State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION, LOCAL 1984, for KEENE POLICE SUPERVISORS ASSN. Complainant v. CITY OF KEENE Respondent	CASE NO. S-0366:8 DECISION NO. 95-05

APPEARANCES

Representing SEA, Local 1984/Keene Police Supervisors:

Ward Freeman, Chief Negotiator

Representing City of Keene:

Thomas J. Flygare, Esq., Counsel

Also appearing:

Larry Staffer, City of Keene
Al Merrifield, City of Keene
Frederick Parcells, City of Keene Police Supervisors
Timothy Peloquin, City of Keene Police Patrolmen
Jeffrey Search, City of Keene

BACKGROUND

The State Employees Association, S.E.I.U., Local 1984 (SEA) filed unfair labor practice (ULP) charges against the City of Keene (City) on July 28, 1994 alleging a violation of RSA 273-A:5 I (e) as that section relates to an alleged refusal to bargain in good faith by the City. The City filed an answer denying the charges on August 8, 1994 after which this matter was set for hearing before the PELRB on October 18, 1994. At the October 18th hearing, the parties entered into an agreement for expedited mediation (Decision No. 94-103 dated October 26, 1994) which, if not successful, permitted either side to reactivate this case on the PELRB's docket

for further hearing. On November 14, 1994, the SEA filed a letter with the PELRB advising that expedited mediation had not been successful and requested further hearing. The case was again heard by the PELRB on January 10, 1995.

FINDINGS OF FACT

1. The City of Keene is a "public employer" of police officers and other employees within the meaning of RSA 273-A:1 X.

2. The State Employees Association of New Hampshire SEIU Local 1984, Chapter 66 is the duly certified bargaining agent for the supervisory officers of the Keene Police Department.

3. The City and the SEA were parties to a collective bargaining agreement (CBA) covering the supervisory officers of the Keene Police Department for the period July 1, 1991 through June 30, 1993 and continuing from year to year thereafter unless notice is given to amend, modify or terminate.

4. On January 23, 1993, the SEA gave notice of its desire to open negotiations for a successor agreement to the City Manager. The first negotiation session occurred on February 23, 1993 where the parties adopted ground rules. Thereafter, the parties exchanged proposals on March 26, 1993. The SEA proposal sought a 4% raise for one year, interest on retroactive pay, maintenance of insurance and grandparent bereavement. The City proposal sought a 3 year agreement with wage adjustments of -5%, 0% and 0% for each of the three years, reductions in accruable sick and personal day benefits, caps on health and dental insurance premiums and the elimination of 50% sick leave buy back at retirement.

5. The parties met for another negotiating session in April of 1993 whereupon the SEA declared impasse. Mediation followed in July of 1993 and fact finding occurred in October. The parties then met on January 7, 1994 during which time they announced their respective positions on the fact finding report, i.e., the union accepted it and the City rejected it. The foregoing actions recited in Finding Nos. 4 and 5 all occurred more than six months prior to the filing of the ULP on July 28, 1994.

6. On March 21, 1994 the parties met for another mediation

session with a new mediator. Pay and insurance were identified as the two key remaining issues. This session was described as "no fault mediation" where any items not tentatively agreed upon were deemed to be unresolved and subject to new proposals without prejudice to the position(s) taken during mediation. This session did not result in a settlement but did deal with wage proposals more generous than the City's original offer of -5%, 0% and 0% and less expensive than the union's original demands.

7. On June 16, 1994, the union, on behalf of the supervisory officers, met with City negotiator Al Merrifield and suggested a second fact finding to follow the second mediation session referenced in Finding No. 6. During that meeting, Merrifield told union negotiators that he would revert to his -5% position if the union sought another fact finding. According to testimony from Timothy Peloquin, President of the patrol officers bargaining unit, he met with Merrifield on the same date, following the meeting involving the supervisory officers. Peloquin testified that during his meeting with Merrifield, Merrifield said that the contract negotiations did not involve an issue of money but an issue of "power and control".

8. The American Federation of State, County and Municipal Employees (AFSCME), which represents public works employees employed by the City, settled its successor CBA in August of 1993 without having been confronted with a -5% wage proposal by the City. Non-union city employees received a 1 1/2% wage increase in July of 1993 and a 2% wage increase in July of 1994. Merrifield testified that the 1 1/2% raise was made possible by the savings produced by these employees when they changed to a different health insurance plan in 1993.

DECISION AND ORDER

The case before us involves a charge of unfair labor practice resulting from a refusal to bargain in good faith. RSA 273-A:5 I (e). It was filed on July 28, 1994; therefore, alleged violations must have occurred between January 28, 1994 and July 28, 1994, in accordance with RSA 273-A:6 VII. Notwithstanding our historical findings outside the foregoing six month period, it is to that period that we must look to determine whether RSA 273-A:5 I (e) has been violated.

The responsibility to bargain in good faith is one of the most important obligations conferred under RSA 273-A. Not only is a violation of this obligation considered to be an unfair labor practice, but also its role in the labor-management relationship is explained in detail elsewhere in the statute. Most notable is RSA 273-A:3 which defines "good faith" negotiations as "meeting at reasonable times and places in an effort to reach agreement on the terms of employment...." (Emphasis added.) While RSA 273-A:3 also provides that the obligation to bargain in "good faith shall not compel either party to agree to a proposal or to make a concession" and thereby entitles either party to say "No" to a proposal or group of proposals, we are compelled to find that both the City's proposals and its bargaining conduct fail to exhibit any evidence of negotiating "in an effort to reach agreement." During the applicable six month period from January to July of 1994, the City's representative told the SEA representative that it (the City) would revert to its -5% position if the union sought a second fact finding hearing as contemplated by RSA 273-A:12. Notwithstanding the City's right to craft its proposals for the fact finding process, we find that its stated intention to revert to its -5% position was intended to and had the result of discouraging the use of fact finding as contemplated by the statute, both at RSA 273-A:12 and RSA 273-A:3 where the parties are required "to cooperate in...fact finding required by this chapter."

Likewise we are concerned by raises given to other city employees during the course of these negotiations. Finding No. 8 above. We have studied the proposals of the parties during the six months before the filing of this complaint last July. There were two key issues at that time. While the evidence shows that the union moved substantially towards the City's position on health insurance during that time, there is no evidence that the City made substantial moves either towards the union's position on wages or towards party with wages granted to non-union employees. It is improper to "punish" employees because they have chosen to affiliate with a union. RSA 273-A:5 I (a) and (c).

Taken in the context of the overall labor relations environment as it existed between January and July of 1994, we find the City's conduct, as enumerated in the immediately two preceding paragraphs, to have violated RSA 273-A:5 I (e), specifically, the obligation to bargain in good faith. By way of remedy, we direct the parties to recommence negotiations forthwith. If the parties have not been able to reach agreement through their negotiating efforts (i.e., reach a package to take back to their principals for ratification) within thirty (30) days from the date of this decision, they shall meet for purposes of negotiating each of the four (4) following Saturdays to seek an agreement. Each of these meetings shall be for a minimum of eight (8) hours unless agreement is reached during the course thereof. If these four Saturday

meetings fail to produce agreement, the parties shall meet each Saturday and Sunday thereafter, for a minimum of eight (8) hours daily, until agreement is reached. The parties shall report the progress of their negotiations to the PELRB as of the 1st and 15th of every month and as of the date they reach agreement to take back for ratification.

So ordered.

Signed this 19th day of January, 1995.

JACK BUCKLEY
Alternate Chairman

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