State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GOVERNOR WENTWORTH SUPPORT STAFF ASSOCIATION/NEA-NEW HAMPSHIRE Complainant	:	CASE NO. M-0518:6
v.	:	DECISION NO. 88-38
GOVERNOR WENTWORTH REGIONAL SCHOOL BOARD NO. 49 Respondent	:	

APPEARANCES

Representing Governor Wentworth Support Staff/NEA-NH:

W.B. Cummings, Director Region I

Representing Governor Wentworth Regional School Board No. 49:

Bradley F. Kidder, Esq., Counsel

BACKGROUND

The Governor Wentworth Support Staff, NEA-NH filed a complaint with the Board (PELRB) charging that the Governor Wentworth School Board (hereinafter "School Board") committed an Unfair Labor Practice by refusing to comply with an Arbitrator's award regarding the reclassification or "grandfathering" of certain staff employees.

On January 14, 1987, the parties, in conjunction with an agreement with regard to a collective bargaining agreement, agreed to a memorandum of understanding which provided in part, that the "grandfathering issue" would be resolved by means of the parties retaining Dr. Alan McCausland to act as a third party neutral to rule on the classification of three employees in the unit. Further, the parties agreed that Dr. McCausland could use any means of investigation and analysis which would enable him to reach a decision in the matter. Following the conclusion of those negotiations, Mr. Cummings, on behalf of the Association, contacted Dr. McCausland in February of 1987. A hearing date was set by Dr. McCausland for June 4, 1987 at which time the parties, represented by Mr. Cummings for the Association and Dr. Alan Perrin for the School Board, conducted a hearing on the matter of the "grandfathering issue". The parties entered into a stipulation at the hearing agreeing that their respective parties would be bound by the decision of Dr. McCausland.

Dr. McCausland rendered a decision in this matter on June 23, 1987 wherein he ordered that these employees be reclassified retroactively to September 1, 1985 and that they be compensated for the difference in pay. On July 14, 1987, the School Board met and upon motion of Dr. Murray, voted to reject Dr. McCausland's decision. Further, at this meeting, Dr. Murray made a motion seeking the Board's agreement that he had acted improperly without Board authority and had exceeded his authority in entering into the subject Memorandum of Understanding. The motion did not carry.

The underlying facts in this matter are not in dispute, but rather the interpretation and connotations applied to the facts as they unfold by the parties.

DISCUSSION

The position of the Association is that the parties entered into a binding agreement with regard to settling the so-called "grandfathering issue". The Association further stated that based upon the representations and the written ground rules of negotiations, that they believed Dr. Murray and Dr. Perrin to be the legitimate agents of the School Board. These agents had the ability to enter into an agreement. The agreement reached in the Memorandum of Understanding was carried out by Dr. McCausland in that no objection or defense was raised by the School Board's representative during those proceedings as to the legitimacy, appropriateness, or advisory nature of the neutral's decision.

The School Board argues that since the Memorandum of Understanding was never presented to the full School Board by either Dr. Murray or Dr. Perrin, that is is unenforcable. Further, the School Board indicates the fact that no School Board member was aware of the hearing and that no witnesses were produced on its behalf at the hearing, that the process is fatally flawed. The School Board also argues that the parties did not contemplate a process or decision such as was entered into and rendered by the neutral under the terms of its agreement, or by the conduct of the parties thereafter.

FINDINGS OF FACT
RULINGS OF LAW

The PELRB is constrained in interpreting cases in part by the public policy concerns enunciated by the Legislature in enacting the Act, not the least of which is to promote harmonious labor relations between the parties, Chapter 490:1, Laws of 1975. The PELRB finds, and has found, that the chief element in meeting this stricture of law or this prescription of public policy, is the requirement that parties deal with each other in a good faith and "clean hands" manner. The parties must be obligated to deal in this manner so that they may trust one another's representations, in negotiations, and in enforcing their agreements. Failure by one or both of the parties to this process to adhere to these basic principles of fair dealing renders not only the process fruitless, but frustrates the basic tenets of the Act. Any other view would permit a party to collective negotiations to otherwise deceive and act in bad faith to disadvantage the other side. It would render the parties' representations at the table meaningless and promote disharmony in the work place.

In the dynamics of collective bargaining, the basic understanding that must be reached by the parties is that they must be able to act upon reliance of the other's representations and agreements. It is within these parameters that the PELRB has examined this case.

The parties to this dispute were involved in negotiations in an effort to reach a new agreement in January of 1987. Whether or not the issue of the "grandfathering issue" was dealt with in a formal or informal manner during the course of these negotiations and during the course of the settlement of these negotiations is immaterial. It is readily apparent from the conduct of the parties, that the "grandfathering issue" was recognized as a stumbling block to an agreement. The School Board, through its representative, entered into an agreement, which provided for an alternative resolution to this issue that would otherwise have resulted in impasse. RSA 273-A:12, 1. The parties freely entered into this agreement which gave a wide range of choice to the neutral. While there is no specific language contained within the agreement that recites the magic words that it would be binding, there is no language which supports a reliance upon this language to indicate that it would be advisory in nature.

Since the language may be termed ambiguous, the PELRB is required to look into the conduct of the parties in order to interpret the meaning of the language.

Once again, there can be little debate as to the intentions of the parties given their conduct as related through the testimony of Dr. Perrin. He indicated that at the time of the neutral's hearing, he (Dr. Perrin) being unsure as to the nature of the proceeding, consulted his notes with respect to the agreement reached under the Memorandum of Understanding in January and concluded that in fact the parties had agreed that the proceeding would be binding upon them. He entered into a stipulation as such and as is recited by the neutral in his decision. Therefore, the intent and interpretation of the Memorandum of Understanding is unequivocably clear.

This point dealt with, the resolution of this dispute turns on whether or not the Association had the right to rely on the agreement reached on January 14, 1987, or in the alternative, whether or not Dr. Murray and Dr. Perrin in the reaching of the Memorandum of Understanding and the conduct of the dispute resolution process had the authority to act for the School Board.

In the first instance, the ground rules between the parties speak for themselves. The ground rules indicated that the entire School Board was to be considered the Negotiating Committee with its representatives being Dr. Perrin, Dr. Murray and Bob Arlin. The rules also specified that the committees representing the parties had sufficient authority to bind the parties. The fact that not every member of the School Board was in attendance on January 14, 1987 cannot now be used to absolve the School Board of the responsibilities and obligations entered into on their behalf by their representatives. To find otherwise, would permit parties to avoid obligations assumed at the bargaining table only to be nullified at a later time by the excuse that not all of the parties' negotiating committee was present at the time of agreement. Such a finding would create such a threshold barrier to the successful completion of final agreements as to foreclose successful negotiations under the Act, as well as give rise to numerous complaints under this procedure, thereby draining the Board of its sparse resources. The focal point of this defense is whether or not Dr. Murray and Dr. Perrin acted as the bona fide agents of the School Board.

The executed ground rules between the parties associated in these negotiations specify not only the identification of the representatives of the School Board, but also that "the parties to these negotiations have the

if the agent has actual authority to do so or if the principal has conducted his business so as to give third parties the right to believe that the act in question is authorized." Belleau v. Hopewell, 120 NH 46 (1980).

In the instant case and in the context of these negotiations, there can be no doubt that Dr. Perrin and Dr. Murray were in fact the agents of the School Board and were authorized by the Board to reach this agreement with respect to the "grandfathering issue". See, IBPO and Derry, PELRB No. 83-47. The ground rules themselves do not equivocate with any reservation with respect to ratification by the full School Board. The fact that the entire School Board, and thus the bargaining team, was not present on January 14th cannot dilute or invalidate the agreement of the Board's agents.

The School Board's own minutes of their meeting of July 18, 1987, belies their reliance on the defense that Dr. Murray had exceeded his authority. Those minutes reveal that Dr. Murray put forward a motion that attempted to clarify the Board's position with respect to the authority it had granted its agents. Dr. Murray proposed that a motion be passed that stated "whereas the former Chairman improperly and without Board authority, entered into a memorandum of understanding with the support staff negotiating committee, the Board now dissociates itself from that original understanding as having exceeded his authority". The minutes reveal that the resolution was defeated 4 to 1 by the Board. One can only conclude from that vote that in fact the inference and connotation that Dr. Murray acted as the agent and with the full authority of the Board on January 14,1987 was in fact the case.

The Board's second defense that Dr. Perrin had inappropriately acted on the Board's behalf in the conduct of the so-called arbitration hearing is equally without defense. Once again, the law of agency would support the position that the Association had every right to rely upon the Board's representative; that he was in fact their agent and had the authority to act on behalf of his principal. Dr. Perrin was retained by Board Chairman, David Rines, to represent the Board at the hearing and did so without raising any reservation with respect to his authority. We find his authority to be justly relied upon in that an agent will be deemed to have implied actual authority after an analysis of the agent's understanding of his authority because of the conduct of the principal which may include communication either directly or indirectly with respect to the acts to be conducted. Sinclair v. Town of Bow, 125 NH 388 (1985).

Dr. Perrin, as a reputable professional, had no reason to doubt the extent of his authority as communicated by the Chair of the School Board in the conduct of his representation in the resolution of this matter. More importantly, the School Board cannot now lay the blame of its own internal communications problems at the feet of Dr. Perrin or the Association. The Association was entitled to rely upon the representation of the Board's representatives and their conduct. The fact that no reservation was put forward with respect to the conduct of the hearing either at the time of the hearing or in the Board's post-hearing brief is demonstrative of the Board's representative's belief in the limits of his authority. Once again, to find other than the Board must be bound by the acts of their agents, would prove calamitous to the conduct of labor relations between public employees and their employers.

Likewise, the School Board's reliance on the fact that the neither the understanding nor the possible financial impact by such a resolution was not revealed to them, places an unduly harsh burden upon the Association. The School Board's relationships with its representatives is not only their

sole prerogative but surely would be the source of great vexation if the Association insisted upon playing any role in their internal communications processes during or following the course of negotiations. To fault the Association's reliance upon the Board's agent's representations because of their failure to communicate those agreements to the Board, begs for an instrusion into a party's decision-making process. This is neither consistent with an assertion of management or union rights or the actual conduct of labor relations in the workplace.

The School Board's further reliance on statutory requirement that cost items be approved by the legislative body also fails to pursuade the Board that its refusal to abide by the neutral's award in this matter is warranted. Clearly, the statutory requirement that cost items be approved by the legislative body must be followed, but in this instance, the source of the dispute is the implementation of past agreements between the parties and as such is not in itself a cost item within the parameters of the collective bargaining agreement. That is, the cost of carrying out the dispute process itself may have been a cost item associated with the contract, but its resolution cannot be included within those parameters. Awards of arbitrators, which require an additional appropriation may not be enforcable without the approval of the legislative body in certain cases but in this case, that is obviously not the circumstance. The Superintendent of Schools testified that sufficient monies were available for prompt payment for these backpay awards in July of 1987, obviating any need or claim for further appropriation.

The School Board's last defense relies upon the Association's depiction of the proceedings engaged in by the neutral as not "arbitration per se". The argument evidently is that the neutral had somehow exceeded the authority granted him by the parties. The construction of what was to take place, whether it was an arbitration, mediation, conciliation, or any other form of dispute resolution is not dispositive to the outcome of this case. Rather, the conduct of the parties speaks clearly to their intentions. The words taken out of context and relied upon by the School Board cannot win the day. As in all matters, the given reference must be read in context and as a whole. In his depiction of the proceeding, the representative for the Association did state that it was not arbitration per se. In further explaining his comment, he pointed out that this comment extended to the fact that the neutral was not interpreting a collective bargaining agreement or past practice. The fact that the Board's agent participated in the process, failing to raise any objection to that process even in his post-hearing brief and agreeing to a stipulation that the parties would be bound by the determination of the neutral is most persuasive of the Association's view of this matter.

Finally, the Board is compelled to take notice of the actions of the School Board's representative in this case as it relates to evidence of bad faith. While the Board may find Dr. Murray's underlying motives laudatory and his support for the School System commendable, his actions in this case, in the first instance, agreeing to a method of resolving a long-standing labor relations dispute, and then that process not having met with his expectation, leading the School Board in opposing the implementation of the award as revealed by the minutes of School Board cannot be countenanced. Further, it is noteworthy that this is not a practice suffered by the Board and is one which this specific School Board has been given fair warning. Governor Wentworth Education Association, NEA-NH v. Governor Wentworth Regional School Board, PELRB Dec. No. 83-60 (1983).

To overlook such conduct would only serve to promote inefficiencies in the collective bargaining system and make agreements reached in the negotiations forum a hollow gesture. Therefore, the Board finds the School Board to have committed unfair labor practices by refusing to negotiate in good faith and grants the Association's request for costs and reasonable fees.

The PELRB rules with respect to requests for Finding of Fact and Rulings of Law as follows:

SCHOOL BOARD:

Requests #1 through #8 are denied as being irrelevant to the disposition of this matter;

Requests #9, 10, 12, 15, 18, 21, 22, 23, 26, 28, 30, 31, 32, 34, 35, 37, 39, 42, 45-50; are granted;

Requests #13, 14, 16, 19, 20, 24, 25, 27, 29, 33, 36, 40, 41, 43, 44, 51, and 52 are denied;

Request #11 granted to the extent that the issue of the classification was not raised in the form of a formal proposal and denied as to the remainder of the allegation;

Request #17 is denied to the extent that Dr. Perrin was not involved in the negotiation of the arrangement and granted with respect to his opinion as indicated in the request;

Request #38 granted as to the allegation that Dr. Perrin presented no documentation or witnesses and denied as to the remainder of the allegation;

ASSOCIATION:

Request #1 and #2 granted;

Request #3 denied as it is irrelevant to the disposition of this matter;

Request #4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 granted;

Request #18 denied.

ORDER

For all the reasons set forth above, the Board finds the School Board to have committed unfair labor practices pursuant to RSA 273-A:5 I (e). The PELRB orders the School Board to comply with its Order:

A. Comply with the award of Allan McCausland in his decision dated June 23, 1987;

B. Report compliance with this Board's order within thirty (30) days;

C. Pay the Association its reasonable costs incurred in the adjudication of this matter;

D. To post the Board's Order and findings in conspicuous locations throughout the District where employees of this Unit work for a period of not less than sixty (60) days.

JOHN M. BUCKLEY
Alternate Chairman

Dated this 6th day of May, 19 88.

By unanimous vote: Chairman John M. Buckley presiding. Members James C. Anderson, Richard E. Molan and Seymour Osman present and voting. Also present, Executive Director Evelyn C. LeBrun.