

otherwise acted improperly because the BOA and/or the BRC have: 1) acted improperly in reviewing and acting upon negotiated contracts; 2) improperly failed to approve cost items in negotiated contracts; 3) rejected contracts that contain cost items previously authorized by the BOA and/or the BOA; 4) rejected non-cost contract items; 5) engaged in illegal negotiating; and 6) engaged in illegal surface bargaining. At the pre-hearing the Union made clear its primary argument that the BOA was obligated to approve the cost items at issue because the costs were consistent with the detail of a previously BOA approved budget. The Union claims these actions constitute unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), (e) and (g).

As remedies, the Union requests, that the PELRB: 1) order the enforcement of the proposed CBA's; 2) order negotiations to renew with a negotiating team with authority to enter into binding CBA's; and (3) grant such other relief as is just and equitable.

The City filed answers to all three complaints on March 16, 2007 and denies that it violated RSA 273-A in any respect. According to the City, the BOA and the BRM at all times acted consistent with their authority under RSA 273-A:3, II (c) to approve or reject cost items in negotiated contracts and that that they never considered or voted on non-cost items contained in a negotiated contract. The City asserts that the public employers authorized to direct the City negotiators in contract talks are the Board of Public Works, the Police Commissioners, the Fire Commissioners, and the Mayor. The City states that the Mayor is the "employer board" for employees covered by the contracts at issue but who are not otherwise hired or supervised by other governing boards created by City Charter. The City claims that negotiators for these public employers acted consistent with the authority and direction given to them by the respective public employer, that in fact the respective public employers all approved the negotiated contracts, but that the cost items of those negotiated contracts were always subject to the review of the BOA, which has never approved all the included cost items. The City asserts that the BOA, as the legislative body, lacks authority to direct the public employers' negotiating teams to negotiate and could not legally set the terms for these negotiations and did not do so. The City also claims some of the complaint is based upon alleged conduct which occurred more than six months prior to the filing of the complaint and therefore must be dismissed pursuant to RSA 273-A:6, VII.

Accordingly, the City requests that the PELRB dismiss the Unfair Labor Practice Charge and order such other relief as it deems just.

The PELRB scheduled a pre-hearing conference for April 2, 2007. Vincent A. Wenners, Jr., Esq. together with Carol Knox appeared for the Union. When no one appeared for the City Stephen M. Bennett, Esq., counsel for the City, was called, and with the involvement of Mr. Wenners and Ms. Knox the undersigned hearing officer reviewed with Mr. Bennett by telephone the basis for his non-appearance. All parties thereupon agreed it was appropriate to re-schedule the pre-hearing for April 5, 2007, on which date the pre-hearing was held.

PARTICIPATING REPRESENTATIVES

For the Union: Vincent A. Wenners, Jr., Esq.

For the City: Stephen M. Bennett, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

At the pre-hearing the parties spent considerable time discussing and refining the specific issues in this case, and based upon this process the issues can fairly be summarized as follows:

1. Whether the Board of Aldermen was obligated to approve the negotiated contracts, or effectively did approve the negotiated contracts, by virtue of its earlier budget approval? If so, whether the Board of Aldermen's refusal to recognize and accept the negotiated contract constitutes a violation of RSA 273-A:5, I (a), (b), (c), or (g)?
2. Whether the City engaged in illegal surface bargaining by, among other things, sending management representatives to the bargaining table without sufficient or proper authority and thereby violated RSA 273-A:5, I (a), (b), (c), (e) or (g)?
3. Whether the Board of Aldermen, the local legislative body, improperly engaged in negotiations during its consideration and rejection of the negotiated contracts in violation of RSA 273-A:5, I (a), (b), (c), (e) or (g)?
4. Whether any of the Union's complaints are subject to dismissal pursuant to RSA 273-A:6, VII?

WITNESSES

For the Union:

1. James McNamee, Esq. City negotiator
2. Peter Cinfo or substitute, UAW chairperson/negotiator
3. James Campbell, Chair, Clerical and Technical unit
4. Dave Springfield, Chair, Professional unit
5. Philip Appert, Co-chair, Professional unit
6. Dawn Roy, Asst. chair, Clerical and Technical unit
7. Stephen Bennett, Esq. (Union does not anticipate calling Mr. Bennett for any specific purpose, the question of the need for his testimony will be reviewed after the submission of all other evidence at hearing)
8. Carol Anderson, Chief Financial Officer

For the City:

1. James McNamee, Esq. City negotiator

2. Maureen Lemieux, Director Administrative Services
3. Jayne Joyce, Human Resource Director
4. David Rootovich, President, Board of Aldermen

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 proper showing, later with 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

For the Union:

1. Current CBA
2. Grievance Materials filed on or about 1/31/07
3. Letter dated 1/9/07
5. Proposal dated 1/12/07
6. Letter dated 2/2/07 to Rich E. Condon
7. Pleadings in this matter
8. Budget Documentation

For the City:

1. Minutes of BOA meeting 7/25/06
2. Minutes of BOA meeting 8/14/06
3. Minutes of BOA meeting 9/5/06
4. Minutes of BOA meeting 11/2/06
5. Minutes of BOA meeting 11/7/06
6. Minutes of BOA meeting 11/14/06
7. Minutes of BOA meeting 12/28/06
8. Minutes of BOA meeting 1/17/07
9. Minutes of BOA meeting 1/23/07

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least five days prior to the date of the evidentiary hearing.

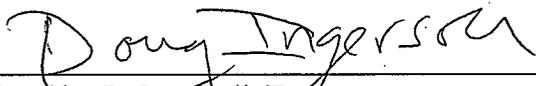
DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before April 17, 2007 in order to compose a mutual statement of agreed facts. Based upon the discussion at the pre-hearing conference, the hearing officer anticipates that the parties will be able to stipulate to a substantial amount of the involved facts in this case. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least one day prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than ten calendar days prior to the scheduled hearing date and any responses no later than five calendar days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

April 19, 2007 @ 9:30 a.m.

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.
April 5, 2007.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:
Vincent A. Weners, Jr., Esq.
Stephen M. Bennett, Esq.