



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

RYE FIRE AND POLICE
ASSOCIATION

Complainant

v.

TOWN OF RYE

Respondent

CASE NO. M-0604:2

DECISION NO. 94-27

APPEARANCES

Representing Rye Fire and Police Association:

Thomas D. Noonan, Business Agent/Teamsters

Representing Town of Rye:

Michael Donovan, Esq.

Also appearing:

Mark N. Zartarian, Rye Fire & Police Association
Peter Colbeth, Rye Fire & Police Association
A. H. Huhlm, Town of Rye
Brad Loomis, Town of Rye

BACKGROUND

The Rye Fire and Police Association (Association) filed unfair labor practice (ULP) charges against the Town of Rye (Town) on December 27, 1993 alleging violations of RSA 273-A:5 I (e), (g) and (i) relative to cancellation of a negotiated collective bargaining agreement (CBA) and coercion. The Town filed its answer on January 11, 1994 after which this case was heard by the PELRB on March 10, 1994.

FINDINGS OF FACT

1. The Town of Rye is a "public employer" with the meaning of RSA 273-A:1 X.

2. The Rye Fire and Police Association is the duly certified bargaining agent for police and fire department personnel employed by the Town.
3. On or about August 17, 1993, the parties executed a CBA for calendar year 1993, through December 31st of that year. Article XXV, Section 1 of the CBA provides that it "shall continue in full force and effect from year to year thereafter unless written notice by certified mail of desire to terminate is served by either party upon the other at least ninety (90) days prior to date of expiration." Article XXV, Section 3 of the CBA provides "if negotiations are in progress at the expiration date of this Agreement, the Agreement shall continue in effect by mutual consent of both parties until conclusion of the negotiations."
4. Article X, Section 3 of the CBA provides "whenever permanent change from the present schedule of 2-12 hour days and 2-12 hour nights is contemplated, then the impact is negotiable before change takes place."
5. On September 28, 1993, two of the three selectmen (Quirk and Herlihy) wrote to the Association, telling them "effective this date, the Board of Selectmen... hereby gives you notice that this Board is terminating the Collective Bargaining Agreement between the Town of Rye and the Rye Fire and Police Association as provided in Article XXV of said Agreement, effective December 31, 1993."
6. On December 22, 1993, Selectman Herlihy wrote to the Association conveying the Town's "final offer". Prior to the date of this letter, the parties had held nine negotiating sessions and had tentatively agreed on all elements of the 1994 CBA, with the sole exception of an agreement on the wage proposal. There have been two additional negotiating sessions after the December 22nd letter and the charges filed on December 27, 1993, namely, on December 31, 1993 and February 1, 1994. Neither of these resulted in settlement. The parties are scheduled for mediation on April 11, 1994.
7. After receiving the Town's final offer, the parties met on December 31, 1993. Union representatives thought there was an agreement to maintain the status quo for a period estimated to have been between one week (Herlihy testimony) and 14 days (Zartarian testimony) during which time unit members would be contacted to determine if they would accept the

final offer. Management representatives (Herlihy testimony) denied agreeing to a status quo freeze and believed they had certain managerial rights to make changes after contract termination on December 31, 1993 if there had not been an agreement on a CBA in the meantime.

8. To the extent the results of the misconceptions referenced in Item 7 did not manifest themselves until after the filing of this ULP, they are not actionable herein.

DECISION AND ORDER

The Association has brought these charges based on alleged violations of (1) the obligation to bargain at sub (e), (2) failing to comply with Chapter 273-A at sub (g), and (3) taking actions to invalidate an agreement at sub (i). The union representative would have us hold that the combination of announcing the termination of the contract plus the presentation of a "firm and final" offer constitutes coercion. We cannot agree. The contract termination letter of September 28th was sent pursuant to a provision of the CBA (Article XXV, Section 1) which the parties negotiated. It was their approach to handling the otherwise self-renewing features of the contract. It is both unfortunate and inconvenient that this conflicts with the provisions of Article XXV, Section 3 as to contract continuation during negotiations. Since we were not provided with any bargaining history or intent of the parties relative to this internal conflict in language, we must presume that the parties are free to give such notice 90 days prior to expiration, not knowing what the status of negotiations may be one or two days before that actual expiration. Notwithstanding these observations, however, we disagree with that part of the Herlihy testimony which suggested that "everything is gone" after the contract expiration date of December 31, 1993. To be sure, no new benefits are accorded until negotiated and voted [see Appeal of Milton School District, 137 N.H. 240 (1993)]; however, this does not eliminate the duty to maintain the status quo pending the negotiation of a successor agreement, except as that status quo might be modified or controlled by statutory exceptions.

Second, we were presented with an allegation of coercion. We heard no testimony indicating that impact on any of the witnesses. Neither party has been compelled to agree to a proposal or make a concession under RSA 273-A:3. The parties continue to negotiate. We find no violation here.

Third and finally, we must also dismiss the failure to negotiate in good faith charge under RSA 273-A:5 I (e) both because of the continuing status of negotiations between the parties and the fact that they are proceeding to mediation, exactly as contemplated under RSA 273-A:12, when they have been unable to

resolve the dispute through their own efforts. This is a proper and appropriate response to a final offer which is unacceptable to the offerees.

The complaint is hereby DISMISSED.

So ordered.

Signed this 29th day of March, 1994.



JACK BUCKLEY, Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members E. Vincent Hall and Seymour Osman present and voting.