NH Supreme Court affirmed this decision on May 22, 2000, Slip Opinion No. 98-635.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER WATER WORKS, UNITED STEELWORKERS OF AMERICA, LOCAL 8938 Complainant v. CITY OF MANCHESTER, WATER WORKS Respondent	CASE NO. M-0545:20 DECISION NO. 1998-052

APPEARANCES

Representing United Steelworkers of America, Local 8938:

Vincent Wenners, Esq., Counsel

Representing City of Manchester, Water Works:

David Hodgen, Chief Negotiator
Daniel Muller, Esq.

Also appearing:

Thomas M. Bowen, Manchester Water Works
Philip Croasdak, City of Manchester
Michael D. Roche, USWA Local 8938
Michael T. Olmstead, USWA Local 8938

BACKGROUND

The United Steelworkers of America, Local 8938 (Union) filed unfair labor practice (ULP) charges against the City of Manchester (City) on February 27, 1998, alleging violations of RSA 273-A:5 I (e) resulting from the failure and refusal of City

negotiators to submit cost items associated with a tentative agreement to the legislative body, namely, the Board of Mayor and Aldermen (BMA) in the case of the City of Manchester. The City filed its response and a motion to dismiss on March 16, 1998. This matter was then heard by the PELRB on May 14, 1998 after an intervening continuance sought by and granted to the parties. The record in this matter was closed on May 14, 1998 at the conclusion of closing arguments by the parties.

FINDINGS OF FACT

1. The City of Manchester, by and through the Manchester Water Works which employs personnel in the operation of that facility, is a public employer within the meaning of RSA 273-A:1 X.

2. The United Steelworkers of America, Local 8938, is the duly certified bargaining agent for permanent full-time non-supervisory employees at Manchester Water Works who have completed their six (6) month probationary period.

3. The Union and the City are parties to a collective bargaining agreement (CBA) for the period January 1, 1995 through December 31, 1997 and which continues thereafter under the *status quo* doctrine pending negotiation of a successor agreement. During the closing months of 1997, the parties engaged in such negotiations which concluded with certain agreed upon changes to the prior CBA, as memorialized by a tentative agreement dated January 5, 1998 by Union negotiators and dated January 9, 1998 by City negotiators. (Exhibit A to ULP.) Section II of the tentative agreement (TA) reads, "The parties agree to present this tentative agreement to their constituents for ratification."

4. On January 13, 1998, City Negotiator David Hodgen sent a memo to City Clerk Leo Bernier asking to be scheduled for a "strategy session with the Board of Mayor and Aldermen after the regular session on January 20, 1998 to discuss Union negotiations." (Exhibit B to ULP.) Hodgen testified that the sequence of constituent approvals coupled with the need for the City's Human Resources Department to

cost the tentative agreement (see City Ex. No. 8) caused the parties to miss the first meeting of the BMA in January. The first next meeting of the BMA at which the contract proposal could be considered occurred on January 20, 1998. On January 15, 1998, Hodgen sent a memo to the BMA on the costs and benefit changes associated with the City's TA with the Union as well as those changes associated with the City's TA with the Teamsters for the airport bargaining unit. (Exhibit A to City's answer.) By memo of January 20, 1998, Mark Hobson, Human Resources Director, sent Hodgen the cost estimates for the January 1, 1998-December 31, 1998 CBA at the Water Works. The Water Commissioners also formally approved the contract proposal on January 20, 1998 so that it could be considered by the BMA at its evening meeting of the same date. (City Ex. No. 1.)

5. At his January 20, 1998 meeting with the BMA in its non-public "strategy session," Hodgen presented two tentative agreements for approval, the Water Works CBA which is the subject of these proceedings and the contract for airport employees who are represented by the Teamsters. Thomas Bowen, Director of the Water Works, also attended. Both Bowen and Hodgen testified that the Water Works TA was discussed by the BMA in their "strategy session" but that no vote was taken and no minutes kept. At the conclusion of the "strategy session" the BMA returned to its formal, public agenda. At that time, Hodgen advised the BMA "that a motion was in order to lay a proposed agreement for a unit at the Airport discussed in the strategy session on the table for ratification pursuant to Rule 26 of the Board." Thereafter the BMA voted to ratify the Teamsters Airport agreement and then adjourned. No action was shown as having been taken in the minutes of the BMA meeting of January 20, 1998 relative to the Water Works TA. (City Ex. No. 3.)

6. Hodgen and Bowen both testified that the actions of the BMA on January 20, 1998, relative to the status of the TA of the Water Works CBA, was consistent with how such approvals or rejections have

been handled by the BMA in the past. Hodgen said, the BMA "have never voted to reject a TA or proposed agreements in the reconvened public session since I went there in 1988." Cited as examples were an earlier TA calling for a 1.5% wage increase on January 1, 1998 (City Ex. No. 4) and the fact that the rejection was not mentioned in the minutes of the BMA on December 2, 1997 (City Ex. No. 5). Similarly, the Water Commissioners approved an earlier three year contract on December 20, 1995 (City Ex. No. 6) but its rejection was not mentioned in the minutes of the meeting of the BMA on January 16, 1996 (City Ex. No. 7).

7. According to Bowen, Hodgen told Union President Michael Roche that the proposed Water Works CBA was not accepted by the BMA on January 20, 1998, at the conclusion of the BMA meeting of that date as Roche was walking down the stairs, ahead of but within earshot of Hodgen. Charles McLaughlin of the Steelworkers learned of the rejection and called Hodgen on January 22, 1998. Hodgen then made a new contract suggestion to him. Hodgen spoke to Roche on January 23, 1998, again conveying the same new contract suggestion he had discussed with McLaughlin. (City Ex. No. 11.) Neither the testimony nor the exhibit was refuted.

BACKGROUND

We examine this case from two prospectives: whether the action by the City negotiator and the BMA violated Section II of the TA which called for the parties to present it to their constituents for ratification (Finding No. 3) and/or whether the manner in which the BMA considered and acted (or failed to act) on the TA violated the statutory obligations found in RSA 273-A:3 II and 273-A:5 I (e).

The record in this case clearly demonstrates that the parties complied with Section II of their tentative agreement, *i.e.*, the TA was presented to their constituents for ratification. The "constituents" for the City's negotiating team were the Water Commissioners as to wording and the BMA as to funding. For purposes of this case, that presentation occurred at both the Commissioners and the BMA meetings on January 20,

1998. Also for purposes of these proceedings, presentation for "ratification" has been construed to mean approval or rejection. Given the foregoing, we find no violation of either the statutory or self-imposed (by virtue of the TA) obligations to present the package for constituent ratification.

We are more concerned, however, with what the BMA did with the TA when it was presented to them in their strategy session on January 20, 1998. RSA 91-A:2 I (b) clearly exempts "strategy or negotiations with respect to collective bargaining" from being a "meeting" within the right-to-know provisions of that chapter. There was no impropriety in calling the "strategy" session to discuss the acceptability of the TA with the Union. This is well within the contemplation of RSA 91-A:2.

RSA 91-A:3 provides that "no ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved in executive session except as provided in paragraph II." The BMA adhered to this mandate, too, as exhibited by the manner in which they approved the Teamsters/Airport contract. There is no record of their having done anything, however, with the Water Works contract. But, that really is not an accurate description of what did happen in the executive or "strategy" session. The BMA *did* take an action; they tacitly and without a formal vote agreed not to approve the Water Works tentative agreement. This must have been the case because it is what Hodgen reported to Roche later on the evening of January 20th. Hodgen, if inaccurate in his report to Roche, was engaging in bad faith bargaining, something for which there is no evidence. In the alternative, the BMA, in rejecting the proposed CBA in executive session and not confirming its action subsequently in its public session or by having kept minutes of its executive session as required by RSA 91-A:3 III, failed to record an action which it took, namely, the rejection of the proposed CBA. It is this second scenario which we believe occurred.

We believe the "non-action" of the BMA in executive session, whether consistent with former procedures used for CBA approvals or not, transcends both the spirit and intent of RSA 273-A:3 II and 273-A:5 I (e). The purpose of these sections of Chapter 273-A is to assure that the legislative body has an opportunity to consider, speak on and vote on the proposed contract settlement. Implicit in this process is conveying the action taken by the legislative body back to the parties so they might determine what

their next step(s) might be down the road to achieving a contract settlement. RSA 273-A:3 II (b) contemplates that a contract may be rejected because it says, in pertinent part, "if the legislative body rejects any part of the submission..." That rejection becomes part of the *political* process contemplated by Chapter 273-A. That process is ineffectual if it fails to convey either an acceptance or rejection back to the bargaining unit. Likewise, in the case of a rejection, that information falls short of its full usefulness if the item(s) rejected and the margin of rejection are not made known to the employee negotiators who may then want to restructure their next proposal in the bargaining process.

For these reasons, we find that the City failed to adhere to the mandates of RSA 273-A, as cited above, by the way it decided to reject the Water Works CBA and by the way this information was recorded (or failed to be recorded) and conveyed to Union negotiators. We find this to have been violative of RSA 273-A:5 I (e) and direct compliance with the requirements for specificity and disclosure, consistent with RSA 91-A, in future actions accepting or rejecting proposed tentative agreements.

So ordered.

Signed this 24th day of JUNE, 1998.

JACK BUCKLEY
Alternate Chairman

By majority vote. Alternate Chairman Jack Buckley and Member E. Vincent Hall voting in the majority. Member William F. Kidder voting in the minority.