State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GILMANTON EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE Petitioner v. GILMANTON SCHOOL DISTRICT Respondent	CASE NO. T-0310:7 DECISION NO. 92-25

APPEARANCES

Representing the Gilmanton Education Association, NEA-NH:

James F. Allmendinger, Counsel

Representing Gilmanton School Board:

Bradley F. Kidder, Counsel

Also appearing:

Ann Kirby, Gilmanton Education Association
Sharon MacDonald, Gilmanton Education Association
Coleen Bownes, Gilmanton Education Association
Jan Paddleford-Loto, NEA-New Hampshire
Linna Page, Gilmanton School Board
Sharon Nelson, Gilmanton Education Association
Wendy Hankins, NEA-New Hampshire
Ted Comstock, Staff Attorney, NH School Board
Waldo Cumings, NEA-New Hampshire

BACKGROUND

This complex matter comes before the Public Employee Labor Relations Board (PELRB) after a long series of negotiations between the Gilmanton Education Association, NEA-New Hampshire (Union) and the Gilmanton School District (Employer) for a contract between the School District and its teachers. The parties initially began

negotiations in November 1988 as negotiations for the 1988-1989 school year. After factfinding, the parties were unable to agree on the factfinder's report. At the 1990 annual School District meeting on March 24, 1990, the voters rejected the factfinder's report, and the parties went back to negotiations. On June 22, 1990, the parties reached agreement on a 3-year contract for 1989-1992. This settlement was brought before the voters at a special meeting on October 4, 1990 at which time it was rejected. In November 1990, the parties reached a 2-year agreement requiring funding in the amount of $140,811. This agreement was brought before the voters at a special meeting on January 26, 1991 and was rejected by a vote of 205 to 125.

After this rejection, on January 28, 1991, the School Board met with Union negotiators Sharon MacDonald and Sharon Nelson. They reached a tentative agreement, to settle the differences on a 3-year agreement involving no increase for the 1989-1990 school year, no increase for the 1990-1991 school year, and a $140,811 increase for the 1991-1992 school year. However, a salary schedule apportioning these increases had to be agreed upon and submitted. Also, testimony before the PELRB indicated that the School Board indicated that it would have to have review of the tentative agreement by its counsel. Further, the January 28, 1991 negotiations agreed that the settlement would be submitted to the voters as part of the general budget warrant article, and not by way of separate warrant article.

Counsel for the School District advised the School District that the tentative agreement regarding the warrant article was illegal. On February 21, 1991, the Chairman of the Gilmanton School Board wrote to the Union representative that the Board prepared a warrant article without a separate warrant article for salary, and reminded the Union that the parties were still without a complete agreement on salaries because the salary schedule allocating the salary had not been submitted. Further, there had been discussion on the application and allocation of fringe benefits, and the proper allocation of those had been discussed. No final salary schedule had been submitted or agreed upon.

The Union submitted a proposed salary schedule on March 19, 1991. This was written four days prior to the 1991 annual School District meeting. At the annual School District meeting a separate salary article was not submitted.

At the meeting, a motion was made to increase the general increase of $90,000 in the Teacher Salary Account contingent on the School Board and the Union reaching agreement on non-economic issues within ten days. This agreement was apparently not reached within the time period. When agreement had not been reached by May 21, 1991, the School Board voted to employ a professional negotiator, and had its legal counsel advise the Union that the School Board proposal to settle negotiations for $90,000 was

withdrawn.

The Union brought an unfair labor practice complaint against the Employer alleging violations of RSA 273-A:5 (a) and (e). On March 7, 1991, the original unfair labor practice complaints seeking a general warrant article be submitted in which is placed the amount of $140,811 was issued by the PELRB in Decision No. 91-15. This was prior to the School District meeting referred to above.

An amendment to the unfair labor practice complaint alleging violations of RSA 273-A:5I (a), (e), and (g) was then filed alleging that the Employer had revoked all proposals and all offers to settle negotiations with the Gilmanton Education Association and that to do so was an unfair labor practice. This complaint alleged that because the Employer had refused to comply with the earlier PELRB order, had refused to honor its agreement, and had revoked the matters which had been put on the table, the original agreement could and should be enforced as a binding agreement.

The Employer responds that no unfair labor practice was committed at any time. First, it states that the original tentative agreement was only tentative and was incomplete because it failed to be fully integrated with a salary schedule on which it failed to be fully integrated with a salary schedule on which the parties could agree, had not been submitted to or reviewed by counsel, was impossible to meet because in requiring a unified warrant article it violated the Sanborn decision as interpreted by the Conway case, and therefore was not final. Further the Employer states that having been rejected by the voters, the tentative agreement cannot now be required by the PELRB.

FINDINGS OF FACT AND RULINGS OF LAW

1. It is clear to the PELRB that no final agreement was reached. While the dollar amount apparently was agreed upon, its application, methods of implementation, and legality were not agreed upon. Further, the parties failed to reduce their agreement to writing, did not initial portions of the agreement on which they had agreed, did not supply the missing data expeditiously in the form of a salary schedule. When the voters failed to ratify the agreement, there was no obligation that either party accept the alternate.

2. There is no way in this case that the PELRB can impose order or agreement when none existed.

3. The fundamental matter decided here is that there was no agreement between the parties, and therefore there is no basis to provide the remedy requested by the Union.

4. As this Board has noted on many occasions, for agreements to be final, they must be clear, agreed on by both parties, and reduced them to writing, initial items as agreed, and expeditiously fill in any blanks or provide additional information required. The failure to record a complete agreement, record mutual agreement on the terms, and complete the additional information required resulted in the unraveling of a tentative agreement. Such delay and failure to record agreement or terms presents the PELRB with a situation in which it is unable to put an agreement back together. Therefore, the unfair labor practice complaint request cannot be sustained and must be dismissed.

5. The Gilmanton School District's request for findings of fact and rulings of law are all granted except for No. 18 on which no action is taken, since it is not necessary to the findings in this decision.

ORDER

Because of the findings made by the Public employee Labor Relations Board in this case, the request for unfair labor practice finding made by the Gilmanton Education Association is hereby DISMISSED.

So ordered.

Signed this 21st day of February, 1992.

EDWARD J. HASELTINE
Chairman

By unanimous vote Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present Board Counsel Bradford E. Cook.