



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HOOKSETT SCHOOL BOARD	:	
	:	
Complainant	:	
	:	
v.	:	
	:	CASE NO. T-0235:8
HOOKSETT EDUCATION ASSOCIATION,	:	
NEA-NEW HAMPSHIRE	:	DECISION 1998-045
	:	
Respondent	:	

APPEARANCES

Representing Hooksett School Board:

Theodore Comstock, Esq.

Representing Hooksett Education Association, NEA-NH:

James Allmendinger, Esq.

Also appearing:

- Joanne McHigh, Hooksett School Board
- LeeAnn Moynihan, Hooksett School Board
- Steven Welford, SAU #15
- Eric Chase, Hooksett Education Association
- Linda McAllister, Hooksett Education Association
- Jackie Wood, Hooksett Education Association
- June A. Rich, Hooksett Education Association
- Gregory Andruschkevich, NEA-New Hampshire
- Olga Haveles, Hooksett Education Association

BACKGROUND

The Hooksett School Board (Board) filed unfair labor practice (ULP) charges against the Hooksett Education Association, NEA-New Hampshire (Association) on February 9, 1998, alleging violations of RSA 273-A:5 II (d), (f) and (g) relating to a refusal to negotiate in good faith when the Association failed to properly submit and support the tentative agreement with management to its membership for

ratification. The Association filed its answer on February 24, 1998. A pre-hearing conference was held on March 18, 1998 at which time the parties stipulated the following issue to be considered by the PELRB:

Whether, consistent with the obligation to bargain in good faith, the Association had an obligation on January 13, 1998, to support and present for a membership vote the tentative agreement of December 23, 1997, once the School Board had acceded to the Association's interpretation of the tentative agreement on January 12, 1998.

After an earlier continuance sought by the parties, this matter was heard by the PELRB on April 22, 1998.

FINDINGS OF FACT

1. The Hooksett School Board employs teachers and other personnel associated with the operation of its school system and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Hooksett Education Association, NEA-New Hampshire, is the duly certified bargaining agent for all full and part-time teachers employed by the Board.
3. The Board and the Association are parties to a collective bargaining agreement (CBA) which will expire on June 30, 1998. In contemplation of this, they started negotiations for a successor CBA in September of 1997. After several bargaining sessions in the months of September, October and November, the Association declared impasse on November 6, 1997. This was followed by a mediation session on December 22, 1997 which lasted into the early morning hours of December 23, 1997. At the conclusion of that meeting, both parties believed they had reached an agreement. (Pleading and response Nos. 3, 4, 5 and 6, Stipulation No. 1 and testimony of Assistant Superintendent Welford.) At the conclusion of the mediation session, the parties agreed that the Association would prepare the salary schedules and Board attorney, Ted Comstock, would prepare the contract language. When the Association failed to receive certain information from Welford to enable it to prepare the salary schedule and when Comstock did not get the salary matrix from the Association, the parties started communicating about what they thought was their tentative agreement ("TA").

4. On January 5, 1998, Comstock sent Association consultant and negotiator Greg Andruschkevich a fax saying that the Board would be meeting on January 6, 1998 and that he needed the Association's "work up." He also said, "Please also remember that the amount agreed to includes the 'fixed' costs of FICA, etc. This cost is approximately .2%" (Association Exhibit No. 1.) Andruschkevich testified that he believed the 3 1/2% salary settlement included the employer's assuming the fixed costs, especially because the Board had traditionally done so in the past. Thus, also on January 5, 1998 Andruschkevich sent a fax to Comstock saying that he checked his record and with the Association Negotiations Committee Secretary, Jackie Wood, and found no record that there was any agreement that the fixed costs were included in the 3 1/2% salary increases. (Association Exhibit No. 2.) On January 6, 1998, Welford and Andruschkevich exchanged faxes on calculations related to the salary proposal with the Association schedules showing 185 days for SY 1997-98, 186 days for SY 1998-99 and 187 for SY 1999-00. (Association Exhibit Nos. 3 and 4.)
5. On January 7, 1998, Comstock sent a fax to Andruschkevich reporting on the school board meeting on January 6, 1998 and saying, in pertinent part:

This letter is to inform you that the Hooksett School Board met on January 6, 1998 to consider the tentative agreement which had been reached by the Board and Association bargaining teams, and voted to not ratify said tentative agreement. The reason for this vote was the issue of the so-called "roll-ups." The Board would have supported the tentative agreement, had the 3.5% for each of the years included the roll-ups. That is what the Board bargaining team believed was the agreement, and that is the authorization which they received from the Board at the time the deal was made during mediation. To have the roll-ups cost (approximately \$12,000. for the 1998-99 year) be exclusive of the 3.5% is not acceptable to the Board.

He continued by saying, "The Board will not ratify a tentative agreement which contains the rollups, an amount which is over and above the 3.5%." (Associa-

tion Exhibit No. 5.) In this fax, Comstock also identified January 12th as "the last opportunity the Board (and Association) will have to ratify an agreement which...can be presented to the voters for their consideration and vote in March, 1998."

6. Some five hours later, also on January 7, 1998, Comstock sent Andruschkevich another fax summarizing the tentative agreement for a 1998-2000 CBA. It addressed nine (9) topics plus the resolution of a sick leave bank grievance. The 9 subject areas were: (1) Merit & Incentive Pay study committee, (2) Reduction in professional staff work force, (3) Insurance, (4) Professional Qualifications and Assignments, (5) Memorandum on funding ratification, (6) Negotiations Procedures, (7) Length of school year, (8) Duration and Renewal and (9) Salaries, with a disclaimer as to no agreement on including or excluding fixed costs in the 3.5%. (Association Exhibit No. 6.)

7. The parties, without their respective professional negotiators, met on January 9, 1998, in an attempt to resolve the fixed cost issue. According to testimony from Welford and Andruschkevich, they were unsuccessful in doing so. On January 11, 1998, Association Co-President, Linda McAllister prepared and posted a notice for a ratification or informational meeting to be held Monday, January 12, 1998 at 3:45 p.m. At that meeting, she explained both the perception of the Association negotiators (Association Exhibit No. 9) as to its version of the TA as well as the Board's version of the TA. The attendees then discussed the fixed cost issue, being able to arbitrate efforts to obtain substitutes when they are needed, two extra days added to the calendar and lower percentage increases at the top of the scale. McAllister was then instructed by the attendees to reject both versions of the TA, the Association's and the Board's. This was not the result of a formal vote but represented what Welford said was described to him as an "overwhelming consensus." (Testimony of Welford, McAllister and Andruschkevich.) At the conclusion of this afternoon meeting, McAllister called Welford and conveyed the concerns of the membership about both versions of the TA. Meanwhile, Andruschkevich and Welford settled a question about a RIF issue and documented this by exchanging a fax on January

13, 1998. (Board Exhibit No. 2) No other issues were described as outstanding in that document.

8. The Board met at 7:00 p.m. on the evening of January 12, 1998. Minutes of that meeting show that the Board voted unanimously to ratify the TA reached with the Association December 22-23, 1997. (Board Exhibit No. 1.) According to testimony from Welford, this ratification was exclusive of the fixed costs, i.e., the fixed costs were ratified as being outside the 3 1/2% wage increase. (Also, Association Exhibit No. 10.) Also that evening, after the Board's ratification vote, Welford and two Board negotiators met with Andruschkevich, McAllister and other teachers. McAllister testified that she told them that the rollup or fixed costs issue was not the only item keeping the TA from being ratified by the Association. On-going concerns included the substitute procurement issue, the increased workdays issue and the salary issue at the high end of the scale. Association negotiators expressed pessimism about taking the Board-ratified TA, now exclusive of rollup costs, to a vote but were prevailed upon to do so by the Board because "they told us we had to," according to McAllister. Accordingly, McAllister posted notice of an emergency ratification meeting for Tuesday, January 13, 1998 at 3:30 p.m. (Association Exhibit No. 11.) Voting was conducted on the package reflected in Association Exhibit No. 12, inclusive of the salary scales and increased workday requirements attached thereto. The result was a unanimous rejection by the Association of the package the Board had ratified the previous evening.

DECISION AND ORDER

The sequence of events in this case broke down at some point after the conclusion of mediation on December 23, 1997 and on or before Comstock's fax of January 5, 1998 (Association Exhibit No. 1 as referenced in Finding No. 4 above) which addressed including fixed costs in the cost of the 3 1/2% wage settlement. It is at this point that the parties' tentative agreement evaporated and, along with it, any obligation to proceed to take the negotiated package, no longer the product of or representing consensus, back to their respective constituencies for ratification.

The confusion about the fixed or rollup costs was a mutual mistake of fact "not caused by the neglect of a legal duty" and involving a "belief in the present existence of a thing material to

the contract which did not exist," namely, a consensus on behalf of the parties that the TA was inclusive (or exclusive) of the rollup costs. Black's Law Dictionary, Fifth Ed., p. 903 (1979). The mistake becomes "mutual" where "the parties have a common intention, but it is induced by a common or mutual mistake." Id. Here the common intention was to negotiate, settle and ratify an agreement and the common mistake was a misunderstanding, unspoken until on or about January 5, 1998, about the status of the "fixed costs."

The common remedy for a mutual mistake of fact is a rescission of the parties' contract and a return to the bargaining process. Here, there is no contract to rescind because there was no meeting of the minds on the negotiated package. The existing CBA (Finding No. 3) continues, of course, until its expiration and, under *status quo*, may continue thereafter. Appeal of Milton School District, 137 N.H. 240, 247 (1993) and Appeal of City of Nashua Board of Education, 141 N.H. 768, 777 (1997).

Having found that the parties' understanding of what constituted their TA disappeared no later than January 5, 1998, we make no assessments of or rulings on the parties' conduct thereafter. They had the obligation to return to bargaining at this point. They may have, in fact, been attempting to bargain after January 5, 1998, up and until January 13, 1998. If so, they were unsuccessful in their efforts. The Association advised the Board of the sense of the membership on January 12, 1998. (Finding No. 7.) The Board insisted that the Association take a vote. The Association honored that request on January 13, 1998. In doing so, the Association engaged in an act of accommodation, not of obligation. The TA, in either version, had disappeared more than a week earlier with Comstock's fax raising the fixed cost issue followed by Association Exhibit No. 5.

The ULP is DISMISSED and the parties are directed to return to bargaining for a successor contract forthwith.

So ordered.

Signed this 8th day of May, 1998.


 JACK BUCKLEY
 Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members E. Vincent Hall and William Kidder present and voting.