



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire	*	
	*	
	*	
Petitioner	*	
	*	Case No. M-0774-2
	*	
v.	*	
	*	Decision No. 2002-083
	*	
City of Rochester, Rochester Public Library	*	
	*	
Respondent	*	
	*	

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The City of Rochester, through its City Manager (the Complainant, hereinafter referred to as the "City") filed unfair labor practice charges on June 14, 2002 against the Teamsters Local 633, representing certain library employees, (the Respondent, hereinafter referred to as the "Union"). The City alleges in its complaint that the parties had conducted negotiations during which the Union was disorganized, that the parties had reached a tentative agreement, that the Union asked the City to prepare a document that could be presented to the Union membership for ratification, and that the Union's negotiating team did not support the tentative agreement during the membership voting as the vote was 13 -1 against ratification. Following the failure of ratification, the Union corresponded with the City and the Executive Director of the PELRB relating that the tentative agreement voted upon differed from that agreement that had been verbally agreed to by the negotiators. The Union also requested that the parties begin the fact-finding process. The City says that these actions by the Union violate certain provisions of the Public Employee Labor Relations Act (RSA 273-A), namely A:5, II (a), (b), (d), and (e).

The City requests relief in the form of a Board order finding that the Union violated the statute and that it cease and desist from committing unfair labor practices, from initiating the fact-finding process. Further that the PELRB be compelled to resume negotiations and to reimburse the City for its legal fees and cost associated with this complaint.

The Union timely filed its Answer with the PELRB on July 1, 2002. It asserts that it was the City that was ill prepared during negotiations and that the Union's chief negotiator indicated that he believed the parties were at impasse although it would present the City's proposal to the membership. The Union denies that it was under any legal obligation to support the City Proposal as written. It further asserts that the City's complaint fails to provide factual allegations that the Union restrained, coerced or otherwise interfered with employees in the exercise of their rights in violation of RSA 273-A:5, II (a). It asserts that the City's complaint fails to provide any factual allegations that the Union restrained, coerced or otherwise interfered with the City in its selection of agents to represent them in negotiations in violation of RSA 273-A:5, II (b). The Union also denies that it breached any obligation to bargain in good faith as required by RSA 273-A:5, II (d) and further asserts that the City's complaint fails to provide any factual allegations that the Union engaged in any job action in violation of RSA 273-A:5, II (e). Finally, the Union denies that it made any affirmative representation to the City that it would promote or support the City's bargaining proposal.

For its part, the Union seeks to have the City's complaint dismissed in its entirety and requests the PELRB order the City to fact-finding pursuant to RSA 273-A:12 and to pay the Union's attorney's fees and costs.

PARTICIPATING REPRESENTATIVES

For the Complainant: Thomas J. Flygare, Esq. for Daniel P. Schwartz, Esq.

For the Respondent: John D. Burke, Esq., Counsel to Teamsters Local 633

ISSUES

1. Whether the facts alleged in the City's complaint to have been the actions of the Union constitute a "strike or "other job action" as provided in RSA 273-A:5, II (e)?
2. Whether the actions of the Union alleged in the complaint constitute restraint, coercion or interference with public employees in the exercise of their rights in violation of RSA 273-A:5, II (a)?
3. Whether the actions of the Union alleged in the complaint constitute restraint, coercion or interference with the City in the selection of its agents to represent them in negotiations in violation of RSA 273-A:5, II (b)?
4. Whether or not the actions of the Union alleged in the complaint amounted to a failure of the Union to bargain in good faith as required by RSA 273-A:5,II (d)?

5. Whether or not attorney fees and costs should be charged against either party and awarded to the other party?

WITNESSES

For the Complainant:

1. Robert D. Steele, Acting City Manager
2. Diane Moody
3. David Tinkham

For the Respondent:

1. Thomas D. Noonan, Teamster Representative, Local 633
2. Dorinda Howard
3. Celina Houlne

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon a proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits

1. Letter from Mr. Noonan, dated 6/6/02
2. Tentative Agreement, dated 5/15/02

For the Complainant:

1. Union proposals*
2. City proposals*
3. Tentative Agreement, dated 5/15/02
4. Union letter, dated 6/6/02

* Such proposals as may be offered shall be identified by date or otherwise to the Union counsel on or before July 31, 2002

For the Respondent:

None other than as presently indicated above as Joint Exhibits

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB within ten (10) days of the date of this Order.

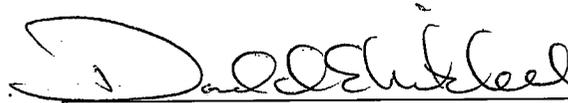
DECISION AND PRE-HEARING ORDER

1. The parties shall meet and confer on or before July 31, 2002 for the purposes of discussing the several issues alleged in the City's Complaint and to consider the withdrawal of this action.
2. On or before August 1, 2002 the City's counsel shall inform the PELRB as to whether it desires to pursue this action further or that it desires to withdraw its Complaint.
3. In the event that the City withdraws its Complaint, the Union shall withdraw its present request that the parties proceed to fact-finding at this time.
4. In the event that the parties are unable to otherwise resolve their dispute, the parties' representatives shall exchange their final Witness List, indicating the name and position or employment title of each witness and Exhibit List, indicating the title and date of each exhibit, and each shall fax a copy of their respective list to the PELRB no later than five (5) days prior to the date of hearing scheduled below.
5. The party representatives shall also meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties within ten (10) days of the date of this order.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, August 15, 2002 beginning at 9:30 AM.

So Ordered

Signed this 19th day of July, 2002

A handwritten signature in cursive script, appearing to read "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer