



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MERRIMACK SCHOOL BOARD

Complainant

v.

MERRIMACK TEACHERS ASSOCIATION/NEA-NEW  
HAMPSHIRE

Respondent

CASE NO. T-0205:8

DECISION NO. 90-19

#### APPEARANCES

##### Representing Merrimack School Board:

Harry Gale, Consultant

##### Representing Merrimack Teachers Association/NEA-NH:

Marc Benson, UniServ Director, Souhegan Region

##### Also appearing:

John Lindsell, Asst. Supt.  
James Bedard  
Eric Heilhecker  
Mary E. Blair  
Pamela J. Tinker  
Rodney F. Mansfield  
Ken Monteith

#### BACKGROUND

On February 15, 1990 a hearing was held at the PELRB office in Concord, New Hampshire before Hearing Officer Seymour Osman who was mutually acceptable by the Merrimack School Board (Board), and the Merrimack Teachers Association, (Association).

The complaint is an unfair labor practice being brought by the Merrimack School Board against the Merrimack Teachers Association for failure to negotiate in good faith for the successor agreement. The present contract in effect runs until June 30, 1990.

Negotiations for successor agreements have to meet certain guidelines as enumerated in the present contract....Article IV, Article XVII and RSA 273-A. We tried to confine the issues to this guideline.

Both sides stipulated that all witnesses and potential witnesses would be sworn in by Atty. Michael Reynolds, because no Justice of the Peace was available on either side, or as this Hearing Officer so constituted. The following were sworn as witnesses or potential witnesses; Eric Heilhecker, James Bedard, John Lindsell, Rod Mansfield, Mary Blair, Ken Monteith and Pam Tinker.

Merrimack School Board (Harry Gale) made an objection to a side bar agreement being raised in the response of the Association (1/19/90). This objection was taken under advisement.

This is a case wherein the Board charges the Association with an unfair labor practice RSA 273-A:5 II f for failure to confer and/or negotiate in good faith. The Association responds by stating that they have negotiated in good faith and under both the terms of the present contract in force Article 4.5 and RSA 273-A:12 either party can declare impasse, and ask for mediation.

Mr. Harry Gale on behalf of the Board, through the testimony of Mr. James Bedard and Mr. Eric Heilhecker, plus exhibits (1 thru 7) attested that the bargaining team of the Board at the start of negotiations, of which both witnesses were members, were inexperienced in labor negotiations. They were led to believe that the first bargaining sessions (9/12/89 and 9/26/89) would be very informal. The ground rules as proposed by the Association had been created sometime after 7/3/89. The negotiating team of the Board also received a lengthy twenty (20) page list of contractual demands at the 9/26/89 meeting and at both the 9/12/89 and 9/26/89 meetings the negotiating teams of the Board found themselves "over their heads" in what they described as sessions that were rancorous, and a review of ground rules primarily with no substantive issues being discussed. On October 4, 1989 a session was scheduled but it was postponed by mutual agreement and rescheduled for November 1, 1989. In the interim the School Board hired Gale Associates to represent the Board at the bargaining table.

Thereafter meetings were held 11/1/89, 11/15/89, 11/21/89, 12/6/89 and 1/10/90. The Board testified that they felt the Association Team did not have the authority to discuss substantive issues, because throughout, the focus centered on the ground rules. This was evidenced by Board Exhibit #7. The Board did present a one page list of proposals for discussion at the 9/26/89 meeting, but once again the testimony was that little was discussed on the proposals, and the majority of the time was spent on ground rules. On 1/10/90 a three hour session was held and the Board had presented counter proposals. After a thirty (30) minute session caucuses were held for the balance of the time. At that time the Association declared an impasse existed (Board 4) with little or no response to the Board's counter proposals.

The Association represented by Mr. Marc Benson cross-examined both witnesses and elicited from them that nothing prevented the Board from presenting their proposals at any meeting and that in fact the Association asked for these proposals. The witnesses for the Board maintained that each session was so dominated by ground rules that the counter proposals could only be offered in their mind, on January 10, 1990 if the Ground Rules would be set aside for the time being (Board 7).

Mr. Benson called Mr. Rod Mansfield of the Association. Mr. Mansfield is a member of the Association Negotiating Team. His testimony was substantive discussions were held at most meetings which represented approximately eighteen (18) hours of negotiations. A resume of the events at each negotiating session was offered in evidence ...Association Exhibit #1. Mr. Harry Gale objected to the

introduction of this resume on the grounds that it was a recollection and a sketchy compilation of the actual minutes. I ruled that this exhibit would received the weight I deemed it deserved.

Upon cross-examination of Mr. Mansfield by Mr. Harry Gale, it was elicited that there was no response to the counter proposal the Board offered at the January 10, 1990 session. Upon re-direct and my own inquiry, Mr. Mansfield stated that the reason for the election of impasse by the Association was for the lateness of time (budget submission) and the wide divergence of positions. Only mediation was possible.

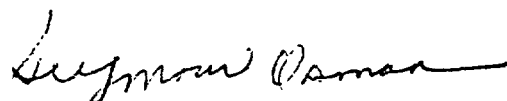
#### FINDINGS AND ORDER

Little evidence was shown that at most if any of the sessions were concerned with substantive issues. Ground Rules was the overriding issue. Ground Rules are important, true. However, the dominating priority should be main issues that concern the Teachers and the Town. I think that a concerted effort must be made by both parties to approach this priority in bargaining and get on with this in an open and conciliatory manner. The evidence shows little of this attitude on the part of the Association especially in refusing to answer the Counter Proposal of the Board.

Therefore I declare an unfair labor practice against the Association and order both parties to return to the bargaining table and both parties are ordered to hold at least two (2) negotiation sessions within thirty (30) days of the issuance of this order and report the findings to the PELRB.

I HEREBY stay the involvement of a mediator and declaration of impasse untile the above order has been complied with.

Signed this 22nd day of February, 1990.



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SEYMOUR OSMAN  
Hearing Officer