State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WILTON/LYNDEBOROUGH COOPERATIVE TEACHERS ASSOCIATION/ NEA-NEW HAMPSHIRE	:	
Complainant	:	CASE NO. T-0295:2
v.	:	DECISION NO. 97-055
WILTON/LYNDEBOROUGH COOPERATIVE SCHOOL BOARD	:	
Respondent	:	

APPEARANCES

Representing Wilton/Lyndeborough Cooperative Teachers Association, NEA-New Hampshire:

Marc Benson, UniServ Director

Representing Wilton/Lyndeborough Cooperative School Board:

Douglas Hatfield, Esq.

Also appearing:

Francine E. Fullam, Wilton/Lyndeborough Cooperative School District
Linda Corileone, Wilton/Lyndeborough Cooperative Teachers Association, NEA-NH
Gwyn Baldwin, Wilton/Lyndeborough Cooperative Teachers Association, NEA-NH
Barry Greene, Wilton/Lyndeborough Cooperative School Board
Philip G. Pratt, NEA-New Hampshire

BACKGROUND

The Wilton/Lyndeborough Cooperative Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Wilton/Lyndeborough Cooperative School Board (Board) on February 18, 1997 alleging violations of RSA 273-A:I (a), (e) and (g) relating to bad faith bargaining when a Board negotiator only made himself available for one full day of mediation between the declaration of impasse on January 21, 1997 and April 15, 1997. The Cooperative School Board filed its answer on March 3, 1997. After continuances sought and granted to the parties for hearing dates on April 1, 1997 and May 13, 1997, this matter was heard by the PELRB on May 15, 1997.

FINDINGS OF FACT

1. The Wilton/Lyndeborough Cooperative School District (District) is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.

2. The Wilton/Lyndeborough Cooperative Teachers Association, NEA-New Hampshire is the duly certified bargaining agent for teachers and other personnel employed by the District.

3. The Association and the Board are parties to a collective bargaining agreement (CBA) which will expire on June 30, 1997. Negotiations commenced for a successor agreement on October 16, 1996. Several bargaining sessions were held between then and January 21, 1997 when the parties jointly declared impasse and agreed to proceed to mediation. Thereafter Messrs. Benson and Hatfield conferred about the selection of a mediator and agreed on three names, depending on which mediator might have dates which matched their availability and that of other members of their respective teams.

4. Barry A. Greene, a member of the Board for nine (9) years, always a member of its negotiating committee during that time and currently the chair of that committee, is a professional tax preparer whose work intensifies between February and April 15th of each year. Other members of the five member Cooperative School Board consider Greene an indispensable member of their negotiating team, recognize his skills in settling prior contracts generally before February 1st of the year in which they were

to expire, and were unwilling to participate in negotiations without Greene being present. Participation by other Board members at the negotiating table was further complicated by the sickness of one and by another's not seeking re-election.

5. The parties, by their pleadings and testimony, agree that Hatfield, Benson and the Association team had several dates available for mediation. The Board's Answer further states that one such available date for a full mediation day was February 20, 1997. The Board further answered, "based on this assumption, the Superintendent presented this date to Mr. Greene...who was able to clear his calendar for that date and subsequently made it available to all parties." The Board, by its answer further contends that thereafter "Benson advised the Superintendent that he was not available on February 20th and that another date had to be determined." During testimony for the Board, Superintendent Francine Fullam said February 20th was one of three dates she believed had been pre-cleared by Benson and Hatfield as being available before she conveyed it to Greene. Greene testified that he was willing to offer the date of February 20th for day-long negotiations because he had only two local clients scheduled for office visits that day and they could be rescheduled.

6. Offering rebuttal testimony Benson said that February 20th was never one of the open or available dates he agreed to with Hatfield when they met on January 29, 1997 to discuss those dates. At that time, Benson said Hatfield had offered possible mediation dates of February 17, 18, 19, 21, 27, March 11, 12 and 15. Benson was assured in this recollection by referring to his personal calendar and by a prior commitment in Milford. He does not believe he either offered or approved the date of February 20th because it was not offered by Hatfield and because of his prior Milford commitment. On or about January 31, 1997, Benson received a call from Fullam saying the "best she can do" was February 20th. Benson told her that date was unsuitable. According to Benson, Hatfield told him in early February that Greene's only availability between then and April 15th was February 20th. Hatfield, who did not testify, then attempted to get other Board members to participate in negotiations but learned that none would participate without Greene

and conveyed this to Benson on or about February 10th, per Benson's recollection. The ULP was filed February 18, 1997.

7. Greene testified that he had agreed to one full day of negotiations/mediation during the week of February 17th, namely February 20th. He had no experience with needing mediation prior to this year. He confirmed that February 20th was the day he had to rearrange and reschedule the least number of clients. Greene had and offered several half days for negotiations after February 20th. They would have begun in the afternoon with the prerogative of being extended into the early evening hours. Fullam said she conveyed the half day concept and dates to Benson who said this was a difficult way to find and secure the services of a mediator. On rebuttal, Benson testified that he and Hatfield had discussed numerous possible dates because they both wanted a full eight hour day available for mediation. Benson also noted that mediators traditionally bill for not less than a full day and that he did not want to inflate the expenses associated with the mediation process unnecessarily. Thus, the parties did not utilize part day dates between the date of the filing of the ULP and April 15, 1997.

8. Currently, the parties are back at the negotiating table with the help of a mediator. One mediation session was held the week of May 5, 1997, according to Greene, and additional mediation dates have already been agreed upon.

DECISION AND ORDER

We find it to be a very positive sign that the parties are currently back at the negotiating table, engaged in the mediation process and striving for an overall contract settlement. We encourage these endeavors.

Our task in this complaint is to determine whether the non-availability of any member of the Board to sit with the Board's team for negotiations which would have occurred between declaration of impasse on or about January 29, 1997 and April 15,1997 was equivalent to a refusal to bargain under RSA 273-A:5 I (e) and/or RSA 273-A:3, thus constituting an unfair labor practice. The most basic of premises maybe found in RSA 273-A:3, to wit:

It is the obligation of the public employer

> and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. "Good faith" negotiations involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

Once we match this mandate with the bargaining time frame of the statute, we have cause for concern. RSA 273-A:3 II obligates any party desiring to bargaining "to serve written notice of its intention on the other party at least 120 days before the budget submission date." It appears that this was accomplished sometime in September or very early in October of 1996 because the parties were bargaining by October 16, 1996. These negotiations differed from prior years in that the Association called in a NEA negotiator and the Board used an attorney/negotiator after impasse occurred.

RSA 273-A:12 contemplates the use of a mediator whenever the parties have bargained to impasse or if the parties have not reached agreement within sixty (60) days of the budget submission date. Impasse did not occur until January 29, 1997, some three days prior to the February 1st budget submission date. This means that there is no practical way to permit the parties to complete mediation and/or fact finding, meet warrant deadlines and present the cost items associated with an agreement to the annual district meeting within the time remaining. The Board (Memorandum, p. 2) would have us rule that the impossibility of completion coupled with judicial reluctance from the Superior Court to call a special meeting until a reasonable time following the regular annual meeting shall have passed is cause for them to prevail. We disagree.

We think there is value in a settlement pending funding approval by the legislative body (RSA 273-A:3 II and 273-A:12 III) and that the goal of "harmonious and cooperative relations" is best served by on-going efforts at settlement notwithstanding the passing of the budget submission date. Whether the delay occasioned in this case was the 7 1/2 weeks acknowledged by management or a longer period measured from impasse to the next negotiating session after April 15th, it was too long. An eight week hiatus, equivalent to 56 days, is nearly half the total 120 day period contemplated for completion of the entire bargaining process in RSA 273-A:3 II. Again we conclude that the delay occasioned by the lack of availability of any Board member was too long.

In Keene Education Association, Decision No. 90-70 (September 5, 1990) we said, *inter alia*, "that persons seeking public office, such as school board members should be cognizant of obligations inherent with such public offices." While one can understand the strictures of Greene's schedule during tax preparation time, the unavailability of any of the five board members to sit with the negotiating team, which also had an attorney/negotiator and professional staff from the District participating in the negotiating process, at any time between February 10th (Finding No. 6), and April 15th was "unreasonable" within the "reasonable times and places" language of RSA 273-A:3. Although it appears, historically, that Greene has discharged his duties very dutifully as chief negotiator over these past nine years, his unavailability during the 1996-97 "negotiating season" cannot be grounds to excuse participation in the process for some seven to ten weeks between January and April of this year by any member of the Cooperative School Board. Regardless of the fact that the Board's advocates were sincere and strongly held their beliefs about the appropriateness of their actions in this case, one side simply cannot have the ability to halt the entire negotiating process because of availability. If we were to accept that argument, any negotiating party could sabotage negotiations indefinitely merely based on lack of availability for negotiating sessions. We are not prepared to say that RSA 273-A ever contemplated putting so much unilateral decision making authority in the hands of one party relative to a process contemplated and controlled by a statute.

While unintended to be and apparently without malice, we find the Board's conduct to have been a technical violation of RSA 273-A:3 as well as RSA 273-A:5 I (e) and (g). Intended or not, it had the practical effect of a refusal to bargain and caused the bargaining process to slow to something less than the "reasonable times and places" contemplated by statute. Recognizing this and that the parties are now back negotiating under their own initiative, we direct no remedy.

So ordered.

Signed this 3rd day of June, 1997.

EDWARD J. HASELTINE
Chairman

By majority vote, Members Hall and Osman voting in the majority; Chairman Haseltine voting in the minority.

Chairman Haseltine dissents as follows:

I dissent from the majority for the following reasons.

1. Testimony from the parties indicated that they had enjoyed excellent relations for the past nine years. These negotiations consistently resulted in prior contracts being concluded by their own efforts and without the need for mediation.

2. During prior negotiations and during these negotiations, the parties were well aware that the Board's chief negotiator was a tax preparer and generally unavailable for negotiations between February and April 15th. This time period was the basis for the ULP charge of failure to negotiate in good faith. A February 20th date was offered by the School Board which was not accepted by the Association. Half day and evenings and weekends were also offered by the School Board but rejected by the Association.

3. The School Board and the Association have mutually selected, after impasse had been declared, a mediator and mediation was on-going at the time of the hearing before the PELRB. This indicates a willingness of the parties to work together. Therefore, I would dismiss the ULP because the issues raised are moot in view of the current status of negotiations.