



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

**NASHUA TEACHERS' UNION, LOCAL 1044,  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO**

**PETITIONER**

**CASE NO. E-0001-3**

**v.**

**DECISION NO. 2008-213**

**MAYOR AND BOARD OF ALDERMEN,  
CITY OF NASHUA**

**RESPONDENT**

**APPEARANCES**

Representing: Nashua Teachers's Union, Local 1044,  
American Federation of Teachers, AFL-CIO  
Teresa D. Donovan, Esq.

Representing: Mayor and Board of Aldermen, City of Nashua  
James McNamee, Esq.

**BACKGROUND**

The Nashua Teachers' Union, AFT Local 1044, AFL-CIO filed a Petition for Declaratory Ruling on March 7, 2008. The Union's petition concerns whether the manner in which the

mayor and board of aldermen for the city of Nashua receive and act upon cost items contained in collective bargaining agreements complies with the requirements of RSA 273-A:3, II (c).

The mayor and board of aldermen and the city of Nashua (the "City") filed an answer on March 24, 2008. The City contends that currently contract cost items are submitted to the board of aldermen within 30 days of negotiated collective bargaining agreements and the board of aldermen votes to accept or reject the cost items within 30 days of submission.

The dispute between the parties involves the meaning of the term "submission" under RSA 273-A:3, II (c). The Union contends that "submission" occurs when a tentative collective bargaining agreement containing cost items is transmitted to a City representative like an alderman-at-large and/or the City legal department. The City contends "submission" occurs when the cost items contained in a tentative collective bargaining agreement are presented in the form of a resolution prepared by the City's legal department to the board of aldermen at a full board meeting.

The parties agreed to submit this case for decision based upon stipulated facts and briefs, all of which were filed by July 9, 2008. The Union filed an Agreed Statement of Facts on behalf of the parties, a copy of which is attached as Addendum One to this decision and is incorporated into the Findings of Fact in this decision. Some of the stipulated facts are recited in the Findings of Fact for convenience of reference.

#### FINDINGS OF FACT

1. The City of Nashua (the "City") is a public employer within the meaning of RSA 273-A:1, X.
2. The Nashua Teachers' Union, AFT Local 1044, AFL-CIO (the "Union") is the board certified exclusive representative for certain City of Nashua public employees.

3. In early 2008 the City and the Union negotiated a tentative collective bargaining agreement, and the following sequence of events occurred:

- January 3, 2008      A tentative agreement was signed by the Board of Aldermen and the Union.
- January 7, 2008      The school district chief operating officer, James Mealey, transmitted the tentative agreement to Alderman-at-Large Steven Bolton by email and copied the email to the city of Nashua legal department.
- January 22, 2008      First reading of the resolution by the Board of Aldermen; Referred to budget committee.
- January 29, 2008      Budget Committee Meeting (no action taken tabled).
- February 5, 2008      Budget Committee (Motion passed to send to the Board of Aldermen without a recommendation).
- February 12, 2008     Board of Aldermen Second reading (resolution Passed 8-6).
- February 15, 2008     Mayor vetoes the agreement using a line item veto.

4. The Union suggests that the date for final action by the mayor and board of aldermen to comply with the statute would have been February 6, 2008, thirty days after transmittal of the contract by email on January 7, 2008.

5. The City suggests that the date for final action by the mayor and board of aldermen was February 21, 2008 which is thirty days after the first reading on January 22, 2008.

## DECISION

### DECISION SUMMARY

The City's current procedures for transmission and approval of cost items contained in a collective bargaining agreement comply with the two 30 day time periods imposed by RSA 273-A:3, II (c). The board of aldermen's receipt at a full board meeting of a resolution addressing the negotiated cost items upon which they can act constitutes the "submission" required within the

first 30 day time period. This procedure does not violate the statute as long as it is completed within 30 days of the date the tentative collective bargaining agreement was negotiated. The date the board of aldermen receive the resolution at a full board meeting is when the second 30 day statutory time period begins to run.

#### JURISDICTION

The board has jurisdiction over petitions for declaratory rulings pursuant to RSA 541-A and Pub 206.01.

#### DISCUSSION

This case arises from the requirement that costs contained in collective bargaining agreements must be approved by the local legislative body. The City's local legislative body is the mayor and board of alderman. RSA 273-A:3, II (c) provides as follows:

If the public employer is a local political subdivision with a city or town council form of government cost items shall be submitted within 30 days to the city council or aldermen or to the town council for approval. Within 30 days of the receipt of the submission, the city council, aldermen, or the town council shall vote to accept or reject the cost items. If the city council or aldermen or the town council rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on all or part of the entire agreement.

The statute describes a two step process, each a maximum of 30 days in duration, which a local legislative body like the Nashua mayor and board of aldermen must follow in order to act on cost items in collective bargaining agreements within the statutorily mandated time frames. Of particular relevance to this declaratory ruling action is the statutory language that the "cost items shall be submitted within 30 days *to the city council or aldermen or to the town council for approval.*" (emphasis added) The statute thus provides on its face that the action required is submission to the aldermen, not presentation to an individual aldermen and/or the City legal department by email. Further, the statute also provides that when the cost items are submitted,

they are to be submitted "for approval." Neither an individual aldermen nor the City legal department can, acting on their own, serve as the local legislative body and approve or disapprove cost items contained in a collective bargaining agreement. Accordingly, email filings to an individual aldermen and/or the City legal department are not submissions "for approval" under the statute.

The City's current method of having its legal department prepare a cost analysis and a resolution concerning collective bargaining agreement cost items for consideration at a full board meeting is also consistent with the 30 day period allowed for completion of the first step under the statute. The first 30 day interval provides the City with sufficient time to observe formalities such as the preparation of a cost analysis to be presented to the mayor and board of aldermen along with the underlying resolution by which the cost items are presented for approval. These interim actions are reasonably and necessarily incidental to legal and binding action by a local legislative body like the Nashua mayor and board of aldermen. The legislature's designation of 30 days to complete the first step presumably reflects in part its understanding that the act of submission may involve more than the ministerial transmission of a tentative collective bargaining agreement to City representatives such as an alderman-at-large and/or the City legal department.

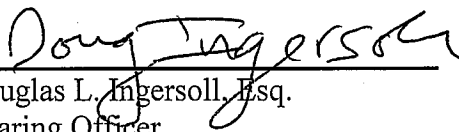
The Union complains that treating submission as the board of aldermen's receipt of a resolution at a full board meeting could potentially lead to uncertainty and delay caused by the local bureaucratic or political process. However, this argument is not persuasive given the clear requirements of RSA 273-A:3, II (c). The statute imposes firm deadlines for both steps of the process. Ultimately, the City's local legislative body is required to vote to accept or reject the collective bargaining agreement cost items within 60 days of the negotiated agreement. These

statutory time periods cannot be enlarged by the City. Moreover, the City currently completes the first and the second step within the applicable 30 day time periods, so the Union cannot claim that current City procedures will automatically result in statutory non-compliance. Should the City fail in the future to act within the statutory time frames applicable to either step one or step two of the process the Union may seek legal recourse.

Accordingly, under RSA 273-A:3, II (c), cost items contained in a collective bargaining agreement must be submitted to a local legislative body like the Nashua mayor and board of aldermen for approval within 30 days of the date the tentative agreement is made. On the stipulated facts submitted in this case, submission occurred at the time the resolution prepared by the City's legal department was presented to the mayor and board of aldermen at the full board meeting on January 22, 2008.

So ordered.

October 16, 2008

  
\_\_\_\_\_  
Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

Teresa D. Donovan, Esq.  
James M. McNamee, Esq.

**ADDENDUM TO**  
**DECISION NO. 2008-213**  
**(Parties' Agreed Statement of Facts)**

STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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NASHUA TEACHERS' UNION  
AFT LOCAL 1044, AFL-CIO

V.

Case No.E-001-3

MAYOR AND BOARD OF ALDERMEN  
CITY OF NASHUA

\*\*\*\*\*

AGREED STATEMENT OF FACTS

NOW COME the Nashua Teachers' Union, AFT Local #1044, AFL-CIO (hereinafter referred to as the "NTU") by its counsel, Attorney Teresa D. Donovan, AFT-NH, and the Mayor and Board of Aldermen, City of Nashua (hereinafter referred to as the "City") by and through its Corporation Counsel, Attorney James McNamee, and do hereby agree to the following Statement of Facts in the above-entitled matter:

Statute in Question (RSA 273-A:3, II (c))

1. The NTU seeks a declaratory ruling from the PELRB as to the application of the thirty (30) day time frames provided in RSA 273-A:3, II (c) for approval of cost items for tentative agreements submitted to the legislative body, in this case identified as the Nashua Mayor and Board of Aldermen.



2. RSA 273-A:3, II (c) provides as follows:

(c) If the public employer is a local political subdivision with a city or town council form of government cost items shall be submitted within 30 days to the city council or aldermen or to the town council for approval. Within 30 days of the receipt of the submission, the city council, aldermen, or the town council shall vote to accept or reject the cost items. If the city council or aldermen or the town council rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on all or part of the entire agreement.

3. The NTU represents the collective bargaining unit known as Nashua Teachers, Unit "A"- Teachers.
4. The Nashua Board of Education ("BOE") is the public employer.

5. The Mayor and the Board of Aldermen ("BOA") is the legislative body.

6. The City operates under a statutory charter as well as other statutory authority. The Nashua City Charter contains the following provisions:

**§ 48. General powers and duties of aldermen**

Except as herein otherwise provided, the board of aldermen hereby established shall have all the powers and discharge all the duties conferred or imposed upon city councils in convention, city councils voting concurrently, or board of mayor and aldermen acting separately, by chapters 44 to 48 inclusive, of the RSA or other general law now in force or hereinafter enacted, or upon the existing city councils or board of mayor and aldermen of the city of Nashua by special laws not hereby repealed. The board of aldermen shall have the powers of selectmen of towns so far as consistent with this charter. All provisions of such laws pertaining to the powers or duties of any or all such bodies shall be construed to apply to the board of aldermen hereby established unless a contrary intent or provision herein appears.

**§ 49. Board of aldermen; standing committees; appropriations**

The members of the standing committees of the board of aldermen shall be appointed by the president of the board of aldermen subject to the approval of the board. No ordinance, and no resolutions containing an appropriation or contemplating an expenditure of money shall be laid before the board of aldermen for action except as otherwise herein provided until the signature of the

mayor, president of the board, or alderman introducing the same, or, if introduced by a committee by its chairman, is indorsed thereon. Upon the final passage of every resolution or ordinance containing an appropriation or contemplating an expenditure of one hundred dollars or more the vote shall be by viva voce and major vote on roll call.

7. The Nashua Revised Ordinances contain the following provisions regarding the Board of Aldermen:

**Sec. 2-22. Regular Meetings**

(a) The Board of Aldermen shall hold regular meetings at 7:30 p.m. on the second and fourth Tuesday of each month, except during the months of July and August, when the regular meetings shall be held on the second Tuesday of those months.

**Sec. 2-48. Other applicable rules.**

~~(a). Except in cases covered by the City Charter or other ordinances of the City, the rules in *Mason's Manual of Legislative Procedure*, 1989 Edition, shall govern the proceedings of the board of aldermen.~~

8. The collective bargaining agreement between the NTU "Unit A", Teachers and the BOE expired on August 31, 2006.
9. The City prepares a cost analysis which accompanies any resolution with financial implications prior to submission of the resolution to the BOA for first reading.
10. The Nashua Revised Ordinances contain the following provision regarding the process for approval of ordinances, orders or resolutions:

**Sec. 2-43 Necessary procedure for passage**

(a) Every ordinance, order or resolution shall be passed through first reading, second reading, passage to be recorded, before it shall be considered as having received the final action of the board of aldermen.

(b) Following the first reading of a resolution or ordinance, the president of the board of aldermen, following any debate, shall refer such resolution or ordinance to its proper committee without a motion from the floor.

(c) All ordinances and resolutions shall be voted on and passed by title reading only.

(d) All committee reports shall be accepted and placed on file without a motion from the floor unless objected to by a member of the board of aldermen.

(e) The sponsor(s) shall authorize the introduction of ordinances and resolutions no later than 5:00 p.m. on the Wednesday prior to the board's regular meetings. A member may be an endorser only if the member signs the legislation. Additional endorsements can be made upon first reading of the legislation, but not subsequent to that time.

(f) All ordinances and resolutions shall be prepared or reviewed by the city solicitor before they shall be endorsed.

(g) All resolutions and ordinances which involve the expenditure of funds shall specify in the body of the legislation the amount and the source of the funds to be expended.

(h) No resolution to approve the cost items of a collective bargaining agreement shall be introduced without an attached cost analysis of the collective bargaining agreement. This provision shall be waived if the cost analysis has not been completed within 21 days of the submission of the collective bargaining agreement to the office of City Solicitor/Corporation Counsel. [Added 2-27-2007 by Ord. No. O 06-70]

(i) If the mayor vetoes any ordinance, resolution or vote, or part thereof, pursuant to section 47 of the City Charter, the following procedure shall be followed:

(1) The city clerk shall place the veto message on the agenda for the next aldermanic meeting under the section designated "Communications."

(2) The city clerk shall also, under the appropriate section of old business, set down as the last item of that section the ordinance, resolution or vote or portion thereof, which has been vetoed by the mayor.

(3) Upon reaching the vetoed item of old business:

a. The board may take action by a motion to reconsider, made by a member who voted with the prevailing side on the original vote. A vote to reconsider shall be effective on a simple majority vote of those members present and voting.

b. If no motion to consider is made, or if a motion to reconsider fails to pass, the vetoed item shall not take effect.

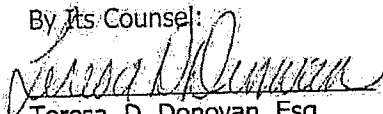
- January 3, 2008** Tentative Agreement signed by BOA and NTU
- January 7, 2008** The school district chief operating officer, James Mealey transmitted the tentative agreement to Alderman-at-Large Steven Bolton by email and copied the email to the city of Nashua legal department. (Exhibit A attached)
- January 22, 2008** First reading of resolution by BOA; Referred to budget committee
- January 29, 2008** Budget Committee Meeting (no action taken - tabled)
- February 5, 2008** Budget Committee (Motion passed to send to the BOA without a recommendation.)
- February 12, 2008** BOA Second reading (Resolution Passed 8-6)
- February 15, 2008** Mayor vetoes the agreement using a line item veto.

15. The NTU suggests that the date for final action by the mayor and board of aldermen to comply with the statute would have been February 6, 2008 thirty (30) days after transmittal of the contract by email on January 7, 2008.
16. The City suggests that the date for final action by the mayor and board of aldermen was February 21, 2008 which is thirty (30) days after the first reading on January 22, 2008.
17. There is a real disagreement as to the application of the statutory 30 day requirement between the NTU and the BOA which the NTU is seeking to resolve by a declaratory ruling from the PELRB. The parties are not aware of a prior definitive ruling or dismissal of the same issues presented in this request.

Respectfully submitted,

Nashua Teachers' Union  
AFT Local 1044

By Its Counsel:



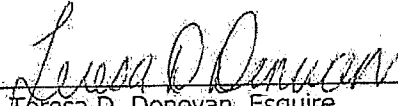
Teresa D. Donovan, Esq.  
AFT-NH  
553 Route 3A Ruggles IV  
Bow NH 03304  
603-223-0747

Dated: 6/18/08

**Certificate of Service**

I do hereby certify that a copy of the foregoing Agreed Statement of Facts has been forwarded via **email** to Attorney James McNamee, City of Nashua Corporation Counsel, 229 Main Street, PO Box 2019, Nashua, NH 03061-2019 on this 15<sup>th</sup> day of June 2008.

Date: 6/18/08

  
Teresa D. Donovan, Esquire

## ATTACHMENT A

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**From:** James Mealey  
**Sent:** Monday, January 07, 2008 9:14 AM  
**To:** Steve Bolton  
**Cc:** Graham, Donna; 'LovingS@ci.nashua.nh.us'; Bennett, Stephen  
**Subject:** Teacher Contract

Steve,

Would you be willing to sponsor the attached teacher contract? The only changes from the previous tentative agreement are the removal of the "evergreen" language, and the increase in elementary planning time goes into effect in 2008 instead of 2009.

Thank you for your consideration.

Jim Mealey

c. If a vote to reconsider prevails, the board may either:

(i) Take any action on the subject matter of the veto as is permitted by the board's rules upon reconsideration; or,

(ii) Upon motion of any member, vote to override the mayor's veto.

d. If the mayor's veto is overridden by affirmative vote of at least ten (10) members of the board, final passage over the veto shall become effective.

e. If the vote to override does not prevail, the board may then take any action on the subject matter of the veto as is permitted by the board's rules upon reconsideration.

f. Any vetoed item that is, upon reconsideration, amended and passed shall be subject to the mayor's veto in its amended form.

11. The NTU asserts that the term submission as used in the statute is when the cost items that need to be approved for tentative agreement are transmitted to corporation counsel for the City of Nashua or such other agent as may be designated by the city.

12. The City asserts that, since the board of aldermen must act as a body to receive and act upon matters that come under its authority and control, the cost items are submitted to the board when the resolution to approve those cost items receives its first reading at a full board meeting. The City has followed that practice since at least 1996.

13. The approval process for the most recent tentative agreement, taken by itself, presents the statutory interpretation issue sufficient for a ruling by the PELRB.

14. The chronology for the last tentative agreement reached between the NTU and BOE is as follows and is an illustrative example of the current process utilized.