



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER EDUCATION SUPPORT
PERSONNEL ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

and

CITY OF MANCHESTER

Respondent

CASE NO. M-0607:2

DECISION NO. 95-62

APPEARANCES

Representing Manchester Education Support Personnel Assoc.:

Steven Sacks, Esq.

Representing City of Manchester:

David Hodgen, Chief Negotiator

Also appearing:

Thomas I. Arnold, III, City of Manchester
Thomas Adams, NEA-New Hampshire

BACKGROUND

The Manchester Educational Support Personnel Association (MESPA), NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Manchester School Committee/City of Manchester (City) on December 6, 1994 alleging violations of RSA 273-A:5 I (a), (e), (g), (h) and (i) relating to refusals to bargain and an alleged unwillingness to negotiate proposals dealing with wages. The City filed its answer and a motion to dismiss on December 21, 1994. After continuances sought by and granted to the parties on February 14, 1995, April 11, 1995 and June 1, 1995, this matter was heard by the PELRB on June 29, 1995.

FINDINGS OF FACT

1. The City of Manchester is a "public employer" of personnel employed in its school department within the meaning of RSA 273-A:1 X.
2. The Manchester Educational Support Personnel Association (MESPA), NEA-New Hampshire is the duly certified bargaining agent for all regular full-time and regular part-time support personnel employed by the Manchester School Department, excepting the secretary to the Superintendent and the secretary to the Assistant Superintendent.
3. During 1993, the City and MESPA engaged in negotiations to reach an agreement on a successor collective bargaining agreement (CBA). On November 3, 1993, Thomas Adams, on behalf of MESPA, transmitted a proposed settlement agreement to David Hodgen on behalf of the City. MESPA representatives have signed that document but the City has not. No new CBA has been concluded and signed between the City and MESPA since December 31, 1990. Article 32 of the CBA which expired on December 31, 1990, provided in pertinent part:

The provisions of this Agreement shall be effective as of January 1, 1989 and will continue and remain in full force and effect until December 31, 1990, and thereafter will renew itself each year unless by June 1, 1991, or June 1 of any succeeding year thereafter either party gives written notice to the other of its desire to modify or terminate this Agreement...."

The City claims that MESPA's letter to Mayor Raymond Wieczorek on May 13, 1991 seeking to negotiate a successor agreement is such notice. MESPA disagrees.

4. During hearing before the PELRB on June 29, 1995, the parties represented that they have not returned to the bargaining table since December of 1993. The City's response to the ULP charge (para. 13) further asserts that MESPA has not sought to return to bargaining since October 8, 1993 and has not declared impasse since then.
5. On April 5, 1994 Mayor Wieczorek prepared a budget commencing July 1, 1994, which would freeze the wages of employees in this and other bargaining units within the City. On June 7, 1994, the Board of Mayor and Aldermen passed a "Resolution Abolishing Step/Longevity Increases

for all City Employees in the Fiscal Year 1995 Budget." This resolution included all school department employees, including MESPA employees involved in this case. The Association claims that the passage of the foregoing resolution predetermined negotiations over wages for fiscal year 1995 and thereby violated the obligation to bargain found in RSA 273-A:5 I. The City disagrees.

DECISION AND ORDER

We are persuaded by the unrebutted representations of the City that, because there has been neither a demand nor an attempt to bargain this contract since 1993, there has been no violation of the obligation to bargain either under RSA 273-A:5 I or RSA 273-A:3. Therefore, there is no unfair labor practice.

As for the Association's contention that passage of the resolution in question on June 7, 1994 unduly restricted or limited bargaining on wages, it is difficult, indeed, to prevail in such an allegation without first attempting to bargain and being rebuffed. City Negotiator Hodgen represented to this Board that the foregoing resolution was passed for the purpose of permitting the mayor and aldermen to go on record as not funding step and longevity increases for FY 95. For practical purposes, then, the resolution placed no constraints on the bargaining process and was permissible as that action relates to RSA 273-A and to the public employer's right to retain public control over governmental functions pursuant to RSA 273-A:1 XI. Likewise, because the resolution dealt with new monies required to fund step or longevity increases and did not interfere with maintaining the status quo upon the expiration of a prior CBA, it is not inappropriate for the public employer to state that it is not funding new or expanded costs. It would have been inappropriate had the public employer refused to bargain over those topics. It did not. The contract continuation clause noted at Finding No. 3, above, is subject to the strictures of Appeal of Milton School District, 137 NH 240 (1993) and is not contractually enforceable to the extent it has not been appropriately funded by the legislative body.

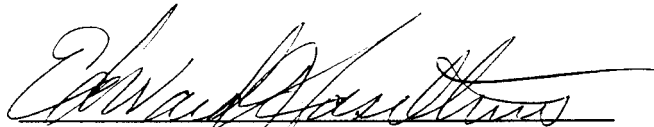
The passage of the June 7, 1994 resolution in no way said that the City refused to negotiate step or longevity raises. It did not omit such topics from the scope of negotiations. A resolution attempting to do so would be contrary to state law and not binding on the obligations of RSA 273-A. To have refused to negotiate step or longevity increases or to have refused to have considered a proposal or counter-proposal containing provisions for them would have been contrary to RSA 273-A:3 and RSA 273-A:5 I (e). This did not occur. While the public employer must consider such proposals, it cannot be compelled to agree to a proposal or to make a concession. RSA 273-A:3. The City's negotiator is obligated to carry back proposals to his principals, the Board of Mayor and Aldermen. They, in turn, are entitled to accept, reject or modify

those proposals to be taken back to the Association. Since the parties have not met for negotiations since 1993, there clearly has been no breach of this obligation.

The ULP is DISMISSED.

So ordered.

Signed this 21st day of July, 1995.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and William Kidder present and voting.