

**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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INTER-LAKES SCHOOL BOARD	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. T-0237:24
	:	
INTER-LAKES EDUCATION	:	DECISION NO. 1998-071
ASSOCIATION, NEA-NH	:	
	:	
Respondent	:	

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APPEARANCES

Representing Inter-Lakes School Board:

Gary Wulf, Negotiator

Representing Inter-Lakes Education Association, NEA-NH:

Janet Paddleford, UniServ Director

Also appearing:

Peter R. Brothers, Inter-Lakes School Board  
Paula Adriance, Inter-Lakes School Board  
Connie Brown, Inter-Lakes School Board  
Linda Allen, Inter-Lakes Education Association  
Howard Cunningham, Inter-Lakes Education Association

BACKGROUND

The Inter-Lake School Board (Board) filed unfair labor practice (ULP) charges against the Inter-Lakes Education Association, NEA-New Hampshire (Association) on April 6, 1998 alleging violations of RSA 273-A:5 II (a) and (d) resulting from the Association's coercive tactics and refusal to bargain relative to certain school calendar issues. The Association filed its answer, in the form of a motion to dismiss, on April 21, 1998. After a continuance sought by and

granted to the parties, this matter was heard by the PELRB on July 21, 1998.

FINDINGS OF FACT

1. The Inter-Lakes School Board employs teachers and other personnel in the operation of its school system and, thus, is a public employer within the meaning of RSA 273-A:1 X.
2. The Inter-Lakes Education Association, NEA-New Hampshire, is the duly certified bargaining agent for all full and part-time, regularly appointed professional employees of the Inter-Lakes School District whose governing body is the Inter-Lakes School Board.
3. The Board and the Association are parties to a collective bargaining agreement (CBA) for the period August 28, 1997 through August 31, 1998 (Board Exhibit No. 3). Article 9.1 of that CBA, also identified as Article 8.1 in the prior 1994-97 CBA (Board Exhibit No. 1), provides:

The Superintendent shall meet and confer with the Association regarding the ensuing year's school calendar and any mid-year changes in the calendar. Individual teachers may make recommendations to the building principal(s) for the ensuing year's school calendar. The principal(s) in turn will make the teacher's recommendation know to the Superintendent.

4. In preparation for the bargaining which led to the parties' agreement on the terms of the 1997-98 CBA (Board Exhibit No. 3), the parties agreed to use collaborative bargaining techniques in March of 1997. According to Paula Adriance, school board chair, this resulted in Board Exhibit No. 3 which was signed by the Association March 19, 1998 and by the Board on March 20, 1998. Board Exhibit No. 1 and Article 8.1 thereof remained in effect in the interim until the 1997-98 CBA was signed. The parties agreed to use collaborative bargaining techniques for the follow-on contract for School 1998-99 and beyond and returned to the bargaining table to accomplish this on September 15, 1997. The Board, according to Adriance, sought to conclude bargaining in time to take a School Year 1998-99, or longer, CBA to the district meeting in the spring of 1998. When negotiations slowed and it

became likely that an early settlement would not be forthcoming, the Board declared impasse in December of 1997. In the meantime, on November 3, 1997, Adriance and Association President George Lapierre, Jr., initialed a two-page ground rules document (Association Exhibit No. 4 appended to Motion to Dismiss) relative to negotiations and the completion of six sessions on or before December 15, 1997. Item 15 of that agreement provided that "if agreement is reached in the process/issue/option/standard...the group will not revisit it at a subsequent meeting but will move on from where they ended." Item 17 of that document identified four (4) areas of discussion in preparation for negotiations for a follow-on (School Year 98-99 and after) agreement. The school calendar was not one of those areas.

5. Superintendent Connie Brown testified that in December of 1997 and January of 1998 she had sent a draft calendar for school Year 98-99 to Lapierre. After discussing the calendar with Lapierre, who wanted an additional snow day because the high school had moved to block scheduling, she then sent the calendar to the Board for approval.
6. According to Peter Brothers, Vice Chair of the school board, the school year 98-99 calendar input process was completed in time to be submitted to and considered at the Board's January, 1998 monthly meeting. The Board was confronted with concerns from "concerned parents of elementary school children" and from certain staff personnel, not exclusively teachers or bargaining unit members, about the calendar, the inclusion of planned snow days and the potential length of the school year. (Board Exhibit No. 5). Consequently, as reflected in the letter from Adriance to Lapierre on February 12, 1998 (Board Exhibit No. 5 and Association Exhibit No. 2), on February 9, 1998, the Board tabled adoption of the School Year 98-99 school district calendar originally proposed by the Superintendent. In this letter, Adriance also said:

As you are aware, during the negotiations for school year 1997-98, new contract language memorialized certain contractual changes, i.e., when school may begin, the placement of in-service days, and the days between the two semesters.

I have enclosed, for your consideration, copies of the elementary petition as signed by members of the Inter-Lakes staff and copy of the parental concerns and their recommendations. The Board offers to meet with members of the Inter-Lakes negotiations teams to reopen contact language in this area only. If the inter-Lakes Education Association is willing to entertain this offer, please contact the Superintendent's Office as soon as possible. Action on the 1998-99 calendar should take place no later than the April School Board Meeting (April 13, 1998).

7. On March 16, 1998, the Association negotiating team responded, by letter to Adriance (Board Exhibit No. 6) saying:

The ILEA is willing to discuss next year's calendar after the Board returns to the negotiation table and finishes the collaborative bargaining process for a successor agreement for 1998 and following. If the Board now has time to negotiate one item in the signed contract, we feel the district would be better served using that time to complete work begun months ago.

The Board then filed the instant complaint believing this communication to be tantamount to a refusal to bargain, "black mail" in the form of a pre-condition to proceeding with the procedures authorized in Article 9.1 of the CBA, and an illegal job action in violation of RSA 273-A:13.

#### DECISION AND ORDER

Before moving to detailed analysis of this case, we dismiss the alleged "job action" claim referenced in the complaint. It was neither pled, by the assertion of a violation of RSA 273-A:5 II (e), nor proved by evidence or testimony. There was no showing of an interruption of services or of a "working to rule" or "work to conscience" as was the case in Appeal of Hinsdale Federation of Teachers, 138 N.H. 88 (1993) and requires no further attention.

The chronology of events tells the tale with respect to the remainder of the case. The bargaining sequence was unremarkable. The parties had their School Year 1997-98 CBA in place and returned to the table in September of 1997 to "collaboratively bargain" a successor agreement. The scope of those negotiations appears to have been controlled by ground rules, for lack of a better term, agreed to on or before November 3, 1997. Issues relating to the school calendar were not among the topics included for discussion or negotiation under those ground rules. (Association Exhibit No. 4) When negotiations

did not progress as rapidly as the Board had expected, the Board declared impasse in December of 1997. According to Adriance, school calendar language under Article 9.1 was not in dispute when impasse was declared. This is also supported by the Association's request for mediation dated February 6, 1998, of which we take administrative notice, which listed only salary, evaluations and transfers as issues in dispute. We also take notice of the fact that the parties agreed to and did proceed to mediation on Monday, May 18, 1998, consistent with the process contemplated by RSA 273-A:12.

During this same period, between September of 1997 and May of 1998, there was a simultaneous series of events occurring under the provisions of the contract, specifically Article 9.1. During this time, there was an interchange between the Association and the Superintendent, namely, the exchange of a draft calendar for School Year 98-99. Since the testimony tells us that Brown subsequently sent the School Year 98-99 calendar on to the Board for approval, we conclude that the meet and confer obligations under Article 9.1 were both followed and completed. There is no evidence to the contrary and, if there were, there is contract language, as identified by the Association, which suggests that this should appropriately be processed under the grievance provisions of Article 27.1 of the CBA. We do note conspicuously that the obligations entered into under Article 9.1 of the contract are for meet and confer procedures, procedures which differ from the statutorily imposed scheme of negotiations found in RSA 273-A:3 and 273-A:12 which contemplate the use of mediation and fact finding when negotiations, as distinguished from "meet and confer," break down.

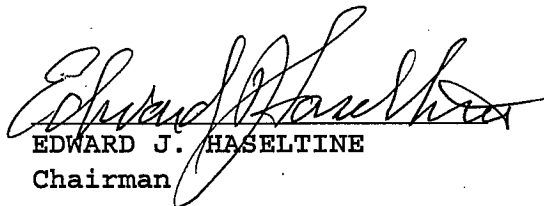
Given that both impasse had been declared and that the Superintendent had submitted the School Year 98-99 calendar to the Board by the time the Board wrote its February 12, 1998 letter to Lapierre (Board Exhibit No 5 and Association Exhibit No. 2), we find it conceivable, if not probable, that the Association might be confused about the Board's intentions, i.e., whether it intended to change language already agreed upon or whether it was an attempt to engage in further meet and confer efforts. Four very cogent events or deviations from normal practice contributed to the potential for confusion. First, Adriance suggested the overture was "to reopen contract language in this area [of school calendar] only." "Reopen" suggests something associated with the negotiating process. Second, as the chronology showed, the Association believed it had already completed its meet and confer obligations on the FY 98-99 calendar, that it resulted in essentially the same language as was in the 1997-98 CBA, and that to modify it further would be detrimental, in the Association's perception, to a matter which it believed had come to closure. Third, since the letter of February 12, 1998 came from Adriance and not Brown, this suggested that the Adriance letter was intended to address the negotiations process, not the meet and confer

process which had historically been administered through the Superintendent. Fourth, Adriance, in the second paragraph of her letter, observed that during negotiations for the 1997-98 contract "new...language memorialized certain contractual changes, i.e., when school may begin, the placement of in-service days, and the days between semesters." It is not unreasonable for the Association to have expected that a "reopening" of these areas would seek or result in a diminution of benefits it had enjoyed in the 1997-98 agreement. Had the Board sought to re-engage in "meet and confer," the Association would have complied. According to teacher negotiating team member Howard Cunningham, the Adriance letter would have been construed as a valid request to meet and confer if it had referenced Article 9.1 and/or if it had been channeled through the superintendent's office.

We find no impairment to the bargaining process, through and including mediation on May 18, 1998, by the Association's attempting to resolve still open areas of disagreement before returning to an issue, outside the formal bargaining process, which had achieved closure through meet and confer efforts. Bargaining, inclusive of negotiations and negotiations assisted by mediation, has been on-going. Likewise, we commend the Board's attempt to involve the Association in re-engaging in meet and confer talks on calendar issues. That overture failed due to the timing of negotiations on one set of issues and meet and confer efforts on the school calendar occurring at the same time. Given the authority conferred on the Board in Article 9.2 through 9.9, we find it to have suffered no harm and there to have been no violation of RSA 273-A:5 II resulting from or implicit in the Association's letter of March 16, 1998 (Assn. Ex. No. 3 and Board Ex. No. 6). The ULP is DISMISSED.

So ordered.

Signed this 26th day of August, 1998.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members William F. Kidder and E. Vincent Hall present and voting.