State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Farmington Educational Support Personnel Association, NEA-New Hampshire	*	
Complainant	*	
v.	*	Case No. M-0621-1
Farmington School District	*	Decision No. 2006-039
Respondent	*	

APPEARANCES

Representing the Association

James F. Allmendinger, Esq. of the National Education Association-New Hampshire

Representing the District

Diane M. Gorrow, Esq., of Soule, Leslie, Kidder, Sayward & Loughman

BACKGROUND

The Farmington Educational Support Personnel Association, NEA-NH (hereinafter "Association") filed an improper practice charge on July 20, 2005 alleging that the Farmington School District (hereinafter "District") violated RSA 273-A:5, I (a) interfering with employees in the exercise of due rights, and (e) failing to negotiate in good faith. The Association's allegations arise from a disagreement between the parties as to the interpretation of the amount of total increase to bargaining unit members' wages that would be provided by the District, and whether the District voted not to ratify the tentative agreement reached by the parties.

The District filed its answers and exceptions to the Association's charge on August 18, 2005, wherein it denied that it has committed an unfair labor practice in violation of RSA 273-A:5 I (a) and (e). The District maintains that their offer of increased

wages was a total increase of 2.7% to wage rates and excluded the granting of an additional step to bargaining unit members. The District's position differs from the Association's position that alleges that the District offered and the Association accepted a 2.7% increase to wage rates and an additional step increase on the salary schedule

A pre-hearing conference was conducted with the parties on November 2, 2005. Pursuant to a Pre-Hearing Order dated November 7, 2005 the parties met, conferred and agreed to certain facts and to the submission into evidence of certain joint exhibits. A written stipulation as to facts and exhibits was filed with the PELRB on December 7, 2005. On December 15, 2005 an evidentiary hearing was conducted at which both parties appeared and were represented by counsel. Each party had the opportunity to present witness testimony and to undertake cross-examination. The parties' mutually agreed stipulations of facts were accepted by the PELRB and appear below as Findings of Fact #1 through #26. The parties submitted joint exhibits that were admitted by the PELRB and each party had the opportunity to offer additional exhibits. The parties were provided the opportunity to submit post-hearing legal memoranda and the record was held open for that purpose until January 6, 2006. The PELRB reviewed all pleadings filed in connection with this matter, considered all of the evidence presented to it, and weighed the credibility of that evidence. It finds as follows:

STIPULATION OF FACTS

1. The Farmington Educational Support Personnel Association, NEA-NH (Association) is the duly elected exclusive representative of the bargaining unit which consists of food service staff and paraprofessionals employed by the Farmington School District (School District) and are public employees as defined in RSA 273-A:1, IX.

2. The School District is a public employer as defined in RSA 273-A:1, X.

3. In the 2004-2005 school year, the Association and the School District were operating under a Collective Bargaining Agreement (CBA) known as the Master Agreement which was effective from July 1, 2002 until June 30, 2005. See Joint Exhibit A.

4. In the fall of 2004 and winter of 2005, the Association and School District were involved in negotiating sessions on the terms of the successor CBA.

5. The Association's negotiating team consisted of NEA-NH UniServ Director Peter Miller and Association members Martha Horgan, Robert Ham, and Patricia Grass Alielouahed.

6. The School District's negotiating team consisted of Superintendent Brian Blake and Farmington School Board members Steve Yurick and Todd Lefebvre.

7. In November 2004, the School Board presented a salary proposal which stated in part: "Yr. 1 Salary: 2% flat (not 2% plus step). Yr. 2 Salary: 3% flat (not 3% plus step)." See Joint Exhibit B (11/29/04 proposal).

8. On November 23, 2004, Deborah Briggs, SAU 61's Business Manager, created spreadsheets entitled "Para/FS Negotiations 2% salary increase" and "Food Service Compensatory 2% increase." See Joint Exhibit C.

9. The Association rejected the proposed 2% salary increase.

10. At a January 4, 2005 negotiating session, the School Board orally presented a final salary offer of 2.7%.

11. On December 21, 2004, the Business Manager created spreadsheets showing a 2.7% increase in wages, not 2.7% plus step increase. See Joint Exhibit D.

12. During the January 2005 negotiating session, the Association and School Board discussed whether the 2.7% included steps or not. See Joint Exhibit E-1 (notes of Steve Yurick), Joint Exhibit E-2 (notes of Patricia Grass Alielouahed), and Joint Exhibit E-3 (notes of Peter Miller).

13. After the January 4, 2005 negotiating session, Superintendent Blake e-mailed the School Board's final offer to Peter Miller. See Joint Exhibit F (incorrectly dated 12/7/05). The e-mail stated that the final proposal on salary was "The board agrees to the 2.7% salary increase for each year of the contract (with step increase)". Id.

14. The Association accepted the School Board's final offer. The Association understood the offer of 2.7% to be 2.7% plus step increase.

15. At 5:16 p.m. on January 10, 2005, Joint Exhibit D was printed.

16. The School Board voted to ratify the Tentative Agreement on January 10, 2005. See Joint Exhibit G.

17. The School Board and the Association ratified the Tentative Agreement, as they understood it.

18. The cost items of the Tentative Agreement were submitted to the voters of the Farmington School District at the 2005 Annual Meeting.

19. The estimated cost increases in the warrant article were $275,304.97 for 2005-2006 and $83,395.06 for 2006-2007.

20. The Farmington School District is an SB2 district and its deliberative session was on February 10, 2005, and the official ballot voting was on March 8, 2005.

21. The voters approved the cost items in the warrant article. See Joint Exhibits H and I.

22. After the voters approved the CBA warrant article, the Association prepared a draft copy of the CBA and hand-delivered it to Superintendent Blake on May 16, 2005. See Joint Exhibit J.

23. The Association's salary schedule attached to the draft CBA reflected a 2.7% increase in wages plus step increases.

24. After reviewing the draft, the Superintendent informed the Association that the salary schedule in the draft did not reflect the School District's understanding of the parties' agreement on wages; therefore, he expected the School Board to reject the draft.

25. After receiving the Association's draft of the CBA, the School Board agreed to pay and offer contracts based on the Board's understanding that the parties agreed to a 2.7% increase over current wages without a step increase.

26. On July 20, 2005, the Association filed an unfair labor practice charge against the School District, disagreeing with the salary payments implemented by the School Board based upon the School Board's understanding of the settlement.

27. Although the District had generated several spread sheets containing designated costs for increased benefits prior to negotiations, but the Association's negotiating team did not see any of these financial calculations or spread sheets reflecting the allotment of specific amounts to particular CBA benefits until Superintendent Blake provided them to Association representative Miller after the voters approved the budget. (See Joint Exhibits C and D)

28. The funds approved by the voters are sufficient to cover the projected costs of the wage increase position espoused by either the District or the Association. (See Joint Exhibit H)

29. The warrant presented to the voters did not express subcategories of costs between wages and insurance and other benefits and required approval only of an aggregate amount.

30. The District made adjustments to the salary schedule effectively resulting in an additional step for some of the unit members. (See Joint Exhibit J, p.3)

31. Superintendent Blake testimony provided no explanation as to why the language in his confirming e-mail communication to the Association expressing the District's final position (Joint Exhibit F) differs from language used in earlier District counter-proposals, but is similar to language used by the Association in its earlier proposals to express its position on wages. (See Joint Exhibit B; Association Exhibit C)

DECISION AND ORDER

JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has primary jurisdiction to adjudicate claims between the duly elected "exclusive representative" of a certified bargaining unit comprised of public employees, as that designation is applied in RSA 273-A:10, and a "public employer" as defined in RSA 273-A:1,I. (See RSA 273-A:6,I).

In this case, the Association has complained that actions of the County constitute violations of RSA 273-A:5,I (a) interfering with employees in the exercise of due rights and (e) failing to negotiate in good faith. Therefore, PELRB jurisdiction in this matter is appropriate pursuant to RSA 273-A:6, I.

DISCUSSION

The Farmington Educational Support Personnel Association, NEA-NH represents food service and paraprofessional staff as their exclusive bargaining representative in collective bargaining negotiations with the Farmington School District. During the fall of 2004 and through the winter of 2005 both parties had experienced negotiating teams involved in bargaining over terms and conditions for a successor collective bargaining agreement to an existing CBA that was to expire on June 30, 2005. The parties exchanged proposals and counter-proposals regarding, among other issues, wages. On or about January 4, 2005 the parties conducted what would be their last face-to-face bargaining session. The negotiation session was noteworthy for two reasons. First, it ended somewhat abruptly and without the preciseness and decorum necessary to formal bi-lateral negotiations. Second, no agreement was reached prior to the departure of the Selectmen as to what extent employees wages would be increased. After the Selectmen members had left, the Superintendent continued to participate in discussions with the Association. The testimonial evidence regarding the end phase of the meeting between these two parties on January 4, 2005 leads us to the conclusion that, the parties had not closed the gap between their respective positions. The issue of wage increases had become narrowed to a final resolution regarding whether the employees would receive an increase of 2.7% without an additional step increase on the salary schedule; a

position advanced by the District. Or, whether the employees would receive an increase of 2.7% with an additional step increase on the salary schedule as advanced by the Association.

Subsequent to this last negotiation session, the District Superintendent e-mailed what can be characterized as confirmation of the District's last proposal. The proposal was expressed as " The board agrees to the 2.7% salary increase for each year of the contract (with step increase)." In all previous characterizations of its position, the district had used the words "flat" and "not [a percentage] plus step" or "without a step." The Association accepted the e-mailed offer and its entire membership approved the negotiating team's acceptance on or about January 10, 2005. The District, asserts that its final offer did not include a 2.7% increase with a step for all bargaining unit members. The essential terms and conditions of the proposed CBA were brought to their respective ratifying entity and approved. The required funding was recommended by the budget committee and approved by the full school board. The District then drafted its warrant for a vote of the Annual District Meeting on March 8, 2005 in a manner reflecting an aggregate amount to fund this CBA. No further detail or breakdown of any specific categories of expenditure were provided in the warrant for the voters or to the Association prior to the vote. The voters approved the CBA warrant, as presented, approving and appropriating $275,304.97 for school year 2005-06 and approving the $83,395.06 scheduled for the school year 2006-07.

Neither party reduced the entire CBA to a comprehensive written document until May 16, 2005 when the Association did so and presented it for signature. Upon review of its contents, the District's Superintendent noticed that the document reflected a wage increase of 2.7% with an additional step for members of the bargaining unit. He indicated to the Association that the document did not reflect the District's understanding of the parties' agreement as to wages. The District did not execute the CBA as presented by the Association and instead limited the increase in employee wages to 2.7% without any step increase. That action sets in opposition the parties' positions and requires this Board to determine which party is entitled to its position under the law.

Having heard all of the evidence and weighed the credibility of each witness that provided testimony, we first have determined that a mistake was made in the negotiations between these two parties. The factual question for us becomes whether the mistake made can be regarded as a mutual mistake or a unilateral mistake. We conclude that the mistake made was one unilaterally made by the District for the following reasons: (1) the parties had assigned special significance to their use of the words "with steps" and either "without additional steps" or "not plus steps" during their negotiations to the extent that both understood, or should have understood that "with step" effectively meant "with an additional step increase"; (2) both parties understood, or should have understood from the history between the parties in negotiations, that a reference to "with step increase" equated with the granting of an additional step beyond the across the board 2.7% increase; (3) the Superintendent's e-mail making specific reference to the Association's position as represented by the words he used, "with step increase" served, or should have served, as a clear expression to both sides that this final proposal from the District meant that the employees were to receive an increase in wages that consisted of two elements, namely, a 2.7% wage increase with an additional step increase; (4) the District did not share any of the more detailed financial

calculations produced on spreadsheets with the Association at anytime; and (5) the Association had no independent information as to how the District had arrived at a total budgetary figure to fund the collective bargaining agreement as revealed in the warrant article before the voters at the Annual District Meeting. In this last regard, there was only an aggregate amount presented in the warrant article without any itemization.

We find no evidence that the Association knew or should have known that the final expressed position, as contained in the Superintendent's written confirmation to them, signified anything other than that after the smoke had cleared from the January 4, 2005 meeting, the District had closed the final gap between the two parties by acceding to the Association's position. Appropriately, upon receiving the e-mail, the Association members met and ratified the essential terms of the new CBA. Unknown to the Association, thereafter the District apparently was adhering to a mistaken understanding of what the position was that had been proposed as their final offer. The District pursued its own path to final appropriation of money to fund the CBA. It apparently did so in a manner that regardless of what they mistakenly believed they had agreed to, funds were appropriated to fund the CBA that are sufficient to meet the final District proposal that was accepted by the Association to increase the employees' wages by 2.7% with an additional step increase. As the warrant article is written, and as it was approved, there is no separation of funds within the appropriation for any expenditure category. In essence, applying the objective standard of the reasonable person having knowledge that only a very few of the employees in this bargaining unit have historically enrolled in the medical insurance coverage and that few, if any, additional employees would likely avail themselves of medical insurance under the final proposed position that requires a substantial employee contribution, there would seem to be a significant overage contained within the town warrant acted upon and that exists in the District's budget today. Regardless of purpose the school administration may have had for not revealing any detail in the warrant, the warrant asks the voters to fund all costs of the CBA. The voters did so in an amount sufficient to be consistent with a final wage proposal that can provide the employees with a wage increase consisting of 2.7% and an additional step on the wage schedule. The evidence is that that increase will represent approximately $19,384.84 for school year 2005-2006 and approximately $24,289.49 for school year 2006-2007. At the present level of participation in health insurance enrollment, the "overage" within the budget equals approximately $200,000.00 in excess of what should have been the District's reasonable expectation of needed money to fund the bargaining unit contract if their final position was not meant to include the additional step increase.

A mistake is "a belief that is not in accord with the facts" (Restatement (Second) of Contracts § 151.) In light of the facts as we have found them, above, the mistake here was solely that of the District's negotiating team as the Superintendent's e-mail does not seem to us to be ambiguous nor to have reasonably created a misunderstanding by the Association. The entire CBA need not have been drawn before the parties could proceed through their respective ratification procedures on the essential provisions, although we believe that both parties will hereafter appreciate the advisability of doing so.

Having found that these facts present an issue of unilateral mistake on the part of the District, we distinguish this case from those other cases where we have found that the actions

of both parties made it evident that they were both reasonably and mutually mistaken as to a fact integral to negotiations and where ambiguity was present. The District's action in issuing a final proposal as to wages using words embodying the Association's position and then refusing to sign an agreement that extrapolated that position to actual amounts on the basis of "that's not what we agreed to" after ratification processes had been completed on both sides and with sufficient funds, as contained in the warrant specifically approved for this CBA by the District voters violates New Hampshire's Public Employee Labor Relations Act. Its refusal to pay the employees pursuant to the terms bargained for likewise violates this statute.

We conclude that these actions by the Farmington School District constitute unfair labor practices resulting in a breach of its obligation to negotiate in good faith and interference of rights granted to employees to collectively bargain the terms and conditions of work as provided in RSA 273-A:5,I(e) and (a) respectively.

We are aware of the District's alternative arguments regarding the granting of equitable relief in the form of a contract rescission. However on previous occasions, the court has cautioned the Board about granting "equitable relief" outside the statutory application of RSA 273-A. The Association is due the benefit of its bargaining and having found the District made a unilateral mistake, it cannot reform that bargain by refusing to abide by the terms it proposed and to refuse to execute a writing that we believe reflects the terms negotiated. We therefore order the District to execute the written CBA and adhere to the provisions contained in the written collective bargaining agreement now pending before it and to forthwith make payment to all members of the bargaining unit in an amount reflecting the difference between what has been paid to these employees since July 1, 2005 as an increase in wages and what is owing to the employees under an increase representing 2.7% and moving each eligible employee to the next higher step on the salary schedule as presented by the Association. Further, all other derivative compensation based upon such increases in wage benefits, *e.g.* overtime, detail pay, retirement contributions, etc., shall likewise be paid at the higher level.

It is so ordered.

Signed this 22nd day of March, 2006.

Jack Buckley, Chairman

By unanimous vote. Chairman Jack Buckley presiding with Board Members Carol Granfield and Richard E. Molan, Esq. also voting.

Distribution:
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