



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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HUDSON FEDERATION OF TEACHERS  
AFT, AFL-CIO

Complainant

v.

HUDSON SCHOOL BOARD

Respondent

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CASE NO. T-0236:10

DECISION NO. 96-117

#### APPEARANCES

##### Representing Hudson Federation of Teachers:

Dan Toomey, AFT, NNEC Staff

##### Representing Hudson School Board:

Gary W. Wulf

##### Also appearing:

Virginia Lunt, Hudson Federation of Teachers  
Carmelita Beaulieu, Hudson Federation of Teachers  
Peter G. Dolloff, Hudson School District  
Larry Burton, Hudson School District  
Shawn Flood, AFT, NNEC Staff

#### BACKGROUND

The Hudson Federation of Teachers, AFT, AFL-CIO (Union) filed unfair labor practices (ULP) charges and a request for a cease and desist order against the Hudson School Board (Board) on November 18, 1996 alleging violations of RSA 273-A:5 I (a), (b), (c), (e), (h) and (i) resulting from the Board's refusal to bargain cost items for the 1997-98 school year. The Board's answer was due to have been filed on or before December 3, 1996.

When this matter was heard by the PELRB on December 12, 1996, the Board's written answer had not been received and the Board proceeded, through its representative, without placing a written answer on file.

### FINDINGS OF FACT

1. The Hudson School Board, by and through the Hudson School District, is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Hudson Federation of Teachers is the duly certified bargaining agent for teachers and certain other personnel employed by the Board.
3. The Board and the Union are parties to a collective bargaining agreement (CBA) for the period September 1, 1994 through August 31, 1997. Article XVII of that agreement is entitled "Duration" and says:

This Agreement and each of its provisions shall become effective on September 1, 1994 and continue in force and effect until August 31, 1997. Negotiations for a subsequent Agreement shall commence on October 1, 1996 or as soon thereafter as shall be mutually agreeable.

Similar provisions appeared in 1987-90 and 1990-93 CBA's with appropriate adjustments to the dates. "October 1st" appeared in each of the three "Duration" articles although negotiations frequently started later than that date.

4. On October 14, 1996, Virginia Lunt, President of the Hudson Federation of Teachers, wrote Stanley Searles, Chair of the Board, saying "In accordance with Article XVI [sic] of the Master Contract between the Hudson Federation of Teachers and the Hudson School Board, the Federation of Teachers is prepared to open negotiations for a new contract. Mr. Daniel Twomey, [sic] will serve as our negotiator. I look forward to hearing from you as soon as possible." No prior exchanges of intent to negotiate for the 1997-98 school year, and possibly beyond, had been exchanged between the parties prior to this date. Carmelita Beaulieu,

Secretary for the Union, testified that the Union was ready to commence renegotiations for a successor CBA on October 1, 1996.

5. On October 28, 1996, Gary W. Wulf wrote to Lunt about her letter of October 14, 1996. He told her, in pertinent part:

I am responding, on behalf of the Hudson School Board, to your letter of intent to negotiate received on October 15, 1996. I will be serving as the Board's consultant in labor relations matters. The Federation failed to meet the deadline for submission of their letter of intent. New Hampshire Public Labor Law provides in RSA 273-A:3 II:

II. (a) Any party desiring to bargain shall serve written notice of its intention on the other party at least one hundred and twenty days before the budget submission date; provided, however, that bargaining [with] state employees shall commence not later than 120 days before the deadline for submission of the Governor's proposed operating budget.

We believe it would be irresponsible for the School Board to excuse fundamental default in compliance with the public labor law. If a delayed commencement of negotiations were to later cause conflicts with the budget process the Board would then become culpable in entering into negotiations over cost items when the Federation failed to provide appropriate notice of an intent to negotiate.

In view of this tardy request the School Board is willing and available to negotiate only non-cost items for 1997-98 (FY98). We are receptive to proposals for cost items which may be applicable to FY99 or thereafter. In effect, this treats your letter of 10/14/96 as an intent to negotiate for FY 99. [Emphasis in original.]

6. On November 5, 1996, Lunt wrote Searles again, this time about the Wulf letter (Finding No. 5). She

sought reconsideration of Wulf's position to negotiate only non-cost items for School Year 1997-98, saying:

I understand that the Board is concerned with the need to have a settlement in time to put the article before the voters. I assure you that the HFT shares that concern. The Federation would like to open negotiations with the Board as soon as possible with all items of the contract eligible to be put on the table. My previous experiences as a member of the negotiation team for the HFT have always been positive in regard to the willingness of the Hudson School Board to negotiate in an honest and open manner. I am hoping that we will be able to continue that process. I respectfully request that the Hudson School Board reconsider their position stated in Mr. Wulf's letter of October 28.

7. On November 6, 1996, Toomey wrote Wulf a letter about Wulf's letter of October 28, 1996. Toomey acknowledged Wulf's new status as management consultant/negotiator to the Hudson School District and specifically referenced Article VII, as cited in Finding No. 3. Toomey claimed, "That clause is a part of an agreement signed by both parties. It constitutes a notice of intent to open negotiations."
8. Wulf responded to Toomey by letter of November 12, 1996, referencing an earlier letter from Toomey dated November 3, 1996 in which Toomey sought negotiating dates. Wulf said:

I received your letter of November 3, 1996. Your statement "We will come to the first meeting with our list of proposals, including wages and benefit demands." suggests that you may not have received my letter of October 28, 1996 addressed to Ms. Virginia Lunt. A copy is attached. May I assume that proposals for wages and benefits, since they are cost items, will be for the 1998-99 (FY99) school year? That is the only premise upon which the School Board is interested in bargaining. [Emphasis in original]

9. There was one final exchange of letters between Wulf and Toomey, both letters being dated November 13, 1996. Toomey, again referencing the Article XVII language, said, in pertinent part:

That is quite clear and unambiguous. Furthermore, it constitutes intent as required under the law. It certainly predates the 120 day requirement...The law clearly requires that public employers negotiate over wage, hours, and working conditions. Nothing in the law allows a party to unilaterally refuse to do so...We have been ready to negotiate since before October 1.

Simultaneously, Wulf cited the "Savings clause" to Toomey and said, in pertinent part:

This is in response to your letter of November 6, 1996. I appreciate your questions regarding the applicability of Article XVII Duration. I did, in fact, review the Agreement before meeting with the School Board regarding negotiations. I am convinced that the language of the Agreement is contrary to RSA 273-A:3 II. The collective bargaining agreement can not supersede or modify State statute. Since you infer that is the case Article XIII Savings Clause becomes significant. It states:

If any provision of this Agreement is or shall at any time be contrary to law, then such provision shall not be applicable or performed or enforced, except to the extent permitted by law and substitute action shall be subject to appropriate consultation and negotiation with the Federation.

In the event that any provision of this Agreement is or shall be contrary to law, all other provisions of this Agreement shall continue in effect.

The School Board is still willing to negotiate multi-year agreement with the first year, 1997-98, addressing "no cost" issues only. [Emphasis in original.]

The ULP was filed five (five) days thereafter.

DECISION AND ORDER

The chronology of this case tells the tale. The Union sent a letter to Board on October 14, 1996, referencing what presumably is the current Article XVII (it was Article XVI in the 1987-90 agreement) and stating it was prepared to open negotiations for a successor agreement. From the reference to the duration article and the absence of any reference to RSA 273-A:II, as appears in Finding No. 5, it appears that the Union was seeking to set dates for a first or series of negotiating meetings. This comports with the Union's explanation and the fact that Toomey did not propose any specific dates to Wulf until November 3, 1996. Meanwhile, sometime after October 14, 1996 and before October 28, 1996, Wulf receives a copy of Lunt's letter to Searles, sees that it was not sent before the requisite 120 days prescribed by RSA 273-A:3 II and refuses to bargain other than non-cost items. The Board, through Wulf, claims the notice was late, agrees that the October 14, 1996 letter can be notice of an intent to negotiate cost items for FY 99 and insists it will not bargain financial issues for SY 1997-98. The Union says not so. The Board has contracted to commence negotiations "on October 1, 1996 or as soon thereafter as shall be mutually agreeable" and the letter was merely a means to arrange a first meeting or series of meetings, claiming the commitment, and, thus, the requisite notice, was given at the time the parties signed the 1994-97 agreement. Thus, the issue is joined.

RSA 273-A:3 II (a) speaks to the serving of a "written notice of...intention to bargain on the other party at least one hundred twenty days before the budget submission date." It states no prohibition as to how many days before the 120 days when such notice may or may not be given. Practically, the Board has recognized this when it said it was willing to accept the October 14, 1996 letter as a notice of intent to negotiate for FY 99. Thus, while 120 days before budget submission date serves as a minimum time limit, there is no maximum time limit.


With this in mind, we look to the parties' agreement. In a duly negotiated bilateral agreement, the Board and the Union agreed, upon signing the 1994-97 CBA, to commence negotiations for a successor agreement "on October 1, 1996 or as soon thereafter as shall be mutually agreeable." That is their agreement. They knew they had committed themselves to this mutual obligation as of October 1, 1996. We hold that mutually negotiated, documented and recognized obligation to be good and sufficient notice within the meaning and intent of RSA 273-A:3 II (a). To hold otherwise flies in the face of the purposes of RSA

273-A, namely, "to foster harmonious and cooperative relations between public employers and their employees...", and is tantamount to our sanctioning the commission of an unfair labor practice, i.e., a breach of contract under RSA 273-A:5 I (h) when the employer fails to negotiate, as contracted in Article XVII, and when it fails to bargain under RSA 273-A:5 I (e).

The Board's refusal to bargain in this case is violative of RSA 273-A:5 I (e) and (h). It is directed to CEASE and DESIST from refusing to bargain cost items for a successor agreement with the Union and is directed to commence negotiations with the Union forthwith as is required by RSA 273-A:3.

So ordered.

Signed this 20th day of DECEMBER, 1996.

  
JACK BUCKLEY  
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members Richard Roulx and Richard Molan present and voting.