

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW
HAMPSHIRE, INC.

Complainant :

CASE NO. S-0339

and :

DECISION NO. 780041

MELDRIM THOMSON, JR., ET AL

Respondent :

APPEARANCES

Representing the State Employees' Association:

Richard Molan, Asst. Exec. Director
Robert Clark, Esquire, Counsel

Representing Governor Meldrim Thomson, Jr.:

David Marshall, Esquire, Counsel

BACKGROUND

This is a case arising out of unfair labor practice complaints brought by the State Employees' Association of New Hampshire, Inc. against Meldrim Thomson, Jr., Chief Executive Officer of the State of New Hampshire and the State Negotiating Committee. The complaint originally stated several unfair labor practice complaints most of which have been withdrawn due to subsequent events. The final complaint, stated in the complaint as #19 complains against the actions of Governor Thomson.

Basically, the facts are not in dispute. The SEA, State Negotiating Committee and State Negotiator began negotiations on "cost items" on or about January 3, 1978 and attempted to reach agreement on a contract between State employees and the State through its various departments. When no agreement could be reached by the end of March, impasse was declared and the parties proceeded with impasse resolution procedures set forth in RSA 273-A:12. When mediation and fact-finding failed to produce agreement, the factfinder's final recommendations were submitted to the General Court both according to statute and in House Bill 67 which was introduced to provide necessary funding and authorization to implement the factfinder's report. The SEA at this point accepted the factfinder's recommendations and urged a 6% general wage increase. The State Negotiating Committee proposed no current wage increase but further consideration of a retroactive wage increase at the commencement of the 1979 regular session of the General Court. As indicated by paragraph 19 of the complaint, on June 29, 1978, the Governor proposed to the Legislative leadership that a 6% general wage increase be adopted effective October 1, 1978. On July 6, 1978 the Governor reiterated that proposal in his veto message. The State Negotiating

Committee has admitted that the proposal for a 6% general wage increase effective October 1, 1978 was not made to the State Employees' Association in the course of bargaining or otherwise.

The complaint made by the State Employees Association is that new proposals can only be made to the other party during collective bargaining and that the action by the Governor in making a proposal in a veto message or otherwise is improper and an unfair labor practice under RSA 273-A:5, I(e) and (g). The State Negotiating Committee and the Governor deny these allegations.

A hearing was held by the PELRB concerning this complaint on August 30, 1978. The parties basically agreed on the facts as stated above and narrowed the issue as stated above. The parties have submitted additional materials which have been considered by the PELRB.

FINDINGS OF FACT

The Board has considered the arguments of counsel and the facts as presented and cannot find that the action by Governor Thomson in his veto message or in his conversations with Legislative leaders provides the basis for an unfair labor practice either as a matter of fact or as a matter of law.

First, as a matter of fact, it appears that the juncture in the process at which the conversations and/or the message were made was a point in the midst of the "legislative process" provided for in RSA 273-A:12 IV which states "If the impasse is not resolved following the action of the legislative body, negotiations shall be reopened." (emphasis added.)

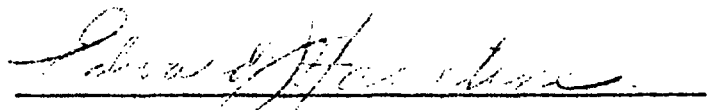
On the State level, the legislative process and legislative action are lengthy and not confined to one step. First, the Legislature receives the fact-finder's report or considers legislation to implement that report as was done in this case. Then, if the legislation is passed, the legislation goes to the Governor who, exercising his constitutional prerogatives to sign or veto a bill, considers the legislative action. If, as occurred in this case, the Chief Executive vetoes the bill, he is required to return the bill to the Legislature with an explanation. His explanation should provide the Legislature with his reasons so that he will be understood and, assumably, should contain his best explanations so that he can perform his function and have his veto sustained if he so desires. After the Legislature receives the Governor's veto message, it then reconsiders the legislation in light of his reasons for rejecting it. It then can override the veto or sustain the veto. In this particular case the veto was overridden at the Governor's urging after subsequent events occurred which are not the subject of this proceeding. In any event, the Governor, when he discussed the legislation with the legislative leadership and when he made his veto message, was exercising his constitutional function and providing his reasons for rejecting the bill. To say that he could not tell the Legislature what he would accept or seek to compromise the matter with them would be to tie his hands, something this Board does not have the authority to do since his actions were taken in performance of his constitutional responsibility. However, the message was given in the midst of the legislative process and until action was taken on the veto, the impasse resolution by the legislative body was not resolved. Therefore, under the statute quoted, negotiations were not required to be reopened at that point since legislative action to resolve the impasse was not completed. Thus, as a matter of fact, the Governor was not required to reopen negotiations.

As a matter of law, the Governor's action was taken as Chief Executive Officer and this Board cannot supersede the Constitution in setting the procedures to be followed. In any event, the Board finds that the statement to the Legislature was not a counter-proposal but was rather an explanation made by the Governor in exercising his constitutional prerogative as Chief Executive explaining to the Legislature his veto and seeking to have it sustained, which is his constitutional right and responsibility. Since it was not a counter-proposal for negotiations as a matter of law, it did not need to be taken up at the bargaining table at the juncture when made.

The employer, State Negotiating Committee, has moved to dismiss the complaint because the matter is moot. While in fact the matter might have been moot on this occasion because the Governor subsequently urged an override of his veto and the Legislature complied, it is important that this matter be addressed as a guide for future actions by Governors. The Board therefore has made its decision on the merits of the case and denies the Motion to Dismiss.

ORDER

The Board finds that as a matter of fact and as a matter of law the unfair labor practice complaint and proof presented at the hearing by the SEA fail to establish sufficient cause to find an unfair labor practice. Therefore the request that the Board sustain an unfair labor practice complaint against Governor Thomson is denied.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Members Allman, Cummings and Moriarty also present. All concurred. Member James C. Anderson took no part in the hearing or consideration of this matter. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.

DATE: September 26, 1978