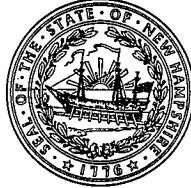


NH Supreme Court affirmed this decision on September 28, 2001, Slip Opinion No. 1999-554.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTER-LAKES EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

v.

INTER-LAKES SCHOOL BOARD

Respondent

CASE NO. T-0237:26
M-0739:4

DECISION NO. 1999-041

INTER-LAKES SUPPORT STAFF,
NEA-NEW HAMPSHIRE

Complainant

v.

INTER-LAKES SCHOOL BOARD

Respondent

APPEARANCES

Representing Inter-Lakes Education Association
and Inter-Lakes Support Staff, NEA-New Hampshire:

Steven Sacks, Esq.

Representing Inter-Lakes Support Board:

Bradley Kidder, Esq.

Also appearing:

Janet Paddleford, NEA-New Hampshire
Linda Allen, Inter-Lakes Education Association
Dollars Humiston, Inter-Lakes Support Staff Association
Connie Brown, Inter-Lakes School Board
Mary E. Gaul, NEA-New Hampshire

BACKGROUND

The Inter-Lakes Education Association, NEA-New Hampshire ("Association") filed unfair labor practice (ULP) charges against the Inter-Lakes School Board ("Board") on February 17, 1999 alleging violations of RSA 273-A:5 I (a), (e), (g) and (i) resulting from refusal to bargain, refusal to submit a fact finder's report to the legislative body in proper form and from a misleading statement in a warrant article. Relief sought included an "immediate emergency cease and desist order pending hearing to prevent irreparable harm." The Inter-Lakes School Board filed its answer on March 4, 1999.

Simultaneously, on February 17, 1999, the Inter-Lakes Support Staff, NEA-New Hampshire ("Support Staff") filed unfair labor practice charges against the Board alleging violations of RSA 273-A:5 I (a), (e), (g) and (i), alleging the same substantive violations as were cited, above, pertaining to the Association's complaint. This ULP, likewise, requested a cease and desist order pending hearing. The Board filed its answer on March 4, 1999. In the interim, the PELRB issued temporary cease and desist orders for each bargaining unit on February 22, 1999, the context of which are incorporated by reference. (PELRB Decision Nos. 1999-010 and 1999-011, retrospectively.) These matters were then consolidated and heard by the PELRB on April 1, 1999.

FINDINGS OF FACT

1. The Inter-Lakes School Board, by and through the Inter-Lakes School District, is a "public employer" of teachers and support staff personnel within the meaning of RSA 273-A:1 X.
2. The Inter-Lakes Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers and certain other professional employees employed by the Board. The Inter-Lakes Support Staff, NEA-New Hampshire, is the duly certified bargaining agent for organized support staff personnel employed

by the Board.

3. At the time of the filing of the Association's ULP, the Association and the Board were operating under *status quo* conditions of a CBA which expired on August 31, 1998. At that same time, the Support Staff bargaining unit was negotiating for its first CBA and, thus, was operating under *status quo* conditions as the result of a bargaining agent being certified to represent it in collective negotiations.
4. In the matter of negotiations for a successor contract for the Association's bargaining unit, these negotiations were lengthy and involved both mediation and fact finding. The fact finder's report, dated November 17, 1998, was accepted by the Association and rejected by the Board (See paragraph 1 of complaint and answer.) In furtherance of the requirement to present the fact finder's report to the legislative body, i.e., the district meeting, the Board caused to be "prepared and posted three separate warrant articles dividing the fact finder's report into three separate parts for three separate votes before the legislative body on March 3, 1999." (See paragraph 4 of complaint and answer and Exhibit No. 1 to Association ULP.) Article No. 1 of the warrant involved the fact finder's recommendations on "evaluations." Article No. 3 of the warrant involved the fact finder's recommendations on "transfers" and "duration." Both Articles 1 and 3 were accompanied by "advisory only" and "not recommended by the Board" commentaries internal to the warrant article. Article 3 further said that the topics "are not cost items, but which are language items that would affect the rights and authority of the Inter-Lakes School Board vis-à-vis its professional teaching staff. (Advisory only.) (Not recommended by the Board.)" Article 2 of the warrant involved cost items only and was described as "not recommended" by the Board.
5. In the matter of the Support Staff negotiations, those negotiations were also lengthy and involved the final step of a fact finder's report and recommendations. That report was rejected by both the Support Staff and the Board. In the course of preparing the fact finder's report for review and action by the legisla-

tive body, the Board "prepared and posted two separate warrant articles dividing the fact finder's report into two parts for two separate votes before the legislative body." (See paragraph 2 of complaint and answer and Exhibit No. 1 to Support Staff ULP.)

Warrant Article 4 asked the legislative body to vote on five non-cost items of the fact finder's report, said items being identified only by number and not by content, to wit:

To see if the District will vote to approve the Fact Finder's recommendations dated January 15, 1999, with the Inter-Lakes Support Staff Association regarding Issues #1, #5, #6, #7 and #8, which are not cost items, but which are language items that would affect the rights and authority of the Inter-Lakes School Board, vis-à-vis its support staff. (Advisory only.) (Not recommended by the Board.)

(See paragraph 4 of complaint and answer and Exhibit No. 1 to the ULP.) Article 5 asked the legislative body to vote separately on cost items and was "not recommended" by the Board. (See paragraph 7 of the complaint and answer and Exhibit No. 1 to the ULP.)

DECISION AND ORDER

These cases were consolidated for hearing because they involve two bargaining units of the same public employer. Conveniently, they also involve the same issue, namely, must a fact finder's report be submitted to voters of the legislative body *in toto* or may the provisions of the fact finder's report be separated into various warrant articles by the preparer of the warrant. Secondly, there is an issue as to the propriety of using the warrant as a proponent document, through the acts of the scrivener, to advocate for the approval or rejection of a given warrant article or articles. We address these issues within the parameters of RSA 273-A.

The prevailing authority which we find suggests, if not demands, that the fact finder's report be submitted to the legislative body in a unified format, as one package, to be approved or rejected by the legislative body as a package. Notwithstanding that the public employer presented Superior Court authority dating back to 1987 and that the Association referenced a 1985 PELRB case, both cases being part of the parties' pleadings, we believe more

current Supreme Court decisions to be dispositive of the issues presented by these two cases.

We know from Appeal of Derry Education Association, 138 N.H. 69, 71 (1993) that "the plain language of the statute requires that the entire fact finder's report be submitted to the legislative body.... We do not agree, however,...that the legislative body's vote on non-cost items can bind either the school board or the association." Even when RSA 273-A:3 I (b) was contrasted to RSA 273-A:12 in Derry, *supra*, p. 73, the Court held that "the fact finders' report must be submitted in its entirety to the legislative body for review, but that the legislative body may not bind the parties by a vote on non-cost items." (Emphases added.)

We see nothing to suggest that "entirety" means anything else than the "total package" and for that matter, "in one piece." It does great disservice to RSA 273-A and the collective bargaining process envisioned therein to say that the fact finder's report may be separated into several pieces and then submitted to the legislative body in those pieces. By the time parties at the table require the services of a fact finder and go through that process, including the efforts of the fact finder in preparing a report to be as acceptable as possible to both parties without being unreasonably objectionable to either, the edges on the issues discussed in that report have been honed down considerably. The fact finder's report should already represent a reasonable prudent person standard and, inevitably, is presented as a package, with the fact finder having disclaimed as much by indicating that strong recommendations in some areas of the report have been balanced by weaker recommendations or rejections of other issues elsewhere in the same report. This being the case, it would not be prudent to permit the contents of the fact finder's report to be voted on by "bunching" issues, or, for that matter, on an issue-by-issue basis. The report is intended as a package and must be addressed by the voters as an entity. [(See Fall Mountain Teachers Association, PELRB Decision 1997-118, p. 7 (December 19, 1997)]. Anything less would be equivalent to a renegotiation of certain issues by voters at the district meeting, with rejected items being sent back for further negotiations. RSA 273-A:12 IV. This would inappropriately shift the balance of power and would "unlevel" the "playing field" in favor of the employer. Appeal of Franklin Education Association, 136 N.H. 332, 337 (1992).

Lastly, under Appeal of Alton School District, 140 N.H. 303, 311 (1995), there is a stated aversion of legislative bodies becoming involved in the bargaining process for, if they were to do so, "they could determine in the first instance some of the most

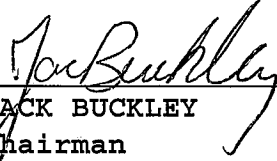
significant terms of the teachers' employment. This would frustrate the entire collective bargaining process set forth in RSA Chapter 273-A." We find this to be further evidence that there never was any expectation that a fact finder's report could be submitted to the legislative body in a piecemeal fashion. The role of the "legislative body of the public employer has but two functions in the collective bargaining process: (1) approving or rejecting cost items submitted to it, RSA 273-A:3 II (b); and (2) accepting or rejecting a fact finder's report, RSA 273-A:12 III." Alton, supra. Permitting a legislative body to address and vote on a fact finders' report in any more detail or specificity than as a total package is violative of this standard set forth in Alton, and is an unfair labor practice violative of RSA 273-A:5 I (e) and (g).

Secondarily, we caution the parties that the warrant is designed and intended to be a descriptive and informative document to aid the voters in determining how they should vote. In Tucker v. Town of Goffstown, Hillsborough ND, Docket No. 97-E-103 (March 23, 1997), Justice Lynn said the "purpose of the warrant is to notify townspeople of the items to be discussed at town meeting" and "does not need to be precise." This suggests to us that a warrant should not be an advocacy or proponent document. That can be left to the literature available for meeting attendees at the door or distributed before the meeting. Likewise, describing subjects to be voted upon merely by numbers, as was the case in Warrant Article 4 (Finding No. 5), does a disservice to the purpose for generating and posting the warrant articles.

The conduct of the public employer in separating various components of the fact finder's report for voting at the district meeting was violative of RSA 273-A:5 I (e) and (g). The public employer, be it Board or District, shall CEASE and DESIST from such conduct forthwith.

So ordered.

Signed this 14th day of June, 1999.


 JACK BUCKLEY
 Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.