

conference with fact finder Greenbaum on May 10, 1988. At about this time, Marc Benson, Chief Negotiator for NEA-NH, contacted Superintendent of Schools Peter Dolloff to suggest another attempt at mediation. In discussions which ensued among the School Board's negotiating team, it was agreed to proceed on that basis at the May 10 meeting. The parties agreed on May 10, 1988 to attempt mediation on May 23 with Marcia Greenbaum. At this point, it was unclear how extensive the mediation process would be and it was still thought that Greenbaum might be able to serve as fact finder. On May 23, 1988, mediation was held between the parties for an extensive period of at least 10-1/2 hours. Prior to that time, Greenbaum had sent the parties a questionnaire asking them to list the issues outstanding between them and their positions on those issues, revealing to her their negotiating strategies, the priority which they placed on each issue, and which issues they might be willing to give up or modify in negotiations or in the mediation process. No issues were resolved at the May 23, 1988 mediation session, notwithstanding an extensive effort by the parties and the mediator. On May 25, 1988 representatives of the teachers and the School Board met without their negotiators or any neutral party to discuss matters further and see if any resolution could be reached. There was no discussion at this meeting of further activities before the mediator or fact finder. On May 31, 1988, Gary Wulf, Chief Negotiator for the School Board, contacted Evelyn LeBrun, Executive Director of the PELRB, to inform her that because the fact finder who had been appointed by the PELRB had engaged in extensive mediation, that fact finder was no longer acceptable to the School Board as fact finder, having discovered the positions of the parties and acted as a mediator. Although Mrs. LeBrun believed that Mr. Wulf had informed the Union of this position, he had not in fact done so, either orally or in writing. Mrs. LeBrun later contacted the School Board negotiator and the Union negotiator with a list of potential replacement fact finders, at which point the Union was aware of the request and was informed of the position of the School Board that Marcia Greenbaum was no longer acceptable. The Union objected to the position of the School Board and the process which had led to the offering of new fact finder candidates and alleged a violation of RSA 273-A:5, I(e), (g) (alleging that Mr. Wulf had violated the ground rules agreed upon by the parties for negotiations, violated PELRB Rule 102.03 by failing to communicate in writing with the PELRB and the Association regarding possible changes in the fact finder, all of which were alleged to constitute negotiating in bad faith and violating the statute).

FINDINGS OF FACT AND RULINGS OF LAW

There is very little dispute as to the facts of this matter. The facts presented at the hearing indicate that the School Board did not know how extensive mediation would be when it agreed to another try at mediation with Marcia Greenbaum. As it turned out, the mediation was extensive and the position of the parties was revealed to Marcia Greenbaum as a mediator when in fact she had been appointed as a fact finder. The School Board therefore considered whether it felt the process could be well served by going forward with her as a fact finder and concluded that it did not believe it could do so on the basis that a fact finder should hear the facts from both parties, with the parties able to challenge facts presented by the other side which had not occurred in the mediation process. In short, they felt that Marcia Greenbaum had been prejudiced or otherwise tainted as a fact finder by engaging in an extensive mediation process. At the hearing, it was clear that the School Board did not make this decision until after

mediation had occurred. Mr. Wulf testified that he informed the PELRB office at the earliest opportunity after the Memorial Day weekend and assumed that Mrs. LeBrun would contact the Union. Mrs. LeBrun, in turn, assumed that Mr. Wulf had informed the Union or that the dissatisfaction with the previously named fact finder was mutual.

The objection by the Union that the ground rules established by the Union and the School Board for negotiations had been violated in that Mr. Wulf had not communicated all information in writing to the Union was refuted by Mr. Wulf who stated that it was his understanding that the ground rules ended at impasse. Evidence at the hearing demonstrated that both parties had communicated orally and in writing with persons other than those set forth in the guidelines and that the guidelines had been rather loosely interpreted or freely broken by the time the mediation/fact-finding process was reached.

It is clear to the Board that the precision of communication required for complete disclosure of positions and contacts with this Board is lacking in the conduct of the parties. Mr. Wulf should have informed the Union of his objection and the parties should have discussed resolution of the matter and procedures to accomplish that resolution. Objections to the process should have been made known clearly to the Board and to the parties. However, the Board is persuaded that there was no intent to trick, defraud or circumvent statutory processes and procedures or guidelines established by the parties in any action taken. The Board is sympathetic with the desire of the teachers to have fact-finding when and as scheduled on June 22, 1988. However, the Board is also persuaded that Mr. Wulf attempted to arrange for an alternate fact finder as expeditiously as possible. The parties were unable to agree upon a replacement fact finder, although a list of fact finders was submitted to the parties by the PELRB.

In short, it is clear to the Board that after mediation took place, the School Board did not feel it could proceed with the same mediator as a fact finder and moved to change the situation as quickly as possible. Communications broke down through no intent of any party and the assumptions by various players were not accurate. Nevertheless, the Board is unable to find any violation of RSA 273-A in the conduct of the parties. However, this case is a graphic example of why communications with this Board or between the parties should be written or confirmed in writing, with a copy to all concerned parties.

The Board finds that it is in the best interest of the parties to proceed expeditiously with fact-finding.

Because of the findings made by the Board, the Board acts on the request for findings submitted by the Litchfield Education Association, as follows:

#1,2,3,4,5,6,7,8 Granted.

#9 Granted, to the extent that the parties agreed on May 10, 1988 to attempt mediation on May 23 with Marcia Greenbaum. The evidence did not establish that all remaining issues were to be submitted to fact-finding by agreement of the parties.

#10 & 11 Granted.

#12 Granted, to the extent that it was established that Assistant Superintendent Larry Burton and Association Representative Benson had phone conversations to discuss ground rules for a meeting. The number of phone conversations was not established. It is true that there was no mention to Mr. Benson of any desire to change the fact finder.

#13,14,15 Granted.

#16 Granted, but the Board would note that it has found in its decision that any failure to communicate by Mr. Wulf under the circumstance was innocent.

#17 Denied.

#18-19 Granted.

#20,21,22 and 23 Denied.

ORDER

The Board issues the following Order: The Board denies the request for unfair labor practice finding and appointed Arnold Zack as factfinder to hold a fact-finding session on July 8, 1988, and further, the Board orders that all future communications in this matter be in writing with copies to the Board and the other party.


EDWARD J. HASELTINE
Chairman

Chairman Edward J. Haseltine presiding. Members Seymour Osman and James C. Anderson present and voting. All concurred. Also present Executive Director, Evelyn C. LeBrun and Board Counsel, Bradford E. Cook, Esq.