



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

\*\*\*\*\*
ORFORD SCHOOL DISTRICT
Cross-Petitioner
v.
ORFORD TEACHERS ASSOCIATION, NEA-NH
Respondent
\*\*\*\*\*

CASE NO. T-0206:11
DECISION NO. 87-41

DECISION AND ORDER

The Orford School District on June 8, 1987 filed a request that PELRB exercise its discretion pursuant to Board Rule Pub 305.03(b) to direct that the factfinder's report in the above matter may be received and used notwithstanding the fact that it was not made within the prescribed time in accordance with Board rule.

PELRB held a hearing on June 9, 1987 with all parties represented. After listening to testimony, the following oral decision was issued:

"The preliminary order of the PELRB dated June 1, 1987 (Dec. 87-40) is hereby vacated and the Board rules that the Factfinder's report issued May 11, 1987 is valid under RSA 273-A and Rule Pub 302.03(b). Having considered the circumstances, the Board directs a waiver of the 30-day rule."

Full decision and rulings on requests for findings and rulings to issue forthwith.

Signed this 9th day of June, 1987.

Robert E. Craig
ROBERT E. CRAIG, Chairman

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard W. Roulx and James C. Anderson present and voting. Also present, Board Counsel, Bradford E. Cook, Esq., and Executive Director, Evelyn C. LeBrun.



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NEA - NEW HAMPSHIRE
PETITIONER
v.
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RESPONDENT
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APPEARANCES

For the Orford Teachers Association

James Allmendinger, Esquire, Counsel
John Fessenden, Uniserv Director
Olga T. Valencia, President, Orford Teachers Association

For Orford School District

David H. Bradley, Esquire, Counsel
Hugh Watson, Superintendent of Schools

BACKGROUND

This case comes before the Public Employee Labor Relations Board as a result of negotiations concerning a new contract for teachers in the Town of Orford. Having been unable to agree upon a new contract, the parties entered the factfinding process required by RSA 273-A:12. On March 3, 1987, the Association and School District appeared before a duly appointed factfinder in accordance with statute. The factfinding hearing took one day, concluding on March 3, 1987. After approximately thirty (30) days, with no factfinding report having been received, the parties independently, and through the offices of the Public Employee Labor Relations Board, inquired concerning the factfinding report. Assured that it would be forthcoming soon, they continued to inquire. No factfinding report was received until one date May 11, 1987, sixty-nine (69) days after the hearing. was sent to the School District Superintendent of Schools. One copy was sent to him for delivery to the President of the union. After opening the factfinder's report and studying its contents, the full-time Uniserv Director of NEA-NH advised the union to consider the report and protest the fact that the report had not been issued within thirty (30) days as required by Board rule 305.03 (b) which reads, in part, "... factfinder shall make a report of findings of fact to the parties and to the Board, together with his recommendations for resolving each of the issues remaining in dispute, within thirty (30) days of his appointment unless the Board otherwise directs; and the parties shall notify the Board of their acceptance or rejection of the factfinder's report within ten (10) days after the report is filed." The teachers considered the report and voted not to adopt the report. The School Board studied the report and accepted it, scheduling a School District meeting to implement the report.

The Board received a letter dated May 27, 1987 from the Uniserv Director requesting that the PELRB rule the report invalid because more than thirty (30) days had passed prior to rendering the report.

By preliminary decision dated June 1, 1987, the PELRB ruled the factfinder's report invalid based on its rules, acting on the letter request of the NEA Uniserv Director. However, the Board stated that if either party wished to be heard on the matter, the Board would convene a special hearing to consider the matter. A cross petition was filed by the Orford School District through its counsel, which petition objected to the PELRB decision and questioned the desirability of a ruling which would automatically declare late factfinders' reports invalid. The petition stated several reasons for objecting to the ruling of the Board, among them the fact that no prejudice had been worked on the Association because of the late report, the union should not be given "two bites at the apple" by being allowed to study a report prior to objecting to its timeliness, the automatic and validity position adopted by the Board was inconsistent with its rules which allowed for the Board to direct a longer time period if it found such action desirable, and the requirement of strict adherence to time periods might create awkward precedent for the Board. In addition, the School Board stated that by invalidating the factfinder's report, the contract resolution process would be lengthened, a result contrary to the spirit of the rule and statute.

Because of the objection filed, the PELRB held a hearing at its offices in Concord on Tuesday, June 9, 1987 at 2 p.m. In addition to the parties, the Board received a memorandum and oral testimony from Ted Comstock, Director of Labor Relations for the New Hampshire School Board Association. At the hearing, testimony from the union raised an objection by the union to the alleged incomplete nature of the factfinder's report. This led to a request to amend the complaint of the union to include a claim of incompleteness as an additional reason for invalidating the factfinder's report.

#### FINDINGS OF FACT AND RULINGS OF LAW

The Board finds that the factfinder's report was in fact late. This is agreed by all parties. There was debate at the hearing as to the reason for the late report, hearsay evidence being offered as to various problems alleged to have delayed the factfinder in issuing his report. The Board finds these facts to be irrelevant under the circumstances of this case since neither party is alleged to have had any involvement in making the factfinder's report late and the factfinder has not requested the extension of time.

At the outset, the Board would note that this matter comes before it without the aid of formal petition or complaint. The Board will not normally rule on letter requests but has deemed this matter of suitable importance to waive the formalities for raising matters before the Board.

The Board will not inquire into the completeness or incompleteness of a factfinder's report, once issued. It is up to the parties to determine the desirability of a factfinder's report in their action to accept or reject. Additionally, because of the procedural posture of the matter before the Board, the Board will not accept an amendment of the complaint of the Orford Teachers Association in this case, restricting its inquiry to the effect of the late report and whether to waive the time requirement.

Rule 305.03 (b) does not require a request for extension come only from the factfinder. Certainly, a factfinder could request an extension if the factfinder has been unable to render a decision and there is sufficient reason

to allow a delay in the interest of economy of cost and time. The Board is not required to grant such an extension and can discipline factfinders by ordering that they not be paid, refusing to appoint them on subsequent occasions or refusing to allow an extension. This case does not involve such a request, however. This is a case in which neither party objected to the delay in any formal sense until after the factfinder's report was received, some sixty-nine (69) days after the hearing. Indeed, the Board finds that both parties were aware of and had considered carefully the contents of the factfinder's report before any objection was received.

Under these circumstances, the Board must inquire as to whether the cause of good labor relations and/or the conduct of the parties argues in favor of directing the consideration of the factfinder's report as a valid report, notwithstanding the amount of time which has passed since the hearing. This would require a waiver of the time limit. The Board has this authority under its rules.

A threshold inquiry which the Board has made is whether either party would be prejudiced by allowing the consideration of this factfinder's report. There was much testimony at the hearing as to the prejudice which would be suffered by the union in this case because subsequent settlements in other school districts have provided additional information which could be provided by the union to the factfinder as a guide to his decision. The Board finds this argument not only unpersuasive but feels it misses the point. Factfinding is to be made based on all of the facts before the factfinder at the time of the hearing and the factfinder is required to make his decision as expeditiously as possible, within thirty (30) days, except when otherwise directed by the Board. The allegations of prejudice based on those reasons set forth at the hearing do not persuade the Board.

Indeed, in this case, the most expeditious way to enforce the contract process contemplated by RSA 273-A:12 is to allow consideration of this factfinder's report notwithstanding its lateness. To do anything else would allow parties to receive a factfinder's report, consider it, and only then decide whether to assert its invalidity because of delay. The statute does not contemplate the opportunity to select additional factfinding in this way. If a party seeks to assert the delay as a reason to set aside factfinding, such an assertion must be made prior to receipt and/or consideration of the report. In other words, a party must object to the tardiness of a report prior to receipt of that report or prior to opening the report and reading it or the party will be deemed by the Board to have waived the objection. Even when objecting, if the Board finds sufficient reason to allow the factfinding process to continue, notwithstanding the lateness, it may direct a longer time period under its own rules. Obviously, both parties can agree to accept a factfinder's report as valid notwithstanding time periods.

By making this decision, the Board does not wish to eliminate the thirty (30)-day rule. The Board will consider carefully disciplinary actions to take against factfinders who have not complied with that requirement, as stated above. The ruling herein allows parties to expect to rely on the thirty (30)-day rule. When, as here, there is no prejudice to the parties because of a delay, the Board directs the consideration of the report and waiver of the rule. This is not an automatic result, but occurs only after hearing the facts and circumstances. Therefore, the Board rescinds the earlier decision and issues the following order based on the facts herein.

The union submitted request for findings. The Board rules on them as follows:

Request numbered 1, 2, 3, 4, 5 and 7 are granted.

Request 6 is granted insofar as the fair and intelligent enforcement of the rules of the Board, based on all the facts before the Board are essential to the orderly administration of RSA Chapter 273-A.

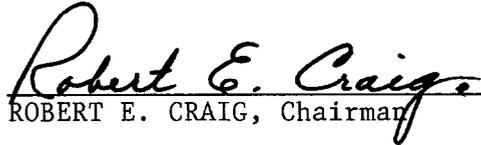
Requests 8, 10 and 11 are denied.

Request 9 is denied as irrelevant to the case at hand.

ORDER

The Board issues the following order:

The preliminary order of the PELRB dated June 1, 1987 is vacated and the Board rules that the factfinder's report issued May 11, 1987 is valid. Under RSA 273-A and Board rule 302.03 (b), having considered the circumstances, the Board directs a waiver of the thirty (30)-day rule.

  
ROBERT E. CRAIG, Chairman

Signed this 23rd day of June, 1987.

Also present and voting members Roulx and Anderson. All concurred. Also present Board Executive Director Evelyn C. LeBrun and Board Counsel Bradford E. Cook.