

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK VALLEY FEDERATION OF
TEACHERS/NEA-NEW HAMPSHIRE, NEA

Complainant

v.

MERRIMACK VALLEY SCHOOL BOARD

Respondent

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CASE NO. T-0387:3

DECISION NO. 89-81

APPEARANCES

Representing Merrimack Valley Federation of Teachers/NEA-NH, NEA:

Theodore G. Wells, Jr., UniServ Director

Representing Merrimack Valley School Board:

Donald J. Pfundstein, Esq., Counsel

Also appearing:

Anne Pickard, Merrimack Valley Federation of Teachers

Philip D. Bell, Jr., Superintendent

Raymond C. Cummings, School Board Member

BACKGROUND

On April 18, 1989 the Merrimack Valley Federation of Teachers, affiliated with NEA-New Hampshire, NEA, (Federation) filed an unfair labor practice charge against the Merrimack Valley School Board (Board) alleging that the Board had failed its obligation to bargain in good faith in violation of RSA 273-A:5 (a), (e) and (g). The Federation had initiated bargaining with the school board for a successor collective bargaining agreement. Negotiation sessions had been held and on December 6, 1988 the Federation declared an impasse and requested the appointment of a mediator. A mediator was appointed by PELRB, mediation however was unsuccessful and a factfinder was appointed. The Federation stated that at a public school budget meeting, Raymond Cummings speaking in his capacity of Chairman of the School Board's negotiation committee stated that the parties were currently at factfinding but that the Board would probably be rejecting the factfinder's report as he felt no factfinder would recommend merit pay.

The unfair labor practice charge alleged that Mr. Cummings' statements interfered with the rights of the Federation and that such statements constituted a refusal to negotiate in good faith, that the statements tended to mislead and confuse the voters and that Mr. Cummings by his statements showed disregard for the factfinding process.

The remedy requested in this case was an order from PELRB to the Merrimack Valley School Board, its representatives and to Mr. Cummings to participate in good faith in the factfinding process.

In answer to the charges, the Board admitted that Mr. Cummings had made the statements and said that it would accept any one of the factfinders listed on the list submitted by PELRB. They stated they had made every reasonable effort to negotiate and even though the parties had agreed that items discussed would not be made public unless by mutual consent, or until subsequent to the completion of the first round of mediation, that it was the Board's position that any representative of the Merrimack Valley School District or the Federation could express his or her opinion with respect to the status of the process between the parties under the ground rules mutually agreed to and requested that the complaint be dismissed.

Hearing in this matter was conducted on June 27, 1989 at the office of the Public Employee Labor Relations Board in Concord, New Hampshire.

In opening statements the representative for the Federation, Ted Wells, stated that the issue was not a complicated or difficult one, that the facts surrounding the case were not difficult, "Mr. Cummings made certain statements which constrained, coerced and interfered with the rights of the employees guaranteed under 273-A." Mr. Wells further testified that the ground rules were set in late October and admitted that the Federation after several sessions did declare an impasse. He cited the requirements of 273-A:3 which specifies that the public employer is obligated to bargain in good faith and follow the process through mediation and factfinding whenever necessary, and further that the statement made by Mr. Cummings were made at a public budget meeting and in the view of the Federation, Mr. Cummings statement served to taint any factfinder's report that might be issued thereby interfering with proper negotiations.

Counsel for the Board, Atty. Pfundstein moved to dismiss on the grounds that the charge failed to allege violations of any section of 273-A.

Motion was taken under advisement.


Witness Cummings testified on his involvement with 273-A since its inception and negotiations for the School District. He admitted to making the statement and stated he was simply expressing an opinion which was not in any way intended to influence negotiations and in fact did not influence the negotiations. He brought up the issue of the ground rule which had been adopted by the parties, i.e., "Items will not be made public unless by mutual consent of the parties or until subsequent to the completion of the first round of mediation if any, at which time thereafter either party may make such public statements as it may determine to be in its best interest." and testified that his statement was made within the parameters authorized under Section 6 of the ground rules adopted by the parties for the conduct of negotiations.

DECISION AND ORDER

PELRB after reviewing the charge, answer and testimony in this case rules as follows:

1. The motion filed to Dismiss by Attorney Pfundstein on behalf of the Merrimack Valley School Board is HEREBY GRANTED.
2. The unfair labor charge filed by the Merrimack Valley Federation of Teachers NEA-NH, NEA is HEREBY DISMISSED for lack of evidence of any violation of 273-A.

Signed this 5th day of December, 1989.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and James C. Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.