDINGS OF FACT AND RULINGS OF LAW

There being no dispute on the facts, the stipulation of the parties has been accepted by the PELRB.

At the hearing, the PELRB ruled on the objections and the Motion to Dismiss by the School District. The rulings were and are as follows:

Addressing the claim of res judicata, the PELRB in its earlier orders specifically stated that it was not ruling on the questions presented to the Board in connection with unilateral adoption of policies "at this time" and reserved the right to rule on them later, should the progress of the case so require. No ruling having been made on those questions, the doctrine of res judicata is not applicable.

In connection with the statute of limitations, had the federation of teachers raised these matters for the first time more than six months after the unilateral adoption of the "policy for operation of the Merrimack Valley School District", there may have been an argument that the statute of limi-

tations barred the matter. However, this was first raised in its complaint by the union in the fall of 1985 and the Board recognizes the most recent complaint merely brings forward that complaint with new examples of unilateral implementation. The Board therefore denies the Motion to Dismiss on the basis of the statute of limitations, the Board having reserved the right to rule should the situation so require. The Board believes that had the parties implemented its previous order to submit the factfinder's report to the legislative body, that body could have decided whether to implement the factfinder's report or could have rejected that report, resulting in further negotiations, either of which would have moved the parties from impasse and made the present case unnecessary. Because agreement has not occurred, the Board recognizes the need to rule on the question of the School Board's unilateral adoption of policies.

The Board finds the unilateral implementation of policies is an unfair labor practice in this case. In many prior cases, this Board has stated that employers may not unilaterally change their pay, benefits, employment policies, conditions of employment and the like, which are negotiable items, at the expiration of a collective bargaining agreement since this would taint the environment in which negotiations for a successor agreement occur, could apply unfair pressure and prejudice the employee organization in negotiations. See, among other cases, Sugar River Education Association v. Claremont School District, Decision 86-25, Portsmouth Firefighters Local No. 1313 IAFF V. City of Portsmouth, Decision 82-70, International Association of Firefighters Local 1571, et al. v. City of Claremont, et al., Decision 82-46, Laconia Association of Support Staff v. Laconia School Board, Decision 84-78. This is not a unique position, it also being a provision of law by decision or statute in many states and under federal law in certain circumstances. If the rule were otherwise, havoc could result during the negotiation period, the employer could be seen to try to "bribe" employees to support its position and the employer would be in an unique position to influence negotiations. The union certainly has no similar power or position. Discussion at the hearing involved how long the prohibition against changing policies and conditions of employment lasts. This Board has never decided whether the inability of the employer to implement policies unilaterally goes on forever (until a new agreement is reached) or ends at some point in the process. The public employer advanced the argument that the prohibition should last only until impasse is reached, the rule asserted to be that under federal private sector law. The Board feels this would be an inappropriate rule in the public sector in New Hampshire.

The employer's asserted rule would be inappropriate since there is a dispute resolution mechanism and an impasse resolution mechanism in the statute which contemplates mediation, fact finding and submission of the factfinder's report to the legislative body. While this Board need not decide whether there is ever a point at which unilateral implementation of policies can be made, the Board rules that that point certainly is not reached while the statutory impasse resolution scheme is incomplete, as it is in the Merrimack Valley case.

The present case is somewhat complicated because the Board failed to rule on this question in the fall of 1985. There has followed one school year of operation under the new policies. While several changes have been implemented, the primary concern is the impending implementation of a merit pay system, the primary point of dissension between the parties. This merit pay was not implemented in the 1985-86 year but is proposed for implementation in the 1986-87 year, pay checks for which commence in September 1986. The PELRB therefore feels that the time has arrived for ordering a suspension of these new rules. The Board will not disturb the pay and benefits for the 1985-86 year except as set forth in its order, requiring negotiations concerning those matters. In addition, the Board noted at the hearing and the parties agreed that practical problems will exist because of the order of the Board and there-

fore the parties are being ordered to return to the bargaining table to negotiate concerning matters under this order and, hopefully, will consider all matters between them, even those subject of the factfinder's report. The Board has been informed that there have been no face-to-face negotiations between the parties for almost two years, and the Board would hope that in the negotiations being ordered all matters could be explored with an eye toward resolving all differences, notwithstanding the factfinder's report, legal appeals, and the like.

The parties have submitted requests for findings of fact and rulings of law. The Board, having found that the unilateral implementation of policies during the impasse resolution process violates RSA 273-A:5 I(a), (b), (e) and (g), makes the following findings on those requests:

On the Merrimack Valley School District's request for findings of fact and rulings of law, the Board grants requests numbered 1, 2, 3, 4, 7 and 8. Requests numbered 6, 9, 10, 12, 16, 17 and 18 are denied. Request 5 is granted in part in that the union's complaints have been raised but, as stated in this decision, were not decided. Request 11 is denied insofar that it suggests that the statute cited is dispositive of a labor dispute. Request 13 is granted insofar as the language quoted is accurate. However, consistent with prior decisions of this Board and general labor law, that contract provision does not affect the question before the Board. Request 14 is granted insofar that it accurately quotes the New Hampshire Supreme Court. However, that case and the issues raised are not dispositive of the case before the Board. Request 15 is granted insofar that it accurately represents one finding of Bouchard v. Rochester, 119 N.H. 79 (1979). However, the Board has found an unfair labor practice with specific violations of 273-A:5 in this case.

Merrimack Valley Federation of Teachers requests for findings of fact numbered 1-17 are granted.

Merrimack Valley Federation of Teachers requests for rulings of law 1-3 are granted. Request for rulings of law number 4 is denied in that the Board refuses to make a distinction on justification for unilateral implementation based on a party being responsible for impasse.

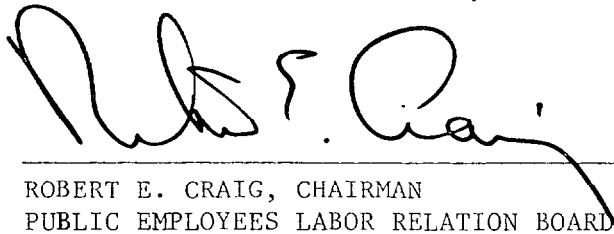
#### ORDER

Having found that the implementation of wages and conditions constitutes a violation of RSA 273-A:5 I as stated above, the Board orders the following:

1. The School Board Policy for Operation of the Merrimack Valley School District Effective September 1, 1985 as to all-non salary changes are suspended and prior rules and regulations in existence prior to September 1, 1985 be reinstated for the 1986-87 school year unless and until the parties agree upon alternate rules and regulations through collective negotiation or the impasse resolution process provided by statute.
2. The salary provisions under individual teacher contracts issued for 1986-87 as unilaterally implemented by the Merrimack Valley School Board are suspended. The funds appropriated for salary increases shall be paid into a special interest-bearing escrow account, said deposits to be made as the monies would have been paid to the teachers. This account and the monies held shall be retained until the parties shall have agreed upon 1986-87 salaries through collective negotiations or the impasse resolution process provided by statute. This provision shall not go into effect if

the parties agree through negotiations on salaries and salary policies for the 1986-87 school year prior to the first payments due for that school year. This order shall have no effect on 1985-86 pay, the effect of which unilateral implementation shall be negotiated by the parties as part of their negotiations concerning 1986-87 pay. Newly hired teachers shall be paid at the rate at which they were hired and their proper place in the pay scale and procedures and policies shall be negotiated by the parties as part of their negotiations concerning salaries.

3. The parties are ordered to negotiate on all matters covered by this order within 15 days of the date of this order and report progress to this Board within 30 days of the date of this order. Further, the parties are urged to negotiate all matters still outstanding between them to attempt to reach agreement, notwithstanding the procedural status of their cases and appeals or any related matters.



ROBERT E. CRAIG, CHAIRMAN  
PUBLIC EMPLOYEES LABOR RELATION BOARD

Signed this 7th day of August, 1986.

By unanimous vote: Chairman Robert E. Craig, presiding. Members Seymour Osman, Richard W. Roulx and Daniel Toomey present and voting. Also present Executive Director, Evelyn C. LeBrun and Board Counsel, Bradford E. Cook, Esq.