

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERLAKES EDUCATION ASSOCIATION, NEA-NH *

Petitioner *

CASE NO. T-0237:8

v. *

INTERLAKES SCHOOL BOARD *

DECISION NO. 86-53

Respondent *

APPEARANCES

Representing the Petitioner, Interlakes Education Assoc., NEA-NH

Wally Cumings, UniServ Director, NEA-NH

Representing the Respondent, Interlakes School Board

Bradley F. Kidder, Esq., Counsel

Also in Attendance

Gary A. Burton, Supt.

Ann Williams

Phillip McCormack

Edward Kenney, Asst. Supt.

Bill West, ILEA

Tom Comstock, Dir. Labor, N.H. School Assoc.

Janet Loto, ILEA

Peter Whelpton, Reporter, Meredith News

BACKGROUND

A series of charges were brought in the Interlakes District arising from negotiations in 1983-85, and a pre-hearing(s) conference was held on February 13, 1986 to sort out these complaints and to see which must be proceeded with. Some complaints were withdrawn but Case No. T-0237:8 was one which needed a hearing and one was scheduled and ultimately held on July 17, 1986.

In a complaint filed February 13, 1985, and later shortened by agreement on February 13, 1986. The Interlakes Education Association ("Association") NEA-New Hampshire charged the Interlakes School Board and its agents ("Board") with Unfair Labor Practices by intimidation and by failing and refusing to bargain in good faith, a violation of RSA 273-A:5, I, (a) (e). The Association alleges two breaches of RSA 273-A occurred:

1. The Board's representative made anti-union statements to the Fact Finder which were accepted by the Board, and
2. The Board did propose a 7% increase in teacher's salaries budget for the School District meeting despite the lack of agreement on any contract, constituting a unilateral change in working conditions.

The Board, in its answer, denies any breach of RSA 273-A and agreed that negotiations for a successor agreement began in October 1983 for a contract scheduled to expire on 23 August, 1984. The Board and the Association reached impasse, scheduled by the Association, on 19 January, 1984 and that fact-finding took place around February of 1985.

The Board admits that its hired negotiator made some kind of statement about "professionalism" before the Fact Finder but claims it was not intimidating, took place only in argument during a closed session of fact-finding and cannot be viewed as a violation of RSA 273-A.

The Board further admitted that on 11 February 1985, it presented a budget for the 1985-86 school year including a (7%) seven percent pay increase for the teachers. The Board argues this is no violation since it has the unilateral right, after impasse has been reached, to adopt wage and benefits previously offered to the union.

The Interlakes Education Association requested a Cease and Desist Order from the PELRB, relative to the (7%) seven percent increase in the teachers budget item for the March School District meeting. The PELRB held a hearing on this motion on March 7th, 1985. The PELRB declined to issue any cease and desist order but did require a statement be read and circulated at the school district meeting informing the meeting that PELRB considers that while appropriation may be made, no monies could be expended without agreement in the negotiations process on-going.

A hearing on the Unfair Labor Practice charge brought by the Association was held at the PELRB office in Concord, N.H. on July 17, 1986.

FINDINGS OF FACT AND RULINGS OF LAW

PART ONE: (The complaint was divided into two parts for ease of presentation and comprehension: part one dealt with the alleged anti-union animous complaint arising from a statement made by the Board's attorney at the Fact Finding Session).

1. At the hearing Mr. Kidder agreed he had made some kind of statement that "teachers were not professional since they belonged to a union with a contract", etc but argued that the statement was simply argument as part of the normal "give and take" of this process.
2. Witnesses testified to hearing Mr. Kidder's comments and feeling they were anti-union and that such statements might, if heard by others, influence their decisions to join the union.
3. Mr. Kidder argued that the statement was made in a closed session, not a public forum and that the fact finder was quite capable of understanding the comment and how to evaluate it properly.

The PELRB finds that the statement was made in a closed session before people who were highly skilled in the process of negotiations and as such must be viewed as simply part of the give and take in the bargaining process and does not by itself in these circumstances, constitute an unfair labor practice.

PART TWO: (This section of the hearing dealt with the issue of the budget containing a seven per cent (7%) wage increase despite

the fact that no agreement had been reached).

1. The School District did adopt a 1985 budget, including a (7%) seven percent increase for teachers salaries (in May) prior to reaching agreement with the teachers.
2. The seven percent increase would have been less than previously offered in bargaining and was less than eventually agreed upon.
3. The School Board argues that so long as the unilateral raise followed an impasse, and the money was less than had been offered in negotiations, and the parties were still in continuing negotiations, then it was permissible under NLRB v. KATZ, 369 U.S. 736 (1965) and later cases.
4. The Association argued that private sector case law does not apply since teachers (and others) are forbidden to strike and hence if unilateral action is permitted, no real bargaining will take place since no real need will motivate the employer.
5. Teacher Association witnesses testified they feared that if unilateral action was permitted then voters and public would believe everything was settled and not vote any more money, even if agreement was reached.

RULING OF LAW

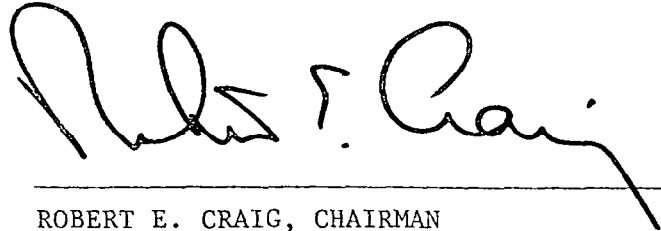
The question here is less one of necessity than one of balance. If one side in contract negotiations is given a leverage to use for the molding of the outcome and not possessed by the other, then one part gains the upper hand. The PELRB declines to endorse an imbalancing of the negotiations process itself. RSA 273-A, Statement of Policy clearly states that "it is the policy of the state to foster harmonious and cooperative relations between public employers and their employees" and that (273-A:3) "It is the obligation of the public employer and the employee organization ... to negotiate in good faith.

We believe that lacking the ability to walk off the job, public employees have the right to ask for a balanced negotiation process, "a level playing field" so-called, where the incentives to reach an agreement, although they may be different, operate to motivate both sides to reach some fair agreement. We cannot allow either side to take unilateral action, which action may only serve to reduce their motivation to reach an accommodation and agreement with the other side in negotiations. Barring exceptional circumstances, we must rule that unilateral action by either side to change the status quo during negotiations is an unfair labor practice in the public sector.

DECISION AND ORDER

With respect to that charge of the complaint alleging coercion because of Mr. Kidder's statement to the Fact Finder the charge is hereby dismissed;

With respect to that charge of the complaint alleging unfair labor practice(s) due to unilateral change(s) in the wages during negotiations the complaint is upheld and the School District is ordered not to conduct itself in such fashion in the future.

A handwritten signature in cursive script, reading "Robert E. Craig". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATION BOARD

Signed this 7th day of August, 1986.

By unanimous vote. Robert E. Craig, Chairman presiding. Members Seymour Osman, Richard Roulx and Dan Toomey present and voting.