



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE EDUCATION ASSOCIATION/NEA-  
NEW HAMPSHIRE

Petitioner

v.

KEENE SCHOOL DISTRICT, BOARD OF  
EDUCATION

Respondent

CASE NO. T-0282:6

CASE NO. T-0282:7

DECISION NO. 89-24

#### APPEARANCES

Representing Keene Education Association/NEA-NH:

Mary E. Gaul, UniServ Director

Representing Keene School District:

Douglas S. Hatfield, Jr., Esq.

Also appearing:

Kenneth Jue, Keene School District  
Patricia Trow, Keene School District  
Thomas Barry, Keene School District  
William Harris, Keene Education Association  
Robert Ross, Keene Education Association  
Jane Hurst, Keene Education Association  
Raynor P. Smith, Sr., Keene Education Association  
J. Larry Adams, Keene Education Association  
Elliot Washor, Keene Education Association

#### BACKGROUND

The Keene Education Association, NEA-NH (Association) filed unfair labor practice charges against the Keene School District, Board of Education (District) for: -

1. Failure to bargain in good faith by refusing to meet at "reasonable" times and places (Case No. T-0282:6), and
2. Violation of agreed ground rules relative to joint press releases (Case No. T-0282:7).

A hearing on both cases was held in the office of the Public Employee Labor Relations Board (Board) on March 14, 1989 with Board appointed hearing officer, Seymour Osman.

Upon approval of the parties, both cases were consolidated into a single hearing.

#### FINDINGS OF FACT AND RULINGS OF LAW

The Association on numerous occasions made requests to meet with the District's team at various times during the teachers' workday; for example, starting negotiations at 1:00 p.m., to avoid hiring of substitutes and to be more productive than to hold all sessions in late afternoon or evenings when everyone is tired after a full day's work.

Various times and dates were proposed by the Association however none of the earlier times were agreed to by the District who only agreed to 3:00 p.m., 5:00 p.m., 6:00 p.m. during the workweek and 9:00 a.m. on Saturdays.

The parties met on three separate occasions; first meeting on September 26, 1988 with only preliminary discussions on ground rules; second session held October 12, 1988 when all but one of the ground rules were approved. The District adamantly refused to discuss negotiations during the workday; the third session was held November 3, 1988 and after again discussing some negotiations during the workday the Association caucussed, returned to the room and session terminated.

Chairman of the Board of Education called a special meeting of its members for later that evening (November 3, 1988) at which time a vote was taken to go to the press.

The Association's first and only proposal was presented to the District's negotiating team on October 12, 1988 and no releases were issued to the press after that meeting. Immediately after the November 3, 1988 session, a prepared statement was given to the press outlining the Association's October 12th proposal. Release was aired at 8:30 a.m. November 4th and subject of a newspaper article in the Keene Sentinel the same day.

The District made no counter-proposal to the Association's proposal.

RSA 273-A:11 grants certain rights to the exclusive representative of a bargaining unit certified under RSA 273-A:8. Among those rights is that a "reasonable" number of employees who act as representative of the bargaining unit shall be given a "reasonable" opportunity to meet with the employer or his representative during the working hours without loss of compensation or benefits.

The public employees in this instant are school teachers whose "workday" ends around or at 3:00 p.m. Monday through Friday.

"Impasse" as defined in 273-A means the failure of the two parties having exhausted all their arguments, to achieve agreement in the course of good faith bargaining resulted in a deadlock in negotiations.

Although it was alleged that the District was prepared to make a counter-offer to the Association's proposal, no counter-offer was proposed, therefore because agreement was not reached on meeting times does not constitute an exhaustion of all arguments (emphasis added) and a deadlock in negotiations.

Approved ground rules are not null and void if agreement is not reached on one particular rule. Ground rules are permissive subject of negotiations, not mandatory and are not part of the negotiated contract by and between the parties but merely approved guidelines for conduct of negotiations.

Association's Requests for Findings: - (Case No. T-0282:6)

#1 thru 9 Granted.

#10 Neither granted nor denied - not substantiated.

#11 thru 21 Granted.

#22 Granted in part. Association did not commit unfair labor practice. Denied in that the District did receive the Association's proposal at the October 12th meeting and did not release it until November 4th.

#23 Granted.

Association's Requests for Findings: - (Case No. T-0282:7)

#1 thru 15 Granted.

#16 Neither granted nor denied.

#17 thru 22 Granted.

#23 Neither granted nor denied. If the Association's refusal is not bad faith bargaining but simply a refusal to concede to a proposal, the same must hold true for the District, however, granted that certain rights are granted the certified agent under 273-A.

District's Requests for Findings: - (Case No. T-0282:6)

#1 & 2 Granted.

#3 Denied, impasse was not officially declared.

#4 Denied. No resolution of one ground rule and session concluded.

#5 Granted, that it may have been the District's opinion.

#6 Denied. It was alleged that the District was prepared to make a counter-offer but no impasse officially declared.

#7 Granted, that agreement had been reached on all but one ground rule however lack of agreement on one rule did not negate approval of others.

#8 & 9 Denied. Once approved, ground rules are binding until official impasse is declared. Ground rules are not part of the negotiated contract.

#10 & 11 Granted, however in the instant case, impasse was not officially declared.

District's Request for Findings: (Case No. T-0282:7)

#1 Granted.

#2 Denied, see Case T-0282:6 District's request No. 4.

#3 Granted, that it was the District's opinion.

#4 Granted, that by testimony the District was prepared to counter-offer. Denied that impasse was declared.

#5 Granted.

#6 Denied. RSA 273-A grants certain rights to certified agent among which is to right to meet during working hours without loss of compensation or benefits.

#7 Denied. The statute contemplated the necessity to meet at reasonable times and places during the workday.

#8 Neither party can dictate.

#9 Denied.

#10 Mixture of times and/or dates include in accordance with 273-A:11, II meeting at "reasonable" times and dates during working hours.

#11 thru 15 Denied.

DECISION

I find the District be found guilty of unfair labor practices for: -

1. Violating the agreed ground rule on joint press releases:  
and,
2. Failing to bargain in good faith with the Association in regard to meeting times during part of the working day.
3. The District shall display copies of this decision at all locations where affected employees work and copies will remain posted for a period of fifteen (15) days.

4. The parties are commended for continuing negotiations pending results of the unfair labor charges, however meeting times and dates must be resolved prior to April 15, 1989 and report of compliance must be submitted to PELRB by that date.
5. PELRB is maintaining jurisdiction in this matter and if agreement is not reached within thirty days, PELRB will reconvene the hearing.

Signed this 23 day of March, 1989.



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SEYMOUR OSMAN  
Hearing Officer