



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301
Seabrook Supervisory Employees

Complainant

v.

Town of Seabrook

Respondent

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Case No. M-0592-19

Decision No. 2001-102

REPRESENTATIVES

For AFSCME Council 93, Local 2301 Seabrook Supervisory Employees:

Angela Wessels, Esquire, Associate General Counsel

For the Town of Seabrook:

Robert D. Ciandella, Esquire

Robert M. Derosier, Esquire

BACKGROUND

AFSCME Council 93, Local 2301, Seabrook Supervisory Employees ("Union") filed unfair labor practice charges on June 28, 2001 pursuant to RSA 273-A:5 I (e), (g), and (h) alleging that the Town of Seabrook ("Town") and its agents otherwise violated its statutory obligations and breached the parties' collective bargaining agreement (CBA) by failing to participate in negotiations for a successor agreement.

The Town answered by generally denying all allegations of the Union except the allegation that AFSCME is the certified representative for this bargaining unit.

After participation at a Pre-Hearing Conference, the parties agreed to submit their respective cases to the Board without an evidentiary hearing. Instead, the matter was submitted upon the parties' respective pleadings, including supportive Memoranda of Law, and an Agreed Statement of Facts with Joint Exhibits. At the Pre-Hearing Conference, the Town filed a Motion to Dismiss and a Supporting Memorandum of Law. The Board considered all of these submissions and deliberated the parties' respective claims. It found as follows:

PARTIES' STIPULATED FACTS

The facts appearing below were jointly submitted by agreement of the parties. The Board hereby incorporates them into this decision as its "Findings of Fact" in this matter.

1. The Union and the Town are Parties to a collective bargaining agreement, ("CBA"). The current CBA expires on 31 March 2001. (The CBA is admitted as Joint Exhibit #1)
2. CBA provision, Article 21, "Duration", sets forth the duration of the CBA and states in pertinent part:

"Renegotiation of this Agreement will be effected by written notification by one party as required by RSA 273-A; as amended.

Negotiations shall commence within two weeks of receipt of such notice."

(See Joint Exhibit #1)

3. On 9 April 2001, the Union sent a letter to the Town Manager advising that it desired to begin negotiations for a successor labor agreement. (See Joint Exhibit #2).
4. On 3 May 2001, neither AFSCME, N.H. Coordinator McMath nor the Union President, David Currier, had received any reply from the Town on its written notification to begin bargaining a successor agreement. David Currier filed a grievance with the Town on 3 May 2001. (See Joint Exhibit #3)
5. By letter dated 8 May 2001, Town Manager, E. Russell Bailey, denied the Union's grievance setting forth his reasons in said letter. (See Joint Exhibit #4).
6. On 11 May 2001, Local President David Currier filed an appeal of the Town Manager's denial of the grievance to the Board of Selectmen. The CBA

provides that failure at any grievance level to meet or to communicate the decision within the specified time limits to the president of the Union or his designee shall permit the Union to proceed to the next level. (See Joint Exhibit #5).

7. On 27 August 2001, the Town wrote to Jack McMath regarding the scheduling of negotiations. The Town also asked the Union, at its convenience to contact the Town to establish a suitable negotiation schedule. (See Joint Exhibit #6).
8. The first bargaining session between the Town and the Union is scheduled for 21 September 2001.

DECISION AND ORDER

Since its passage in 1975, the Public Employee Labor Relations Act established a governing board pursuant to RSA 273-A:2. A separate provision of that act, A:6, gave the board primary jurisdiction over all unfair labor practices as described in RSA 273-A:5. The complaining exclusive bargaining representative, AFSCME Council 93, Local 2301, filed an unfair labor practice complaint against the Respondent, Town of Seabrook, that alleged certain actions undertaken by the Town constituted prohibited practices, namely: refusing to negotiate in good faith; failing to comply with the governing statute and the administrative rules promulgated thereunder; and breaching the collective bargaining agreement between the parties.

We first focus on the allegation that the Town refused to negotiate in good faith, that is, a violation of RSA 273-A:5 (e). The operative provision of the statute states in relevant part:

“Any party desiring to bargain shall serve written notice of its intention on the other party at least 120 days before the budget submission date;”

We have previously pointed out that this statutory provision, “states no prohibition as to how many days before the 120 days when such notice may or may not be given.” Hudson Federation of Teachers AFT, AFL-CIO v. Hudson School Board, Decision No. 96-117. The PELRB acknowledged the 120 day limit as a minimum time limit and concluded that there is no maximum time limit. Id.

The parties agree that the Union expressed its intent by letter, dated April 9, 2001. (See above Stipulated Fact #3). The parties further agree that the Town denied a subsequent grievance filed by the Union by a letter dated May 8, 2001. (See above Stipulated Fact #4). We cannot help but further note that the Town’s response to the Union’s original letter of intent came via a letter of its Town Manager nearly five months later, dated August 27, 2001.

As an equal party to the collective bargaining process, the Union was entitled to a response to their original letter. Common courtesy, much less good faith, would dictate a timely response to a request to bargain. We do not find that a separate requirement to respond to a grievance eliminates the Town's statutory obligation to bargain in good faith with the Union as the exclusive bargaining representative of its employees. The Town's interpretation of the 120 day reference in the statute would dictate that parties must wait until the last minute to initiate bargaining. We read neither the law nor its purposes as expressing that meaning.

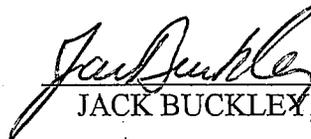
We find that the Town did not act in good faith in by refusing to respond to the Union in a timely, and, thereby, reasonable manner and by avoiding the initiation of collective bargaining for nearly five months after the Union's letter of intent was sent to the Town Manager. Therefore, we deny the Town's Motion to Dismiss the Union's complaint and we GRANT the Union's complaint. Having found this violation of RSA 273-A:5 (e), we need not consider any further basis for an unfair labor practice.

We order as follows:

1. This order is to be posted by the Town in a conspicuous place in each municipal building within which members of this bargaining are employed.
2. We order no further remedy at this time other than that the parties participate in meaningful negotiations.
3. In the event that either party notifies this board, in writing, that meaningful negotiations are not being undertaken, the PELRB shall reopen this case immediately and schedule a hearing.

So Ordered.

This 18th day of October, 2001



JACK BUCKLEY, CHAIRMAN

By unanimous vote with Chairman Jack Buckley presiding and members E. Vincent Hall and Richard Roulx present and voting.