State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BOW EDUCATION ASSOCIATION NEA-NEW HAMPSHIRE Complainant v. BOW SCHOOL BOARD Respondent	CASE NO. T-0265:6 DECISION NO. 93-22

APPEARANCES

Representing Bow Education Association, NEA-NH:

W. B. Cumings, UniServ Director

Representing Bow School Board:

Thomas Barry, Esq.

Also appearing:

Anne Baier, Bow School Board
Ralph J. Minichiello, Bow School Board
Erle Pierce, Bow School Board
Charlotte Bridges, Bow Education Association
Kay Graves, Bow Education Association
Tim Neville, Bow Education Association

BACKGROUND

The Bow Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Bow School Board (Board) on December 15, 1992 alleging violations of RSA 273-A:5 I (a), (d), (e) and (g) for alleged failures to bargain in good faith and refusal to sign tentative agreements. The Board filed its answer on December 22, 1992 after which this matter was heard by the undersigned hearing officer on February 16, 1993.

FINDINGS OF FACT

1. The Bow School Board is a "public employer" of teachers and other personnel as defined by RSA 273-A:1 X.

2. The Bow Education Association is the duly certified bargaining agent for teachers and other personnel employed by the Board.

3. In October of 1992 the parties commenced negotiations for a successor collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1994. In furtherance of that effort, the parties discussed (October 29, 1992) then agreed on Ground Rules for Negotiations which were signed by representatives of each team (Pierce & Bridges) on November 19, 1992. Those ground rules are silent on the issue of "tentative agreements" or how they will be handled.

4. During the course of prior negotiations (before the 1993-94 round), the parties have followed the practice of signing or initialing tentative agreements once reached but prior to agreement on an entire package which would then obligate them to take that package back to their principals for ratification.

5. During the ground rules meeting on October 29, 1992 and during subsequent negotiations meetings, at least on November 19, 1992 and December 3, 1992, Board negotiator Pierce reiterated the Board's position that it was bargaining for a total "package" with the intent that nothing would be finalized until the "package" was complete.

6. On December 3, 1992, the Board accepted the Association's proposal modifying Article XV, Section 2 of the CBA pertaining to preparation periods.

7. At the parties' third bargaining session on December 7, 1992, the Association presented the Board with a written rendition of the agreement on preparation periods and asked the Board to sign that agreement. Board negotiator Pierce declined because the Board's team was negotiating the CBA as a "package" and because the Board "wanted all items open for the mediator" should the negotiations process proceed to mediation and fact finding. This refusal to sign the agreement on preparation periods prompted the Association to declare impasse later on December 7, 1992 after which the Board presented a handwritten memo, prepared by Pierce, to Association negotiator Bridges, stating that the Board

"tentatively accept[ed] " the Association's proposed changes to Article XV, Section 2. This document was dated "12-7-92" but was not formally signed, i.e., it contained the handwritten names of Pierce and Bridges but the signatures of neither.

8. During the December 7, 1992 negotiations meeting, Bridges told Pierce it was "OK" to sign tentative agreements because those agreements were "tentative" until the whole package was accepted or rejected and, according to the Superintendents' testimony, that tentative agreements were not binding at mediation.

9. On December 8, 1992 Pierce initiated a call to Bridges to inquire about the reasons for the declaration of impasse and to see if the parties might resume their attempts at bargaining. During the course of their conversation, Pierce used words (the context of which is disputed by the parties) to the effect of "playing hardball" and raising an issue of "who will have a job when this is over" with the result that Bridges felt threatened by the conversation.

10. Pierce called Bridges on December 9, 1992 to apologize for "stepping out of his role as a Board member," not for the contents of his conversation. There is no evidence of prejudicial or punitive behavior towards Bridges or any Association negotiating team member since the exchanges of December 8-9, 1992.

11. On December 11, 1992, the Board, through the Superintendent, again offered the Association to resume negotiations and to sign tentative agreements with the understanding that those agreements were tentative until such time as agreement was reached on a total package. In the event of impasse, either side would be free to present its choice of issues to the mediation or fact finding processes. (Board Exhibit No. 4).

12. On January 6, 1993, Pierce wrote to Bridges (Exhibit No. 5) telling him (1) that he would sign a document reflecting the Association's proposal on preparation periods and any other tentatively agreed items, (2) that the Board wanted to resume negotiations, and (3) that the Board would not withdraw tentatively agreed bargaining issues if the PELRB were to rule in the Associations' favor in this case. On January 11, 1993, the Board signed a typewritten version of the earlier handwritten memo reflecting agreement on modifications to Article XV, Section 2. (Board Exhibit No. 6).

DECISION AND ORDER

The parties' practice prior to these negotiations (Finding No. 4) of signing or initialing tentative agreements was an appropriate one. That procedure provides "a system for writing down and initialing or in some other manner establishing what has been agreed to as agreement occurs on particular issues" and is to be encouraged. I.B.P.O. Local 565 v. Town of Derry. (Decision No. 83-47, September 26, 1983). The evidence in this case supports a finding that both sides knew and acknowledged the tentative nature of initialing or signing preliminary agreements on individual topics pending agreement on a whole package to be submitted to their constituencies for formal ratification or rejection. (See Bridges' statement to Pierce in Finding No. 8 and the Board's characterizations of "tentative" in its Memorandum, p. 10.)

With this background, it is difficult to understand why either side would refuse to initial or sign a tentative agreement or "TA." The process is one of systematic record keeping to facilitate the bargaining process, not one of irrevocable commitment. Under Londonderry School Custodians (Decision No. 84-62, October 24, 1984), negotiators are considered to be bargaining in good faith if they support tentative agreements when those TA's are taken back for ratification by the appropriate groups. In this case, there is neither any indication that Board negotiators did not consider their agreement of December 7, 1992 to be a tentative agreement to which they were committed nor any indication that Board negotiators did not intend to support this agreement when and if it was submitted to the ratification process.

Negotiations progress was hampered in this case by a misunderstanding that items tentatively agreed to in negotiations were irrevocably determined and disposed of for the remainder of the negotiations process, even should mediation and fact finding later be invoked. Had there been a question about such a practice, it would have been most conveniently addressed in the ground rules. It was not. Board Exhibit No. 2. Notwithstanding this, the presumption does not follow that the silence of the ground rules binds the parties on all TA's throughout the remainder of the negotiations process. To be sure, the TA maintains the status quo until the package is put forth for ratification or until further steps in the negotiations process are invoked. When and if that occurs, the parties must have the flexibility to represent their positions just prior to or upon entering mediation and fact finding, as the case may be. To hold otherwise would stifle the bargaining process and require the parties to have and to utilize the wisdom of Solomon from the commencement of their negotiations, regardless of the dynamics of the situation or the need to address external factors, such as the votes of legislative bodies. Thus, the Board's conduct with respect to the TA on preparation periods did not constitute a ULP and, in any event, would have been mooted by the Board's actions of January 11, 1993. (Finding No. 12).

There is insufficient evidence to find that Pierce's comments to Bridges on December 8 or 9, 1992 (Findings No. 9 and 10) were equivalent to a threat, be it actual or potential. There is nothing to elevate those statements to the status of a ULP.

Accordingly, the charges of unfair labor practices are DISMISSED.

So ordered.

Signed this 18th day of March, 1993.

PARKER DENACO
HEARING OFFICER