



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

COMMITTEE FOR FAIRNESS IN NEGOTIATIONS :

Petitioner :

v. :

SOMERSWORTH ASSOCIATION OF EDUCATORS, :

NEA-NEW HAMPSHIRE :

and :

SOMERSWORTH SCHOOL BOARD, S.A.U. 56 :

Respondents :

CASE NO. M-0578

DECISION NO. 86-54

APPEARANCES

Representing the Petitioner, Committee for Fairness in Negotiations:

John M. Lewis, Esquire, Counsel

Representing the Respondents:

Somersworth Association of Educators, NEA-New Hampshire

James Allmendinger, Esquire, Staff Counsel

Somersworth School Board, S.A.U. 56

Glen G. Davis, Esquire, Former School Board Chairman

Also in Attendance:

John H. Powers, Superintendent
Clement Wyman, School Board Member
Claire Snyder, School Board Member
Jo Campbell, UniServ Director, Region II
Elissa Bass, Foster's Daily Democrat

Teachers:

Robert Creighton
William Cantin
Robert Watson
Rick Keith Forge
Nancy Shepard
Rosemary Boy Scott
Carl J. Tabor
George J. Roy
Ray Lambert
Donna Vittands

Beverly Hotaling
Jackie Ferland
Katherine Benson-Dubrevil
Shirley A. Carozza
Mary W. Dean
John A. Cummings
Wayne B. Stevens
John B. Dean
Walter Morgan

BACKGROUND

This case comes to the Public Employee Labor Relations Board presenting unique charges arising out of the negotiations for a new collective bargaining agreement between the Somersworth Association of Educators (SAE), affiliated with the New Hampshire Education Association (NEA) and the Somersworth School Board (SSB), which negotiations took place in 1985. In that year, the previous collective bargaining agreement expired. That agreement followed a format which had been in existence in Somersworth for many years. As was customary, the SAE selected a negotiating team which negotiated with representatives of the SSB. The teachers were assisted by NEA representatives. SSB brought various goals and objectives to negotiations in 1985 including "tightening" the salary scale which had grown to many steps over the years due to the existence and expansion of a so-called "star system", a system which resulted in an additional asterisk level being assigned to teachers beyond step 12 in the salary scale for each year of longevity. This system, in effect, added an additional step for each year of longevity. If this system continued, it was alleged, newly hired teachers would never be able to attain the highest step since previously employed teachers would continuously obtain additional steps. Other SSB goals were the institution of some sort of merit pay system and increasing starting and early year salaries in order to entice teachers into the Somersworth system. In addition, both parties desired to adjust salaries somewhat to reward teachers who received additional education credits, thus improving themselves and, hopefully, their teaching.

Negotiation in Somersworth were conducted in the context of the fact that the City Council was threatening to appropriate money regardless of the outcome of negotiations which would have resulted in less money being available for teachers and the school system if an agreement was not reached than if it were.

Negotiations took place during the 1984-1985 school year without too much movement until the spring of 1985. In April, the parties, working with the aid of the office of the superintendent of schools, rapidly reached agreement on a proposed collective bargaining agreement. This agreement contained provisions which resulted in significant overall salary increases, rewarded teachers in salary steps resulting from additional education, gave significant increases to teachers in the early stages of their careers in Somersworth and made certain other changes. Significantly, the proposed schedule did away with the star system, gave salary increases which were disproportionate among the steps and grades, and eliminated all but the most basic references to longevity pay.

On May 1, 1985, SAE members held a meeting concerning ratification. At that meeting, the union president and members of the negotiating team were present for the purpose of explaining the proposed contract. They were questioned at length concerning various parts of the agreement, especially the amount and philosophy of pay increases and the effect of individual steps and grades. Following the meeting, which meeting took over one and one-half hours, the contract was ratified in a voting procedure that used "ballots", the members writing their approval or disapproval on the information sheet handed to them. The contract was ratified, 54 to 10.

Almost immediately after the ratification meeting, certain senior teachers became concerned about the elimination of the star system, disparity of raises between various groups and categories of teachers and the way in which information was presented to the membership and acted upon. They attempted to contact union representatives and set up a meeting or meetings

to discuss the situation and were unsuccessful in their attempts. After the summer vacation commenced, they hired an attorney, formed an organization known as the Committee for Fairness in Negotiations and, after the attorney contacted the union, were successful in getting a meeting, the results of which did not satisfy them. The committee sought to have negotiations reopened for the purpose of arriving at what they considered to be a fairer agreement with a more equitable distribution of pay and benefits.

Obtaining no satisfaction in its attempts for meetings or renegotiations, the committee filed unfair labor practice complaints against SAE and SSB. These allege that the negotiations were conducted in bad faith, were the result of the failure of the union to adequately represent all of its members, and were the result of certain union members negotiating for themselves as opposed to negotiating for all members of the union. SSB was accused of bad faith in putting such an agreement into effect. These actions, it is alleged, have resulted in unfair labor practices by the SAE in failing to represent the school district senior teachers properly, without discrimination in a non-arbitrary manner. Thus they are alleged to be violations of RSA 273-A:5 II (a) and (c). In addition, the Committee for Fairness alleges that SAE has refused and failed to negotiate in good faith with SSB and therefore has violated RSA 273-A:5, II (d). Further, the committee alleges that SSB, by participating in and working with the SAE to put into effect the salary schedules, has restrained, coerced and otherwise interfered with the teachers in the exercise of their rights, has discriminated against senior teachers and has refused to bargain in good faith with the SAE, thus violating RSA 273-A:5 I (a), (c) and (e). The committee requests that unfair labor practice complaints be sustained against both and that both parties be required to reopen collective bargaining negotiations to arrive at equitable raises for all teachers, that the results of these negotiations be applied retroactively so that all teachers receive appropriate salary adjustments for 1985-1986 year, and for other relief.

Five hearings have been held by the Public Employee Labor Relations Board in connection with the unfair labor practice complaints. The first hearing held December 5, 1985, concerned subpoenaed documents and did not go to the merits of the case. Full hearings were held on February 6 in Concord, February 18 in Somersworth, April 22 in Somersworth and July 10 in Concord. At the hearings, the position of SAE and SSB were that the complaints were unfounded. Specifically, the SAE stated that the negotiations were intense, well reasoned, diligent and that the resulting contract contained compromises by both sides. Further, SAE maintained that the ratification meeting was longer than those which have been held in the past, more formal, voting was more educated and that all union members had an opportunity to be present and be heard. SAE stated that the mere fact that there were disproportionate raises did not show unfair representation and there were legitimate and understandable purposes accomplished in the agreement. SAE established that the overall increases obtained for membership were substantial. Therefore, SAE asked that the charges be dismissed or in the alternative, denied.

SSB denied all charges, stated that it had done nothing in violation of the law, and that the dispute before the board was a dispute between union members and their union and asked that the charges be dismissed. At the conclusion of the presentation by the Committee for Fairness, the PELRB granted SSB's motion to dismiss, subject to the exception of the committee. The Board dismissed these charges based on the fact that no evidence against the school board had been presented.

At the final hearing on June 10, 1986, the parties submitted cases, legal memoranda and SAE requests for findings of fact and rulings of law.

FINDINGS OF FACT

This case presents the PELRB with a case of first impression, notwithstanding the Board's experience of over ten years. In this case there is an allegation by certain members of a union that the union itself failed to represent the complainants properly, discriminated against them, discriminated against senior teachers because of their status as senior teachers and therefore engaged in some sort of age discrimination and in other ways failed in the duty of fair representation. The board finds the facts in this matter to be as follows:

Normal procedures for the selection of the union negotiating team were followed in Somersworth, consistent with those practices employed in prior years. The union asked for and received volunteers, acted upon the expressions of interest and selected a negotiating team. This negotiating team came from a relatively broad section of the union.

SAE negotiators, representatives of SSB and certain professionals from NEA and Superintendent of School's Office participated in the negotiation process throughout the 1984-1985 school year. These negotiations were hard, especially because of the insistence by certain SSB members and the negotiating team that merit pay be instituted and a system for evaluation devised. Despite the insistence, this SSB goal was never realized. However, certain SSB goals were pressed and finally adopted. Specifically, the goal that the initial salary steps have increased monies so that starting salaries and initial increases could be more attractive was implemented. Also, SAE and SSB goals of offering more reward for additional education was implemented and, significantly, the "star system" was eliminated, making the salary schedule more simple and allowing, at least in theory, all teachers to reach the highest step. This elimination of the star system was not just a goal of the parties in 1984-1985, but had been discussed in earlier contract negotiations. SSB acknowledged the need to provide added pay for longevity and included a very simple statement in the contract recognizing the need for additional pay for longevity, the parties leaving it to the next contract to "flesh out" the longevity pay system.

At the end of negotiations in the spring of 1985, while the parties knew they were "under the gun" of the city council in Somersworth and its possible action to set the school board budget before the negotiations were complete, matters moved very quickly, meeting were held frequently and, finally, the parties came up with a salary schedule which is acceptable to both of them. SAE first proposed the schedule and SSB accepted it. The computer operator for the school board assisted the parties in coming up with the proposed salary schedule acting as a resource to both parties. The resulting salary schedule and final contract were put together quickly and presented to the school board and teachers.

The May 1, 1985 SAE ratification meeting was not perfect. The teachers did not have a complete explanation of the salary schedules, the representatives present could not explain in detail all of the percentages of increase and range of increases nor could they provide a clear explanation of the relative effect of the salary schedule in general. What was explained and recognized by all teachers was the size of the raises, which were significantly larger than they had been in the past. The meeting lasted an hour and a half, was run relatively formally compared with previous meetings and resulted in a ballot system vote of at least rudimentary nature. The vote in favor of the contract was overwhelming, although there were certain teachers at the meeting who asked extensive questions and were not satisfied with the answers they received.

Almost immediately after the meeting of ratification, certain senior teachers began to request meetings with their local building negotiators and union representatives. For various reasons, the meetings were not held and, in fact, requests for a general meeting were not honored. Evidence showed that the reasons given by the union were valid, involving unavailability of teachers, conflicting schedules at the end of the school year and the like. Nevertheless, the fact was established that the union did not honor the request of its members for meetings for further explanation.

Through the summer, and until the individuals complaining had retained counsel, there was a failure to communicate from the union to its dissident members. Meanwhile, the ratified agreement was put into effect.

The increased salaries in the contract varied from several hundred dollars to thousands. These variances were based on the parties' goals in negotiations. Specifically, starting salaries were increased, early year salaries were increased and more credit for additional education was given. Those not seeking to get additional education were relatively "hurt" for such failure. The salary schedule as enacted did have a disproportionate effect on some more senior teachers who did not have additional education credits. There is no evidence, however, of any intent to discriminate or any conspiracy to discriminate against any specific group of teachers or any age group of teachers, all of the salary changes being based on the goals and compromises reached in negotiations.

No evidence was presented that SSB did anything other than negotiate properly, seek to advance its goals in negotiations and reach a compromise agreement which provided substantial increases in the amounts of money available to pay its teachers, a goal it shared with SAE.

Significantly, the agreement was reached only after mediation and factfinding which demonstrate the hard and substantial nature of the negotiations. The parties reached agreement without the help of a mediator or factfinder in one last attempt to reach agreement.

For years, the star system had added steps in addition to the 12 numbered steps in the salary system so by the time of these negotiations there were six additional "star" steps. The parties were concerned about the impact of the star system and a continuing goal in negotiations was the elimination of that and a more rational system. At various times in the negotiations, the star system was retained or eliminated in the proposals.

The actual negotiated system resulted in the negotiating team's members receiving various raises, some higher and some lower than the average raise.

Evidence at the hearings, especially that advanced by school board member Clement Wyman, indicated that the final contract was a compromise from the SSB's point of view since Wyman and other members wished to have the merit pay procedure implemented fully which it was not.

The evidence demonstrated that the impact of the salary schedule finally adopted was not analyzed by either the school board or the union negotiators for its effect on specific teachers or groups of teachers.

On specific requests for findings of fact, the following SAE requests are granted:

1,2 (In part, since the information provided in prior years was not provided in the same format and certainly was not identical), 3, 4 (With the exception of the language cannot be characterized a "lax" which characterization the Board will not adopt), 5, 6 (In part, in that evidence was provided that suggested a certain pressure for certain lines of discussion to end), 7 (In part, in that the characterization of the complaint is rejected since the complaint speaks for itself), 8, 9, 10 (In part, in that the "does no more" characterization is not adopted by the Board), 11 (In part, in that the understanding of longevity in the contract is obviously not clear given the testimony at hearings), 12 (To the extent it suggests that all teachers did not get the same benefit of the "star system" but not as to its editorial content), 13, 14, 15 (In part, and only to the extent that it indicates that the number of complainants is 11), 17. (To the extent that it accurately quotes a New Hampshire decision which was not made under RSA 273-A), 19, 21, 24, 29, 30, 32, 33 (Except as to the characterization of the increases "as equitable" which is argumentative), 34, 35, 37, 38 (To the extent that it indicates that the school board did not merely adopt the proposed salary schedule without analyzing it or thinking about it), 40.

The following requests by the Somersworth Association of Educators are denied: 31 (not clearly established) 36, 39.

The requests which are neither granted or denied herein are deemed to be requests for rulings of law and will be dealt with later.

RULINGS OF LAW

Although never previously addressed by this Board, it is certainly true that RSA 273-A prohibits discriminatory action by a collective bargaining representative against members of the organization and empowers the Board to hear and decide those matters. RSA 273-A:10 VT (b). Also, the allegations made by the complainant in this particular case allege other violations of the unfair labor practice statute, RSA 273-A:5 II, concerning union activity and, RSA 273-A:5 I concerning employer activity.

The duty of fair representation has long been recognized in Federal labor law. It has formed the basis of unfair labor practice complaints. See Miranda Fuel Co. 140 N.L.R.B. 54, 51 L.R.R.M. 1546 (1962). The substantive standards developed and established in connection with the duty have evolved from Steele v. Louisville & N.R.R., 323 U.S. 192, 65 S. Ct. 226 (1944), which imposed a duty on a union to represent minority member "...without hostile discrimination, fairly, impartially, and in good faith". Id. 323 U.S. 192, at 204.

However, the standard and tests have recognized that while unions have a duty of "complete loyalty to the interests of those whom it represents," the union has a "wide range of reasonableness...in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Ford Motor Co. v. Huffman, 345 U.S. 330, at 338 (1953). In Amalgamated Ass'n of Street Electric Railway and Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971), the U.S. Supreme Court added that for a breach of the duty, the union member must "adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." 403 U.S. at 301. There is a need to test claims, the court said, against "the very distinction...between honest, mistaken conduct...and deliberate and

severely hostile and irrational treatment." 403 U.S. at 301. These standards and tests have been applied in both contract negotiations and grievance administration contexts.

Thus, the proper standard for testing union activity when presented with a claim of unfair representation is whether there was overt hostility or discriminatory purpose; whether the action was in furtherance of legitimate purposes; and, whether the action could have been the result of honest mistakes.

Under this standard, unions have the obligation to consider all members and the good of all members in the process of negotiations. The various opinions of constituent groups making up the unit must be considered. Obviously all conflicting opinions cannot be adopted within the framework of one collective bargaining strategy or one agreement. What the union is required to do is to effectively consider, analyze and represent the unit. This will, on occasion, require the interest, opinion or position of one or more members of the union to be weighted against the goals or good of the majority. Consequently, a union has a special obligation to communicate to its members its positions, the results of those positions, negotiated agreements and the effect of those negotiated agreements. All of this must be done within the context of the real world and not some arbitrary or "ideal" system. Honest mistakes will occur. The communications process is important so that the democratic vote contemplated by statute will be an informed vote. In the case at hand, the SAE clearly performed its duty in the negotiating process. It developed strategies, goals and objectives; negotiated hard and long, participated in mediation and factfinding, went back to the table when requested to do so, and formulated a pay plan at the eleventh hour which addressed certain goals long held and discussed in negotiations, those of compressing the salary scale, attracting new teachers and allowing existing teachers to reach the top of the scale while rewarding those who went back to school. In doing so, the union did not violate its obligation to negotiate in good faith. If the incidental effect gave disproportionate raises to younger and older teachers, this was neither intended nor illegal.

More troubling in this case is the obligation of the union to communicate the results of its negotiating process to its members, giving them an opportunity for informed action to ensure an informed election. In the real world, perfect communication is not possible. While the complainants provided evidence of how the union could have done better, this Board is not prepared to say the failure to hold additional meetings after an overwhelming majority had ratified the contract is unfair representation. Failure to have more complete responses at the ratification meeting was not troubling enough to the majority of teachers to cause them to ask for a delayed vote or to vote against a proposed contract. Indeed, it appears the majority were satisfied and we cannot find on the facts of this case that the minority were illegally discriminated against. The Board would note and strongly urge these and all parties to negotiations to communicate extensively and in detail the contents of proposed collective bargaining agreements when they are to be acted upon and, in particular, urges unions to communicate promptly with members when they complain about treatment or actions. However, it must be remembered that all union members on the "front line" in Somersworth during the course of negotiation and communications were "amateurs" and not skilled union professionals and greater latitude and understanding must be given to their actions.

No evidence has been presented which shows illegal discrimination or unfair representation in this case. Because no such finding is made against

SAE, the question of whether such a finding would also necessitate a finding of unfair labor practice against the employer is moot. The Board reaffirms its earlier dismissal of charges against the SSB.

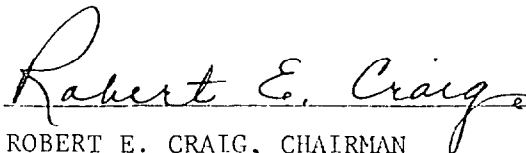
SAE requests for rulings of law are ruled on as follows:

Granted: 18, 20, 22, 23, 27, 28.

Denied: 25, 26.

ORDER

Having found no illegal activity by the Somersworth Association of Educators and again having found no action by the Somersworth School Board which is illegal, the complaints against both in this matter are dismissed and the relief requested is denied.

A handwritten signature in cursive script, reading "Robert E. Craig", is written over a horizontal line.

ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATION BOARD

Signed this 12th day of August, 1986.

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