

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Brotherhood of Police Officers,
Local 320

Complainant

v.

Town of Merrimack

Respondent

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Case No: P-0723-8

Decision No. 2004-182

APPEARANCES

Representing International Brotherhood of Police Officers, Local 320:

Julia E. Fahey, Esq., Counsel

Representing Town of Merrimack:

Mark T. Broth, Esq., Counsel

BACKGROUND

The International Brotherhood of Police Officers (IBPO), Local 320 (hereinafter "the Union") filed an improper practice charge on April 26, 2004 alleging that the Town of Merrimack (hereinafter "the Town") committed an unfair labor practice, in violation of RSA 273-A:5 I (a) & (e), when it rejected a tentative contract settlement reached between the parties. More specifically, the Union states that on or about July 21, 2003, the parties commenced negotiations for a successor agreement and executed negotiation ground rules. Thereafter, as indicated by the Union, the parties participated in numerous negotiation sessions and on November 4, 2003 reached a tentative agreement. However, on or about January 21, 2004, the Union claims that the Town's bargaining team informed the Union that the tentative agreement had been rejected by the Board of Selectmen, that all previously agreed upon contract items were off the table, and that the Town was submitting new proposals. As a result of such conduct, the Union alleges that the Town violated the previously agreed upon ground rules executed by the parties, as well as failed to bargain in good faith. Accordingly, it states that the Town has violated RSA 273-A:5 I (a) and (e).

The Town filed its answer denying the Union's charge on April 29, 2004. The parties agree on the chronology of events as described in the Union's charge. It specifically denies each and every allegation of violations of RSA 273-A as claimed by the Union. By way of further answer, the Town submits that the negotiation ground rules conditioned approval of any tentative agreement on ratification by the Board of Selectmen and ratification of any cost items by Town Meeting; that the Board of Selectmen exercised its prerogative to reject the tentative agreement; and that following such rejection, the Union had the option of either resuming negotiations or declaring impasse and availing itself of the dispute resolution mechanisms set forth in RSA 273-A:12.

A pre-hearing conference was conducted at PELRB offices on June 14, 2004 during which both parties were represented by counsel. At the outset of the pre-hearing conference, the Hearing Officer disclosed to the parties that he had previously been employed by, and later served as NH Counsel to the Union. The Hearing officer expressed that he had no personal knowledge as to the facts giving rise to the complaint, and his belief that he could conduct the pre-hearing conference in a fair and impartial manner, but stated that under the circumstances, if asked to do so, he would recuse himself. Given the nature of the proceeding, the parties had no objection to the Hearing Officer conducting the pre-hearing conference. The Hearing Officer recused himself from any further decision-making or other participation in the PELRB's consideration of the instant matter.

During the pre-hearing conference, the Union was asked to further elaborate as to what specific portions of the negotiation ground rules the Union was claiming had been violated by the Town. The Union responded by referencing, *inter alia*, the obligation to use best efforts to obtain ratification and that neither party was to make new proposals following the third bargaining session. The Union was also asked to specify what relief it was seeking through the instant complaint, to which it answered that the Town be ordered to submit the tentative agreement to Town Meeting for a ratification vote. In response, the Town stated that regardless of the merits of the Union's claim, such relief is not within the authority and jurisdiction of the PELRB to grant. The Union was directed by the Hearing Officer to put its requests for relief in writing, in accordance with PELRB rules, no later than July 1, 2004. On June 30, 2004 the Union filed its amended complaint detailing its requested relief. The nature of the amendment required no additional response by the Town and the Town's general denial of claims and relief remains effective.

On August 19, 2004 the Board convened an evidentiary hearing at its offices in Concord. Each party was represented, provided the opportunity to present witnesses and conduct cross-examination and to present exhibits. Following the submission of each party's case the board then reviewed all filings submitted by the parties and considered all relevant evidence, including the "stipulated facts" submitted by the parties incorporated below as Findings of Fact #'s 1-8. The Board then determined the following:

FINDINGS OF FACT

1. The International Brotherhood of Police Officers, Local 320 (hereinafter the "IBPO") is the exclusive bargaining agent for all regular permanent members of the Town's Police Department.
2. The Town of Merrimack (hereinafter the "Town") is a public employer within the meaning of RSA 273-A:1 X.
3. The Town of Merrimack and the IBPO are parties to a collective bargaining agreement dated July 2, 2000 to June 30, 2004.
4. For all times relevant to this matter the Town has employed the Town Manager form of Government and has adopted the SB-2 form of Town Meeting.
5. On or about July 21, 2003, the negotiating team representing the Town and the negotiating team representing the local executed agreed upon ground rules to be followed in successor contract negotiations.
6. Subsequent to executing the aforesaid ground rules, the parties participated in approximately six (6) negotiating sessions.
7. On or about November 4, 2003, the parties reached a Tentative Agreement, which reflected the provisions that had been agreed upon through the negotiating sessions. (See Joint Exhibit #2).
8. On or about January 21, 2004, the Town's negotiating team informed the Union that the Board of Selectmen had rejected the tentative agreement, that all previously agreed upon contract items were off the table and the Town was submitting new proposals.
9. Among the Articles of the parties' existing collective bargaining agreement were Article XII – Wages (Sections 1,4, and 5) and Salaries and Article XVI – Supplemental Compensation (Benefits) (Section 1) which related to a prescription health insurance benefit to employees.
10. On or about July 21, 2003 the parties executed "Agreed Ground Rules for Contract Negotiations". Paragraph #6 of that document states that "Each side's negotiating team has authority to reach tentative agreements, but any contract to be final must, from the Town's standpoint, be approved by the Board of Selectmen and adopted, as to cost items, at a Town meeting, and from the IBPO's standpoint, be ratified by IBPO Local #320 membership." (Joint Exhibit #1).
11. The parties' Ground Rules also provide in Paragraph #11, in relevant part, that " The parties agree that exclusive of counter proposals and modifications / revisions to

original proposals, all original proposals by both parties will be submitted no later than the third negotiating session". (Joint Exhibit #1).

12. The parties' Ground Rules also provide in Paragraph #7 that " It is understood that in the event that no agreement is reached and mediation/factfinding becomes necessary, neither party shall be bound or limited by their 'T.A.' to any item." (Joint Exhibit #1).
13. The IBPO agreed that the Town followed the process outlined in Paragraph #6 of the parties' ground rules. (Testimony of Union President Pane).
14. On Thursday, December 18, 2003 the Town's Board of Selectmen conducted a public meeting that had been preceded by a private session among the Selectmen. At the public session it considered the contract tentatively agreed upon by the respective negotiating teams. The Town's Administrative Assistant presented the essential terms to the Board and the Board of Selectmen rejected the tentatively agreed contract terms, as presented. (Minutes for the Board of Selectmen's Meeting, dated December 18, 2003 – Town Exhibit #1).
15. The parties' ground rules do not specifically detail requirements upon either party regarding continued negotiations and proposal exchanges, following rejection by a party of tentatively agreed contract terms negotiated under these ground rules, nor do they limit statutory rights of either party to seek mediation/fact-finding.
16. The Town's negotiator sought a union response to Town proposals at each negotiation session and made statements indicating that he was "providing regular updates to management" and that he would be "reviewing [the items agreed] when we are with the board". He further indicated that he was in continuing contact with management during the course of the parties' negotiations. He did not make an express representation during negotiations that the Board of Selectmen had approved any provisions tentatively agreed to prior to the Board of Selectman's full consideration and rejection of the entire proposed agreement on December 12, 2003.
17. Following the Board's rejection of the tentatively agreed contract terms, the parties met on or about January 21, 2004. Neither party declared impasse or suggested to the other party that it intended to request mediation/fact-finding at that time. Instead, the Town's negotiator initiated actions to restart negotiations for a successor agreement to the parties' collective bargaining agreement due to expire June 30, 2004. He presented a second set of ground rules, identical to the previous set used by the parties, and different proposals regarding wages and health insurance.

ORDER

JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A:1 *et seq*) provides, that the PELRB has sole original jurisdiction to adjudicate claims brought against a public employer pursuant to RSA 273-A:5, I, by the exclusive representative of a certified bargaining unit comprised of individuals employed by that "public employer" as defined in RSA 273-A:1,I. (See RSA 273-A:6).

DECISION SUMMARY

The parties undertook negotiations of a successor collective bargaining agreement pursuant to mutually acceptable "ground rules" constituting a valid contract between the parties. The ground rules expressly reserved to the Board of Selectmen and the Union membership the right to reject the product tentatively agreed to by the respective negotiating teams. Following the tentative agreement of the negotiating teams and presentation of the tentative agreement to the Board of Selectmen, they rejected its terms. We find no breach of the good faith obligation to bargain on the part of the Town either during negotiations or in its presentation of the tentative agreement for ratification. The Board of Selectmen were acting within their valid reservation of rights to approve the tentative agreement reached by the respective negotiating team when they voted to reject the tentative agreement. Therefore, no violation of RSA 273-A occurred and the Union's complaint of the commission of an improper labor practice is denied.

DISCUSSION

It is a common, if not a preferred, practice between negotiators representing public employers and exclusive bargaining representatives to establish, in writing, so-called "ground rules" to which they will subsequently adhere during their negotiation of collective bargaining agreements. Indeed such ground rules constitute an agreement, in and of itself, between the parties. In form it is dated and executed and its content expresses, in part, standards of conduct or obligations of the parties related to their negotiations. Adherence to such mutual ground rules reflects, again in part, the statutory obligation the parties have to negotiate in good faith pursuant to RSA 273-A:3 I and to avoid conduct prohibitive by RSA 273-A:5.

In this case, the parties executed ground rules on July 21, 2003 that expressly reserved the approval of any tentative agreement achieved by their respective negotiators. (See Finding of Fact # 10). These parties conducted several negotiation sessions during which proposals were received and made by each party. On or about November 4, 2003 a tentative agreement was reached for a successor collective bargaining agreement. In the

numerous discussions that were incident to these negotiation sessions, individuals made many representations coincident with the negotiation process. Oral comments attributed to the Town's negotiator include representations that he was "providing regular updates to management"; that he would be "reviewing [the items agreed] when we are with the board" and that he was in continual contact with management during the course of the parties' negotiations. The Town's negotiator admits to these representations.

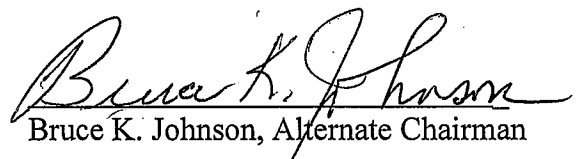
In the context of negotiations, opposing parties are free to attach such significance as they wish to comments made by the other side. One side may be said to imply and another side may be said to infer meaning where no such meaning can be legally ascribed. Indeed, a purpose of executing written ground rules is to insure that the banter, bluffing, and blustering often employed as a strategic or tactical move in the give and take of negotiations does not so cloud the parties' statutory and contractual obligations that they forget them. It appears to us that the union negotiating team took an inference from the conduct of the Town's negotiator in establishing a pace to negotiations by seeking a union response to Town's proposals at each negotiation session, and his statements as expressed above. While they were free to take such inference as they may from the ongoing proceeding, they did so with the same risk as any negotiator that elevates inference over the statutory obligations and written statements contained within a mutually agreed set of ground rules.

We do not view the Town negotiator's statements or conduct as evidence of a failure to bargain in good faith or as interfering with rights afforded to employees pursuant to RSA 273-A:5(a). Likewise, we do not conclude that the Board of Selectmen's rejection of the tentative agreement presented to them violates the statute. It was the valid exercise of a right that was specifically reserved to them by both parties.

Accordingly, the complaint against the Town is denied.

So Ordered.

Signed this 22nd day of November, 2004


Bruce K. Johnson, Alternate Chairman

By unanimous vote. Alternate Chairman Bruce Johnson presiding with Board Members E. Vincent Hall and Richard W. Roulx also voting.

Distribution:
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