



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| TEAMSTERS LOCAL 633 OF | : | |
| NEW HAMPSHIRE FOR THE BERLIN | : | |
| DEPARTMENT HEADS | : | |
| | : | |
| Complainant | : | CASE NO. M-0693:1 |
| | : | |
| v. | : | DECISION NO. 95-81 |
| | : | |
| CITY OF BERLIN | : | |
| | : | |
| Respondent | : | |

APPEARANCES

Representing City of Berlin:

Mitchell Berkowitz, City Manager

Representing Teamsters Local 633:

Thomas Noonan, Business Agent

Also appearing:

Mickey Terriault

BACKGROUND

Teamsters Local 633 of New Hampshire (Union) filed unfair labor practice (ULP) charges against the City of Berlin (City) on June 12, 1995 alleging violations of RSA 273-A:5 I (a), (b), (c) and (e) resulting from (1) the City Council's not voting on a tentatively agreed upon package as negotiated and (2) a breach of the negotiating ground rules as they pertained to press releases. The City of Berlin filed its answer by letter on June 23, 1995 after which this matter was heard by the PELRB on August 24, 1995.

FINDINGS OF FACT

1. The City of Berlin is a "public employer" within the meaning of RSA 273-A:1 X.
2. Teamsters Local 633 of New Hampshire is the certified bargaining agent for certain department heads employed by the City. Although this certification dates to April 4, 1994, the parties had not completed negotiations on and signed their first collective bargaining agreement (CBA) when these charges were filed on June 12, 1995.
3. The parties have ground rules for their negotiations. They provide, in pertinent part, that "negotiation sessions are confidential and not subject to right-to-know laws [but that] both parties may discuss issues and items with their advisors, counsels and constituents between negotiating sessions." "Press releases will be agreed to, prepared and released jointly by both parties. If the parties are at an impasse, there will be no release of details until a factfinding report is issued." "All items tentatively agreed to at the table shall be subject to approval of the respective governing bodies. In addition, all items referred to as a 'package' must be accepted as a package otherwise they will not be considered accepted unless the parties at the table agree to accept specific items of a package for the purpose of continuing negotiations."
4. On March 14, 1995 the negotiating parties agreed on a negotiated contract package following clarification on the health insurance portion of the City's proposal of February 3, 1995. Thereafter, the Union approved a tentative agreement on the package and asked the City, through its City Council, to do the same.
5. The Berlin City Council reviewed the tentatively agreed package on May 17, 1995 and asked its City Manager/Negotiator to return to the bargaining table for further negotiations on both language and cost items.

6. The negotiating parties met again on June 6, 1995 at which time the Union was told that the City Council had not yet voted on the tentatively agreed package but that it had "authorized several alternatives." Thereafter on June 12, 1995, the City Council met and formally voted to reject the tentatively agreed to package and to offer a counter.
7. Further negotiations then followed between June 12, 1995 and August 17, 1995, including an additional grant of authority to the City's negotiator in June and new City proposals to Teamsters representative Noonan on July 5, 1995 (City Exhibit F) and to Teamsters negotiator Fortier on July 7, 1995 (City Exhibit G). Sometime between July 7, 1995 and August 7, 1995, the Union approved the new package. The City Council accepted the same package on August 7, 1995.
8. During the negotiating meeting on June 6, 1995, the Union complained that one or more City Councilmen were releasing information and/or press releases to the media in violation of the ground rules as reported in Finding No. 3. There is no evidence that Councilman Paul Grenier, a named respondent in this case, was a member of the negotiating team or that he was a party to or a signatory to the negotiating ground rules. In its answer, the City states that the members of the Council generally "adhere to all ground rules of negotiations," that it "has been reminded that [comments about negotiations] could violate any round rules... and [that] no comments have since been made."

DECISION AND ORDER

The traditional procedure is for a funding body, the City Council in this case, to vote on a tentatively agreed to package first before offering any counter proposals. The logic for this is simple: if the tentatively agreed to package receives funding approval, there is no need for further deliberations, negotiations or expense. For whatever reasons, the Berlin City Council sought to offer counter-proposals before voting for or against the tentatively agreed to package. This was counter-productive from two perspectives. First, it caused the City to


be charged with an unfair labor practice. Second, it had the potential of undermining, unnecessarily, the credibility of the City's negotiator at the bargaining table. Except for the exceptional abilities of the negotiators and their ability to work with each other, this diversion from the normally accepted approval/disapproval procedure may have derailed these negotiations. It is to the credit of the negotiators that this did not happen.

It is also to the credit of the negotiators that they were able to negotiate and get approval for a contract package even after the cart-before-the-horse procedure used by the Council when it asked its negotiator to return to the bargaining table with a counter proposal before it had rejected a tentatively agreed to package which had been negotiated within limits each believed to have been within the authority of the other. It is only because the parties had the skill to reach their ultimate agreement in August that we do not find the commission of a ULP. No remedy on the bad faith bargaining charge is warranted; that part of the ULP is now moot and is DISMISSED.

As for the Union's complaints about violations of the ground rules as they pertain to press releases, we can find no proof that the City councilman about whom the Union specifically complained was either a member of the negotiating team or a drafter of or a signatory to the ground rules. While, as the City said in its answer, it is prudent for council members to adhere to the ground rules as a general principle to avoid charges such as these, the specific conduct complained of in this instance cannot be attributed to this singular set of negotiations, to a party to the ground rules, or to a negotiator. Accordingly, that part of the ULP which alleges a violation of the ground rules is hereby DISMISSED.

So ordered.

Signed this 13th day of September, 1995.


EDWARD J. HASELTINE
Chairman

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