State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of Manchester Public Library Employees Petitioner v. City of Manchester, Public Library Respondent	*	Case No. M-0786-1 Decision No. 2002-157

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

John D. Burke, Esq.

Representing City of Manchester:

Daniel D. Muller, Jr., Esq.

Also appearing:

David A. Hodgen, Chief Negotiator, City of Manchester
William J. Prive, City of Manchester
Thomas Noonan, Business Agent, Teamsters Local 633

BACKGROUND

Teamsters Local Union No. 633 of New Hampshire (Union) filed unfair labor practice (ULP) charges against the City of Manchester, Public Library (City) on August 9, 2002 alleging violations of RSA 273-A:5 I (e) for refusing to bargain with it in good faith after having been order to negotiate dated April 4, 2002 and denominated Decision No. 2002-040. The City filed its answer and motion to dismiss on August 23, 2002. The Union filed objections thereto on August 30, 2002 which prompted the City to file a "replication" to the Union's objection on Sep-

tember 5, 2002. The Union filed an objection to the City's replication on September 11, 2002. This matter then went to a pre-hearing conference on September 20, 2002, as memorialized in Decision No. 2002-110. Thereafter, on September 30, 2002, the City filed an amended motion to dismiss and to clarify the pre-hearing order. That clarification was forthcoming in a "corrected copy" version of Decision No. 2002-110 dated October 3, 2002. The Union filed an objection to the City's amended motion to dismiss and cross motion for summary judgment on October 9, 2002 which prompted an objection thereto filed by the City on October 24, 2002. This matter was also heard by the PELRB on October 24, 2002. At the close of those proceedings, the parties agreed to file post-hearing briefs on or before November 15, 2002. Both briefs were timely filed by counsel for each side on that date.

FINDINGS OF FACT

1. The City of Manchester employs certain personnel for the operation of the Manchester Public Library and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.

2. Teamsters Local 633 of New Hampshire is an employee organization which petitioned for and subsequently was certified as the exclusive bargaining agent for certain employees at the Manchester Public Library as a result of a bargaining agent election conducted on March 25, 2002 and so certified on April 4, 2002 in Decision No. 2002-040. That certification directed the City to "negotiate collectively with the Teamsters Local 633 of New Hampshire with an objective to [sic] reaching an agreement with the employee organization on terms and conditions of employment and shall negotiate collectively with such employee organization in the determination, and administration of grievances." (Union Exhibit No. 1)

3. The Union made demands to bargain on March 26, 2002 (Union Exhibit No. 2) and on April 12, 2002 (Union Exhibit No. 3) and the City responded on March 28, 2002 (City Exhibit No. 3) and on April 17, 2002 (Union Exhibit No. 4), all of which predated PELRB review of the election results which occurred on May 6, 2002 in the form of Decision No. 2002-053, after review of the City's Motion for Reconsideration filed on April 9, 2002, and the Union's objections thereto filed on April 16, 2002.

4. On or about June 5, 2002, the City filed an appeal of the PELRB's decision in Decision No. 2002-053 pertaining to the election and certification (Union Exhibit No. 6) with the New Hampshire Supreme Court.

5. On or about July 3, 2002, the Union made the request to bargain which is the subject of this ULP. (Union Exhibit No. 5.) The City responded by letter of July 8, 2002, which said, in pertinent part, "It is the City's position that negotiations are not appropriate at this time, pending the action of the Court on the City's Motion to Stay" (Union Exhibit No. 6.)

6. On or about August 19, 2002, the New Hampshire Supreme Court accepted the City's appeal but denied its motion to stay. (Union Exhibit No. 8.) Approximately two days later, on the 21st, Union counsel Burke and City negotiator Hodgen engaged in a telephone conversation. (City's "Replication" filed September 5, 2002.) Burke's brief filed on August 28, 2002 (pp. 4-5) characterized the exchange as *quid pro quo* bargaining because "the City has indicated that it would begin negotiations if the Union withdraws its improper practice charge." (See also Union objections filed September 11, 2002, page 2.) At Item 5 of the "Replication," Hodgen's response characterized the exchange as his asking "Burke if the Union would withdraw its ULP on the representation that it [the City] would start negotiations" and further explained that the "City...has not taken the position that it would begin negotiations if the Union withdrew the ULP. The City merely attempted to lay the ULP to rest." (Replication," Item 6.)

7. On August 23, 2002, the City filed an answer to the instant ULP and a motion to dismiss on the basis of mootness, at paragraph 8 thereof. On August 28, 2002, the Union filed objections to the City's motion to dismiss, specifically refuting the allegation of mootness. This was followed on August 29, 2002, by a letter from the City (Hodgen) to the Union (Noonan) stating, "now that the Court has ruled on the Motion to stay, we believe it is appropriate to start negotiations, without prejudice." (City Exhibit No. 4.)

8. The status of the parties' negotiations as the date of hearing before the PELRB is that they agreed to a first meeting date of September 24, 2002 (City Exhibit No. 5), they agreed to ground rules, and the Union has exchanged its non-economic proposals with the City on October 21, 2002. (City Exhibit 6 and testimony of Tom Noonan.)

DECISION AND ORDER

The Union's ULP complaint filed on August 9, 2002, alleges that "on or about July 8, 2002, the City of Manchester Public Library refused Teamsters 633's request to bargain and begin negotiations for the Manchester Public Library." Finding No. 5 and Union Exhibit No. 6 support this allegation. As of July 8, 2002, the City's position was that it had no obligation to bargain with the Union "pending the action of the Court on the City's Motion to Stay." We disagree with that conclusion.

We take notice of RSA 541:18 which provides, in pertinent part, "no appeal or other proceedings taken from an order of the commission shall suspend the operation of such an order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require

such suspension...." As of July 8, 2002, the PELRB's certification of April 4, 2002 (Decision No. 2002-040) was in full force and effect. It had neither been rescinded or modified by the PELRB nor stayed by the court.[1] Since suspension of the PELRB's order is not automatic upon filing an appeal and since the PELRB's order had not been stayed by court order,[2] we conclude that the City did violate RSA 273-A:5 I (e) when it refused to bargain on the date alleged.

Notwithstanding the foregoing finding, we are also mindful that the parties appear to have traveled the most difficult portion of their journey of learning to deal with each other under the obligations of RSA 273-A. Finding No. 8 shows that they are now meeting, have agreed to ground rules and have exchanged at least some proposals. We encourage that progress and the ultimate goal of arriving at a collective bargaining agreement. Inasmuch as the parties' course of conduct as reflected in Finding No. 8 now appears to be consistent with requirements under RSA 273-A, we characterize the violation of RSA 273-A:5 I (e) in the previous paragraph as a "technical violation"[3] and direct no remedy because the parties are now (as of the closing of the record) bargaining as contemplated by statute.

The finding is as stated. No further remedy is directed based on the circumstances as we understand them to be after September 24, 2002.

So ordered.

Signed this 31st day of December, 2002.

BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members E. Vincent Hall and Carol Granfield present and voting.

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[1] Footnote 2 to RSA 541:18 suggests that public policy generally tips in favor of not suspending an agency order pending appeal. "Suspension will be granted only upon a showing that in its absence petitioner will suffer irreparable harm due to circumstances beyond his control and that harm to plaintiff outweighs the public interest in enforcing the order for the duration of the appeal...." Union Fidelity Life Ins. Co. v. Whalan, 114 N.H. 549 (1974).

[2] Finding No. 6 notes that the court denied the motion to stay on August 19, 2002.

[3] The concept of "technical violation" is intended to connote a literal violation as defined by statute, RSA 273-A: 5 I (e) in this case, but accompanied by circumstances which have either remedied themselves or require no remedial order(s). It is not an unknown concept in New Hampshire public sector cases. See Appeal of Lisbon Regional School District, 143 N.H. 390, 395 (1999) where the court said, "To the extent the school district argues that its good faith conduct can otherwise excuse a *technical violation* of the contract, it cites no authority to support its position." (Emphasis added.)