



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Nashua Board of Education

Complainant

v.

Nashua Teachers' Union Local 1044, American
Federation of Teachers, AFL-CIO

Respondent

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Case No. E-0001-4

Decision No. 2008-070

ORDER ON REQUEST FOR INTERIM RELIEF

The Public Employee Labor Relations Board ("PELRB") convened an expedited hearing at its offices in Concord on March 26, 2008 for the limited purpose of considering the petitioning City of Nashua Board of Education's (hereinafter "City") request for interim relief. The interim relief request is part of an unfair labor practice complaint filed on March 21, 2008 against the Nashua Teachers' Union, Local 1044, American Federation of Teachers, AFL-CIO. (hereinafter "Union") Notice of that filing was provided to the Respondent Union which filed its answer on March 26, 2008. Prior to the hearing, counsel were informed that the matter would be heard upon offers of proof by counsel on behalf of their respective parties and oral argument by counsel. The parties stipulated to certain facts for purposes of the expedited hearing and submitted those to the PELRB at the time of hearing. Specifically the interim relief requested is that a cease and desist order to issue from the PELRB against the Union prohibiting certain actions connected with and including a strike action by its members. We deny the City's request for that relief at this time.

The PELRB has primary jurisdiction over matters governed by the Public Employee Labor Relations Act (RSA 273-A) and to issue cease and desist orders (RSA 273-A:6,III) This includes jurisdiction over complaints alleging violations of RSA 273-A:5,II making it a violation of a union "(d) To refuse to negotiate in good faith with the public employer, (e) To engage in a strike or other form of job action; and (f) To breach a collective bargaining agreement." In the instant matter, we are asked to determine whether we should issue a cease and desist order prohibiting the Union from participating in a strike scheduled to take place on Monday, March 31, 2008 providing the parties do not reach agreement on a successor collective bargaining agreement to one that expired on August 31, 2006.

The parties have been negotiating for almost two (2) years. Over the course of that time the Board of Education and the Union negotiators have reached a tentative agreement subject to the approval of their respective ratifying processes on three occasions. In each instance, the City did not ratify the terms negotiated by its representatives at the bargaining table. Most recently a proposed agreement failed because despite obtaining a vote of approval from the Board of

Alderman, the City's Mayor vetoed their vote thus causing a failure in the ratification process and rendering the proposed collective bargaining agreement a nullity. Over the course of time, the negotiating parties have utilized a mediator to assist in resolving their differences on two separate occasions. Negotiation sessions continue even at the present time and the parties represent that they will continue to be conducted beginning again with a session on March 27, 2008.

Both parties allege actions on the part of the other that, if proven during a subsequent hearing on the merits of the parties' charges, may well show both parties have violated the statute. More relevant to the issue immediately before us, the Union has undertaken actions in preparation for the planned strike. The City has undertaken actions in response to notification of a planned strike. If there is a strike, the City has indicated that it will have to close its schools. It represents that if the strike occurs, a threat to the health and safety of the students will be present. Since the enactment of the Public Employee Labor Relations Act, we have seldom had to address the issue of public employee strikes. However, we have addressed the issue in the past and approach this case in a similar manner. RSA 2273-A:13 states "Strikes and other forms of job action by public employees are hereby declared to be unlawful." In *University of New Hampshire v. American Association of University Professors*, PERLB Decision #2000-054 we considered the threat of a strike in the form of a vote of the union membership to provide the union leadership with authority to call a strike without providing any notice to management representatives. What we said in 2000 in that case was,

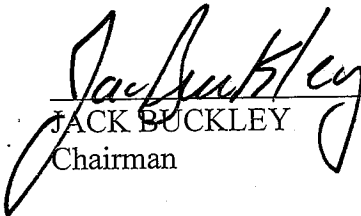
Further, the statute provides that it is a prohibited labor practice for the exclusive representative of any public employee, in this instance, the AAUP-UNH, "To engage in a strike of other form of job action" RSA 273-A:5 II (e). Indeed, the courts have found strikes and job actions that constitute a withholding of services to be illegal. See *City of Manchester v. Manchester Firefighters Association*, 120 N.H. 230, 430 A.2d 577 (1980) (involving "sick-outs"). The Act also appears to manifest the General Court's recognition that if a strike or such other forms of job action that result in a withholding of services should take place, the public employer is allowed, "immediate access to an equity court." *Id.* at 234. The proof of the functionality of the legislative scheme has, indeed, already been shown in the instant case as USNH-UNH had sought and received a hearing in the Strafford Superior Court seeking injunctive relief.

Our focus remains the same. A strike or other job action considered relevant is an action that constitutes a withholding of services. The facts before us do not indicate that any services have been withheld by the Union and its members. The Union continues to negotiate and the members continue to teach and nurse and aid the students of Nashua's schools. Therefore, we find no violation of RSA 273-A:13 or RSA 275-A:5, II (e).

For purposes of considering the City's request for interim relief we incorporate the common standard often used by courts of general jurisdiction, namely, "irreparable harm." We do not find that the City has met its burden at this time that it is presently suffering irreparable harm or that it is in imminent danger of suffering irreparable harm. Further, we do not determine that the City has shown with sufficient evidence that there exists an immediate danger to the public health, welfare of safety. Request for cease and desist order denied. No award of fees and costs. Consideration of other grounds for City's complaint must await further proceedings, if they remain necessary and if further arbitration of contractual provisions is not first required.

So ordered.

Signed this 26th day of March, 2008.



JACK BUCKLEY
Chairman

By unanimous decision. Chairman Jack Buckley, members Kevin E. Cash, and Sanford Roberts, Esq., present and voting.

Distribution:

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