STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Laconia Professional Fire Fighters Association, IAFF, Local 1153

v.

City of Laconia

Case No. G-0094-3
Decision No. 2011-148

Appearances: Richard E. Molan, Esq., Molan, Milner & Krupski, PLLC, Concord, New Hampshire for the Laconia Professional Fire Fighters Association, IAFF, Local 1153

Mark T. Broth, Esq., Devine, Millimet & Branch, P.A., Manchester, New Hampshire for the City of Laconia

Background:

The Laconia Professional Fire Fighters Association, IAFF, Local 1153 (Union) filed an unfair labor practice complaint against the City on September 21, 2010. The Union claims the City did not bargain in good faith in violation of RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations). In particular, the Union charges that during the relevant time period the parties reached a tentative collective bargaining agreement after the Union made concessions demanded by the City. The Union contends the City's subsequent wage proposal seeking a suspension of step increases in the upcoming year constitutes regressive bargaining, that the manner in which the City participated in negotiations was improper, and that the City improperly failed to vote on and approve the tentative

agreement. As relief, the Union requests that the PELRB: 1) find that the City has committed an unfair labor practice in violation of RSA 273-A:5 I (e); 2) order the City to honor its original proposal to settle the collective bargaining agreement; and 3) order the City to vote as necessary to ratify the contract in public.

The City denies the charge. According to the City, the parties did not reach a tentative agreement as claimed by the Union, the City Manager bargained in good faith, and the City Council acted in a manner consistent with its authority to review and approve or disapprove of negotiated cost items pursuant to RSA 273-A:3, I (c).

This case was initially scheduled for a December 2, 2010 adjudicatory hearing, but the parties subsequently agreed to submit the case for decision based upon stipulated facts and exhibits as well as written briefs. The parties' stipulated facts are reflected in finding of facts 1-15.

Findings of Fact

1. The Laconia Professional Fire Fighters Association, Local 1153 IAFF, AFL-CIO, CLC, is the certified exclusive representative of certain members of the Laconia Fire Department by virtue of their certification by the Public Employee Labor Relations Board.

2. The City of Laconia is a public employer as that term is defined by RSA 273-A:1, IX.

3. The City Council of the City of Laconia is the legislative body of the City as that term is defined in RSA 273-A:X. By operation of the City Charter, the Laconia City Manager is responsible for the administration of the City, including the negotiation of collective bargaining agreements.

4. The parties are signatories to a collective bargaining agreement which expired on June 30, 2010.

5. The parties met for the purposes of negotiating a successor agreement on January 21, 2010.

6. The Union's position is that the parties reached a tentative agreement which would be submitted to the City Council by the City Manager.

7. The City's position is that no tentative agreement was reached, as certain issues raised in negotiations remained unresolved.

8. On January 22, 2010, the Union's counsel sent a letter to the City Manager memorializing the Union's proposal. It is the Union's understanding that the proposal would be submitted to the City Council. A copy of this letter was submitted as a stipulated exhibit.

9. It is the Union's position that on or about February 15, 2010, the City Manager notified Union's counsel, by telephone, that the City Council had rejected their proposal citing two specific elements of the proposed agreement, namely a "me too" clause and a no layoff clause. The City Manager indicated that the remainder of the proposal was acceptable. The Union believed that the City Manager was speaking for the City Council.

10. It is the City's position that on January 25 and February 8, 2010, the City Manager reported to the City Council on the status of labor negotiations. Following those discussions, the City Manager informed the Union that the proposal contained in Attorney Molan's letter dated January 22, 2010 was unlikely to obtain City Council approval.

11. The parties next met for the purpose of negotiations on May 5, 2010 at which time the Union agreed to withdraw the proposed "me too" and no layoff clauses. City personnel specialist Paula Baumoel's handwritten notes from this bargaining session were submitted as a stipulated exhibit. These notes reflect the Union's withdrawal of the "me too" and no layoff proposals, and also reflect discussion about a $3,000 stipend and the New Hampshire

Retirement's review of the stipend with respect to the question of "earnable compensation." Ms. Baumoel's notes also reference the sum of $18,280.00 as the cost of projected step (wage) increases in the 2010-11 year.

12. On or about May 10, 2010, the City's representative contacted the Union indicating that they would now like the Union to consider eliminating step increases for the upcoming fiscal year.

13. On or about May 17, 2010, the Union indicated to the City that it was unwilling to consider further reductions in the proposed contract terms.

14. The parties met for further discussions on July 28, 2010. It is the Union's position that the City informed the Union that the City Council had rejected the proposed settlement and proposed that the Union forego step increases for the fiscal year 2011. It is the City's position that the Union was informed that the City Council would not approve an agreement which contained step increases for fiscal year 2011. The City admits that the Council did not take a recorded vote on the tentative agreement at that time.

15. On October 12, 2010, the City Council formally rejected the Union's last proposed agreement.

Decision and Order

Decision Summary:

There is insufficient evidence to prove the parties had reached a tentative agreement as claimed by the Union or that the City's conduct otherwise constituted a violation of RSA 273-A:5, I (e). Therefore, the Union's claims are denied and the complaint is dismissed.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5. *See* RSA 273-A:6.

Discussion:

The Union asserts the parties had reached a tentative agreement following the May 5, 2010 bargaining session and therefore the City's subsequent wage proposal seeking a suspension of step increases in the 2010-2011 year was improper. The parties have stipulated that the City Manager is responsible for negotiation of collective bargaining agreements but the City Council, as the local legislative body, has the statutory authority to review and act on negotiated cost items. If a tentative agreement had been reached on May 5, 2010, as the Union claims, then the next step in the collective bargaining process would normally involve the formal submission of negotiated cost items to the City Council for action pursuant to RSA 273-A:3, I (c). The Union also generally complains about the City Manager's and City Council's conduct during negotiations, including City Council activity as reflected in minutes from May and July, 2010 City Council meetings.

The stipulated record reflects that during the January to May 5, 2010 time period the parties communicated about negotiations and did bargain about a number of matters. However, the evidence contained in the stipulated record is insufficient to establish that the parties had reached a tentative agreement by the conclusion of the May 5, 2010 bargaining session.

For example, although the Union argues the City had agreed by February, 2010 that the parties would have an agreement if the Union's "me too" and no layoff proposals were withdrawn, the stipulations do not allow for this conclusion given stipulated Findings of Fact 9 and 10, which provide:

9. It is the Union's position that on or about February 15, 2010, the City Manager notified Union's counsel, by telephone, that the City Council had rejected their proposal citing two specific elements of the proposed agreement, namely a "me too" clause and a no layoff clause. The City Manager indicated that the remainder of the proposal was acceptable. The Union believed that the City Manager was speaking for the City Council.

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10. It is the City's position that on January 25 and February 8, 2010, the City Manager reported to the City Council on the status of labor negotiations. Following those discussions, the City Manager informed the Union that the proposal contained in Attorney Molan's letter dated January 22, 2010 was unlikely to obtain City Council approval.

These two stipulations do not quite align as to the outcome of negotiations in the event the Union's "me too" and no layoff proposals were resolved, and in fact they suggest the contrary, that the parties did not have a common understanding or agreement in this regard.

Other evidence in the record is likewise inadequate to establish the claimed tentative agreement. The notes submitted from the May 5, 2010 bargaining session are inconsistent with the finding of a tentative agreement in several respects. They reference a $3,000 or $4,000 stipend issue related to an earnable compensation question apparently pending before the New Hampshire Retirement System as well as suggestions on how this might be handled, but whether a tentative agreement had been reached is unclear. These notes also reference what the Board understands to be the $18,280 cost of step increases during the upcoming 2010-2011 fiscal year, a subject raised again by the City in a May 10, 2010 email submitted as a stipulated exhibit. This suggests to the Board, at least based on the record submitted for decision, that step increases during the upcoming year remained an unresolved topic of bargaining at the conclusion of the May 5, 2010 bargaining session.

The record otherwise lacks some of the indicia the Board would expect to find had a tentative agreement been reached as a result of the May 5, 2010 bargaining session or, for that matter, after the Union rejected the City's wage proposal to suspend step increase in the

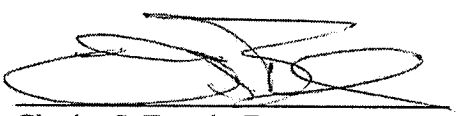
upcoming year. Such indicia might include, but not be limited to, joint documents from bargaining sessions (or at least more clear documentation than the May 5, 2010 notes submitted in this case) with "tentative agreement" or "TA" notations next to certain items with initials/signature and date entries by the negotiators. Although such indicia is not essential to proof of a tentative agreement, it does have the virtue of eliminating or at least minimizing disputes like the one presented in this case about the exact status of negotiations at certain points in time. Additionally, given all the evidence in the record, the City Council October 12, 2010 vote appears to be an accommodation to the Union. It does not change the Board's finding that there is insufficient evidence to establish that a tentative agreement was in fact reached during the time period in question.

As to the Union's complaints about how the City participated or conducted itself in negotiations, we note that the City Manager is entitled to consult with the City Council as bargaining proceeds, and the record is insufficient to establish any improper or bad faith conduct on the part of the City Manager or City Council in this regard. This is not a case where, for example, the City Manager has misrepresented her authority at the bargaining table, misled or deceived the Union at the bargaining table, or misrepresented the City Council's views about negotiations at the bargaining table. The record reflects there were a number of instances where the City Manager and the City Council informally reviewed the status of negotiations, but these consultations were intended as an aid to the bargaining process. These consultations were not conducted in a manner designed to hinder, delay, or frustrate bargaining, and they did not have that effect or impact according to the record submitted for decision. Additionally, in the circumstances of this case, the Board does not consider these consultations to be the equivalent of formal City Council action on cost items pursuant to RSA 273-A:3, I (c).

Based on the foregoing the Board finds there is insufficient evidence to establish that the parties had reached a tentative agreement by the conclusion of the May 5, 2010 bargaining session or that the City has violated the provisions of RSA 273-A:5, I (e). Accordingly the Union's claims are denied and the complaint is dismissed.

So Ordered.

Date: May 19, 2011.



Charles S. Temple, Esq.
Alternate Chair

By unanimous vote of Alternate Chair Charles S. Temple, Esq., Board Member Richard J. Laughton, Jr., and Board Member James M. O'Mara, Jr.

Distribution:

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