State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA TEACHERS UNION (FOOD SERVICE EMPLOYEES UNIT D)	:	
Complainant	:	CASE NO. M-0643:4
v.	:	DECISION NO. 97-080
NASHUA BOARD OF EDUCATION/ NASHUA BOARD OF ALDERMEN	:	
Respondent	:	

APPEARANCES

Representing Nashua Teachers Union, Unit D:

Emmanuel Krasner, Esq.

Representing Nashua Board of Education/Aldermen:

James McNamee, Esq.

Also appearing:

Claire McGrath, Board of Aldermen, Nashua
Mark Conrad, Nashua School District
Francis A. Barksdale, Nashua Teachers Union
Dan Toomey, AFT, NNEC

BACKGROUND

The Nashua Teachers Union, Food Service Employees (Unit D), AFT, AFL-CIO (Union) filed unfair labor practice (ULP) charges against the Nashua Board of Education and the Nashua Board of

Aldermen (referred to collectively as "City" herein) on March 14, 1997 alleging violations of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i) resulting from bad faith bargaining, unreasonable delay in submitting cost items to the legislative body and granting raises to non-union, non-unit employees without securing legislative body approval while requiring and not obtaining similar approval for bargaining unit employees. The City of Nashua, for its Board of Education and Aldermen, filed an answer on April 3, 1997. After an intervening motion to continue sought by and granted to the parties for a hearing on June 12, 1997, the PELRB heard this matter on July 10, 1997. The City filed a Motion to Dismiss on July 10, 1997 which was taken under advisement by the PELRB.

FINDINGS OF FACT

1. The City of Nashua, through its Board of Education, is a "public employer" of both professional and non-professional employees in its school department within the meaning of RSA 273-A:1X. The Nashua Board of Aldermen is the "legislative body" for the City of Nashua within the meaning of RSA 273-A:3 II (b) and RSA 273-A:12 IV.

2. The Nashua Teachers Union, Local 1044 is the duly certified bargaining agent for food service employees employed by the City of Nashua in the operation of its School Department, otherwise denominated as "Unit D" of the Nashua Teachers Union.

3. The Board of Education and the Union were parties to a collective bargaining agreement (CBA) for the period September 1, 1993 through August 31, 1995. The parties started formal negotiations for a successor contract on May 2, 1995 and reached tentative agreement in September of 1996 for a CBA covering from September 1, 1995 through August 31, 1996. On or about October 1, 1996, the union membership approved that agreement and notified the Board of Education of that approval in early December of 1996. Thereafter the Board of Education approved the agreement later the same month after which it went to the Board of Aldermen for approval of cost items and was rejected on February 25, 1997.

4. The Union, by its pleadings, contends that approval of the agreement by the Aldermen was unnecessary because no appropriation or cost item was involved. Union Representative Dan Toomey said the settlement required no tax dollars because the food service operations of the school department are self-sustaining through state and federal funding mechanisms, inclusive of both subsidy programs and grants, and through a fee-for-service charge imposed on users.

5. At the time the agreement was presented to and rejected by the aldermen on February 25, 1997, by a vote of 8 to 6, several of the aldermen who voted against the agreement did so because of specific concerns with certain contract provisions. For example, Ald. McCarthy, Ald. Tollner, Ald. Hersh and Ald. Hack objected to the effective date of certain negotiated wages on the last day of the contract (Aldermen's Minutes, pp. 17-19). Ald. Grant (Minutes, p. 19) refused to support the agreement because it was not the last contract in the FY 1996 cycle and because bargaining is "a never ending cycle." Ald. Hack (Minutes, p. 19) objected to the contract because of the health insurance contribution rate and because of contract language permitting sick leave buy backs.

6. After rejecting the contract, the aldermen moved to indefinitely postpone it. Union President Francia Barksdale questioned this action and received a letter of explanation from Claire McGrath, President of the aldermen, dated February 28, 1997, stating that the indefinite postponement meant the aldermen could not consider "exactly the same resolution for the remainder of the term, which is December 31, 1997." (Emphasis in original, Union Exhibit No. 1, p. 29.) In testimony, McGrath explained that the aldermen had been confronted with a complex issue resulting from a spending cap passed by voters in 1994 elections, namely, that spending increases were limited to changes in the CPI regardless of increases in revenues. She also explained that raises (Union Exhibit No. 1, p. 16) for the new position of "site coordinator," created in 1995 (City Exhibit No. 2) and resolved by the parties as being, outside this particular bargaining unit (Exhibit E to the City's

Motion to Dismiss) on October 26, 1995, were paid by "enterprise funds" and, therefore, were not controlled by the spending cap limitations. She described "enterprise funds" as those funds where revenues and expenditures offset each other and, consequently, do not have to be considered a part of the $3.5 million in overall wage increases which the City could absorb under the CPI limits.

7. Mark Conrad, Business Administrator for the School Department, confirmed that the site coordinator raises did not go to the aldermen for a slightly different reason. The rates of pay for these non-bargaining unit employees were within established ranges for the position and, therefore, required no further approval. He said that food service employees receive salaries from the food fund which, in turn, gets its funding from state and federal subsidy programs and grants. This was further substantiated by City Exhibit No. 4, a memo from Jan Bangert to the Board of Education dated October 25, 1994, saying, in part, "[S]alaries for positions funded through special projects/grants will not require aldermanic approval."

DECISION AND ORDER

The conduct complained of in this case does not rise to the level of an unfair labor practice. The delays in the approval of the tentative agreement cannot be laid at the feet of the Board of Aldermen. While the Union approved the provisions of the new contract in early October, they did not convey this approval to the Board of Education until December. Once so informed, the Board of Education approved the pact and sent it on to the Aldermen in the same month, December. The Aldermen voted on and rejected the tentative agreement on February 25, 1997. While this may be longer than normal, we find neither the period between notification and approval by the Board of Education nor the period between the action taken by the Board of Education and the rejection by the Aldermen to have been excessive under the circumstances of this case.

We have considered that part of the complaint which objected to the granting of raises to non-unit, non-union personnel without aldermanic approval. The explanations provided by McGrath, Conrad and the Bangert memo (Finding Nos. 6 and 7) we

find to be plausible and reasonable. There is no allegation or evidence that these raises were given for purposes of frustrating RSA 273-A or in violation of the more specific prohibitions of RSA 273-A:5 I.

We do not accept the Union's assertions that aldermanic approval of their tentative agreement was either unnecessary or improper because of "enterprise funds" which could be and are being used to fund the food service activities of the school district. In Appeal of City of Franklin, 137 NH 723 (1993), the teachers union and the school board came to certain contractual agreements within fiscal limitations of already appropriated funds. Notwithstanding the agreement within the pre-existing fiscal limitations, the Franklin City Council sought to review and act on the contract. The Supreme Court, in a 3 to 2 decision, said the school board could not fund the CBA from monies already approved by the City Council. 137 NH 723 at 730.

> Where school district's proposed budget . . . was approved and the money necessary to fund it was appropriated before the collective bargaining agreement (CBA) was signed, and money from this appropriation was set aside by the school district to pay for the salary increases of any forthcoming CBA, but subsequently several veteran teachers left the school district and were replaced with less experienced teachers, circumstances which would have left the school district with a budget surplus, and subsequently a CBA was ratified with salary increases and related costs in the amount previously set aside for salary increases plus the expected budget surplus, the city council had the right to review all monetary provisions of the CBA, including those funded by the funds originally set aside to fund salary increases.

The same principles apply to this case.

Finally, certain actions by the aldermen, as reflected in Finding No. 5 above, come perilously close to transgressing their role as defined by the New Hampshire Supreme Court in Appeal of Alton School District, 140 NH 303 at 311 (1995). The Court explained that the role of the legislative body was limited to approving or rejecting, and not negotiating the contract package presented to it. "Were we to interpret RSA 273-A:1, IV otherwise, legislative bodies could determine in the first instance, some of most significant terms of the teachers' employment. This would frustrate the entire collective bargaining process...in RSA 273-A. As we stated in Derry, 138 NH

at 71 [in 1993] . . . ' [s]chool boards, not legislative bodies, have authority to negotiate and enter into collective bargaining agreements.'"

The ULP is DISMISSED.

Signed this 21st day of August, 1997.

EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.