



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2932, Dover Custodial & Grounds Employees	Complainant	Case No. E-0058-1
v.		Decision No. 2008-073
Dover School District	Respondent	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 2932, Dover Custodial & Grounds Employees (the "union") filed an Unfair Labor Practice Complaint and Request for Immediate Cease and Desist on March 14, 2008. The union's complaint arises from the school board's March 10, 2008 vote to contract out, or privatize, custodial services currently performed by bargaining unit members. According to the union, this reversed an earlier vote on December 10, 2007. The union complains that the district pursued privatization of custodial services for 2007, 2008 and 2009 while simultaneously approving and funding a July 1, 2007 to June 30, 2010 contract (the "2007-10 CBA") with the union for the same services. The union contends that:

- 1) The district refused the union's request in March, 2008 to renegotiate the cost of the 2007-10 CBA before voting to proceed with privatization by awarding the custodial services contract to Unicco, a company that responded to the board's September 14, 2007 request for proposals;
- 2) A school board member who negotiated the 2007-10 CBA made the motion that nullified it and cast the deciding vote to privatize;
- 3) The district was aware of a pending tax cap and the related need to fund school board programs such as all-day kindergarten during the time when the 2007-10 CBA was approved; and
- 4) The district is allowing Unicco to begin distributing literature to bargaining unit members during work hours.

The union claims that as a result of these actions the district has failed to bargain in good faith in violation of RSA 273-A:5 I (a), (b), (c), (e), (g) and (i).

As remedies, the union requests that the PELRB: 1) order the district to bargain in good faith; 2) order the district to cease and desist from allowing the distribution of literature on school property that promotes privatization; 3) order the district to publicly post the board's findings for 30 business days; 4) order the district to make the union whole for any and all cost and expenses incurred to pursue the prohibited practice charge; and 5) order any and all other relief as the board deems necessary and appropriate.

The district's answer was filed on March 31, 2008, after the pre-hearing conference but within the applicable deadline. Consistent with its position at the pre-hearing conference, the district denies that it has violated the provisions of RSA 273-A:5, I and contends that is exercising its right to privatize as authorized by Article 25.1 of the parties' 2007-10 CBA. The district contends that it has bargained in good faith and that the subject matter of the union's complaint is, in substance, a dispute as to whether the district has the right to privatize under the 2007-10 CBA and should be resolved pursuant to the contract grievance procedure.¹ As to the tax cap, the district asserts that its precise impact was uncertain and the tax cap placed substantial financial constraints on the district.

The undersigned Hearing Officer conducted a pre-hearing conference on March 28, 2008 at the offices of the Public Employee Labor Relations Board in Concord.

PARTICIPATING REPRESENTATIVES

For the Union: Karen E. Clemens, Esq.

For the District: Timothy A. Gudas, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the district failed to bargain in good faith as a consequence of its actions in negotiating and approving the 2007-10 CBA and proceeding with the privatization of custodial services, all in violation of RSA 273-A:5 I (a), (b), (c), (e), (g) and (i)?
2. Whether the board should order the district to cease and desist with its privatization of custodial services pending further good faith negotiations on the cost of the 2007-10 CBA?

WITNESSES

¹ At the pre-hearing the union stated that the matter is not arbitrable as the union's claims are based upon the district's alleged lack of good faith bargaining, not a violation of the parties' collective bargaining agreement.

For the Union:

1. Steve Lyons, AFSCME Staff Representative, negotiations
2. Bryan Lamirande, AFSCME Staff Representative, negotiations/privatization
3. Ken Hall, union negotiator
4. Kenneth Guild, Jr., employee
5. Reid Marshall, union negotiator
6. Dale Caswell, union negotiator
7. Gene Libby, union negotiator
8. Carolyn Mebert, school board member

For the District:

1. John O'Connor, Superintendent
2. Marjorie Fisher, school board member
3. Doris Grady, school board member

It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Union (to be marked as full exhibits by agreement):

1. Certification of Representation and Order to Negotiate, 9/20/01
2. Collective Bargaining Agreement, 7/1/07-6/30/10
3. Certified Letter sent to Supt. John Connor re: intent to negotiate, 6/9/06
4. Petition for Appointment of Mediator dated 5/8/07
5. First Privatization letter sent to Union, 5/16/07
6. E-mail stating the August 30, 2007 Mediation meeting, 7/26/07
7. Minutes of October 8, 2007 Dover School Board Meeting, 10/8/07
8. Section of the Owen, Renz & Lee Co. Bid proposal stating the RFP request of September 14, 2007, 10/22/07
9. Proposals from three vendors outlining the costs of a three year contract
10. Minutes of the October 24, 2007 City Council meeting, 10/24/07
11. The sign 7/1/07 through 6/30/10 Collective Bargaining Agreement, 11/1/07
12. Minutes of the December 10, 2007 Dover School Board meeting, 12/10/07
13. Second privatization letter sent to Union, 1/3/08
14. Minutes from January 7, 2008 Dover School Board Organizational meeting, 1/7/08
15. Minutes of the January 21, 2008 Dover School Board meeting, 1/21/08
16. Message from Bryan Lamirande addressing the School Board, 3/10/08
17. Agenda of the March 10, 2008 School Board meeting, 3/10/08
18. Invitation from the Unico to all Dover School Facilities Personnel
19. Letter sent to each School Board Member on 1/17/08
20. A note from a Dover Custodian, 2/26/08

For the District (union in process of reviewing B-M):

- A. Collective Bargaining Agreement, 7/1/07-6/30/10
- B. Negotiating Proposal in 1999 re: "contracting/subcontracting out"
- C. Marked-up negotiating proposal in 1999 re: "contracting/subcontracting out"
- D. Excerpts of September 2, 1999 Dover School Board meeting minutes reflecting ratification of the 1999 collective bargaining agreement
- E. The collective bargaining agreement from 1/1/99-6/30/01
- F. City of Dover resolution re: "spending cap petition," 8/31/07
- G. City of Dover, City Charter Provision C6-3 materials, 1/08
- H. Superintendent's Budget FY 08/09 materials, 2/4/08
- I. Dover School District Budget Workshop materials, 3/3/08
- J. Dover School District Budget Workshop materials, 3/5/08
- K. Dover School District "budget reductions for proposed 2008-2009 approved through 3/5/08."
- L. Minutes of the Dover School Board meeting, 3/10/08
- M. Other publicly available minutes of the Dover City Council or the Dover School Board from 2007-2008.

Copies of all exhibits are to be filed in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing is 3 hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB on or before April 7, 2008.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. Unless otherwise ordered, the parties shall meet, or otherwise confer, on or before April 4, 2009 and attempt to reach a stipulation on presenting the case by written submission, or, in the alternative, without the need for formal testimony. The parties shall document any such agreement by immediately filing a joint statement which includes a proposed schedule for the parties' fact stipulation filings and briefs, if any.
2. If the matter is to proceed to hearing, the parties shall meet or otherwise confer on or before April 4, 2008 in order to compose a mutual statement of agreed facts. The parties shall file their fact stipulations on or before April 7, 2008.
3. At the pre-hearing attorney Clemens advised that she wished to subpoena school board member Carolyn Mebert. As stated at the pre-hearing, attorney Clemens shall

file her request for a subpoena by email. Requests for a subpoena should contain the information called for in Pub 203.01 (c).

4. On or before April 3, 2008 the union shall its objections, if any, to the district's exhibits, copies of which were provided to the union at the pre-hearing conference.
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on **April 8, 2008 at 10:15 a.m.** at the offices of the Public Employee Labor Relations Board in Concord.

So ordered.

March 31, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

Karen E. Clemens, Esq.

Timothy A. Gudas, Esq.