



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Union, UAW, Local 2232,
Professional Employees of the Nashua Police
Department, Clerical and Technical Unit,
and Professional Unit

Complainant

v.

City of Nashua, Nashua Board of Public Works,
Nashua Board of Fire Commissioners, and Nashua
Board of Police Commissioners

Respondent

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Consolidated Caption

Case No. P-0774-1

Case No. G-0044-1

Case No. G-0043-1

Decision No. 2007-102

APPEARANCES

Representing International Union UAW, Local 2232:

Vincent A. Weners, Jr., Esq., Law Offices of Vincent A. Weners

Representing City of Nashua:

Stephen M. Bennett, Esq., Corporate Counsel

BACKGROUND

The International Union, UAW, Local 2232, Professional Employees of the Nashua Police Department, Clerical and Technical Unit, and the Professional Unit constitute three separate bargaining units in the City of Nashua and will hereafter be collectively referred to as the "Union." The Union filed three unfair labor practice complaints, Case No. P-0774-1 was filed on March 1, 2007, and the other two cases were filed on March 6, 2007. The three

complaints are virtually identical in all respects, and the same is true with respect to the answers to the complaints.

The Union complains that the BOA and/or the BRC have, at different times, acted beyond its legal authority and role as the legislative body under RSA 273-A:3, II (c) and 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 BRC 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 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 BRC 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 issues raised by the complaint are 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.

The PELRB initially scheduled a pre-hearing conference on 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 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.

Thereafter, a full evidentiary hearing was conducted on April 19, 2007 at which all parties appeared and were represented by counsel. At the outset of the hearing, the City requested that the hearing officer take official notice of minutes of municipal meetings on March 1st and 6th of 2007 and without objection by the Union such official notice was taken. 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 #24. The parties submitted exhibits that were admitted into evidence

and each party had the opportunity to object to the said admittance of exhibits. At the conclusion of the evidentiary hearing, the hearing officer requested that the City provide a copy of Chapter 42 of "Mason's Manual of Legislative Procedure" and the parties were provided the opportunity to submit post-hearing legal memoranda and the record was held open for that purpose until May 28, 2007. The undersigned hearing officer reviewed all pleadings filed in connection with this matter, considered all of the evidence presented, and weighed the credibility of that evidence. I find as follows:

FINDINGS OF FACT

1. The International Union, United Automobile, Aerospace and Agricultural Implement Workers (UAW), Local #2232 Professional Unit; UAW Local #2232 Clerical and Technical Unit; and, UAW Local #2232 Professional Employees of the Nashua, New Hampshire Police Department are the duly certified bargaining agents for the above-mentioned units of Local #2232.
2. The Mayor of the City of Nashua, the City of Nashua Board of Public Works, the City of Nashua Board of Fire Commissioners, and the City of Nashua Board of Police Commissioners are the "public employers" of employees represented by the Unions, for purposes of RSA 273-A:1 X.
3. The City of Nashua Board of Aldermen is the legislative body for the City of Nashua, having the power to appropriate public money for purposes of RSA 273-A:1 VII.
4. The negotiating teams for the Unions and the public employers reached agreement on the terms of proposed collective bargaining agreements during June, 2006.
5. The proposed collective bargaining agreements were presented to the appropriate public employers and approved.
6. The proposed collective bargaining agreements were presented to and approved by the memberships of the Unions.
7. The cost items of the proposed collective bargaining agreements were introduced at the June 27, 2006, board of aldermen meeting. The cost items of the proposed collective bargaining agreements were assigned to the Budget Review Committee for recommendation.
8. On July 6, 2006, the Budget Review Committee reviewed the cost items of the proposed collective bargaining agreements and voted to "hold them in committee".

9. On July 13, 2006, the Budget Review Committee reviewed the cost items of the proposed collective bargaining agreements and voted to recommend that the board of aldermen indefinitely postpone approval of the cost items contained in the proposed collective bargaining agreements.
10. On July 25, 2006, the board of aldermen voted to "indefinitely postpone" the resolutions approving the cost items of the proposed collective bargaining agreements.
11. The Unions' and the public employers' negotiating teams returned to the negotiation table and again reached agreement on proposed collective bargaining agreements in October, 2006.
12. The renegotiated proposed collective bargaining agreements were approved by the appropriate public employers in October, 2006.
13. The collective bargaining agreements renegotiated by the negotiating teams were approved by the membership of the Unions in October 2006.
14. The cost items of the renegotiated collective bargaining agreements were introduced at the October 24, 2006 meeting of the board of aldermen. The cost items of the collective bargaining agreements were assigned to the Budget Review Committee for recommendation.
15. On November 2, 2006, the Budget Review Committee reviewed the cost items of the renegotiated collective bargaining agreements and voted to table the resolutions.
16. On November 7, 2006, the Budget Review Committee reviewed the cost items of the renegotiated collective bargaining agreements and voted to recommend to the board of aldermen that approval of the cost items be indefinitely postponed.
17. On November 14, 2006, the board of aldermen voted to indefinitely postpone the resolutions approving the cost items of the renegotiated collective bargaining agreements.
18. The negotiating teams returned to the bargaining table and agreed to resubmit the same cost items to the board of aldermen for approval.
19. The cost items of the resubmitted collective bargaining agreements were introduced at the January 9, 2007 meeting of the board of aldermen. The cost items were assigned to the Budget Review Committee for recommendation.

20. On January 17, 2007, the Budget Review Committee reviewed the cost items of the resubmitted collective bargaining agreements and voted to recommend that the board of aldermen reject the cost items.
21. The negotiating teams for the Unions and the public employers have not declared impasse.
22. The board of aldermen passed the 2006 fiscal year budget on August 16, 2005.
23. The board of aldermen passed the 2007 fiscal year budget on May 3, 2006.
24. At the time of the hearing, the board of aldermen have not passed a budget the for 2008 fiscal year.

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). The PELRB has sole original jurisdiction to adjudicate claims of unfair labor practices committed by a public employer or an exclusive bargaining representative as certified under RSA 273-A:8.

In this case, the Union has complained that the Town's actions relating to its failure to give final approval to collectively bargained agreements violated prohibitions by committing unfair labor practices in violation of RSA 273-A:5 I (a) interfering with employees exercise of rights conferred under the Public Employee Labor Relations Act (RSA 273-A); (b) interfering in the administration of the bargaining unit; (c) acting in a discriminatory manner to affect membership in the bargaining unit; (e) failing to bargain in good faith, and (g) failing to comply with the provisions of RSA 273-A.

In addition, the Town has raised the possibility of a statute of limitations bar to some of the issues raised by the Union. This presents a preliminary issue for determination based upon jurisdiction based in RSA 273-A:6, VI, that states "[t]he board shall summarily dismiss any complaint of an alleged violation of RSA 273-A:5 which occurred more than six (6) months prior to the filing of the complaint...."

DISCUSSION

The City and the Union relate a history of their collective bargaining negotiations to achieve successor agreements to those between them that expired on June 30, 2005. This history includes actions that occurred prior to September 6, 2006, *i.e.* more than six months prior to March 6, 2007, the date the Union filed its complaint. Upon review of the allegations brought by the Union in its complaint I do not find any reason that actions occurring prior to September 6, 2006 should be considered as part of this complaint. The applicable provision of our statute is RSA 273-A:6, VII which mandates that any such actions that give rise to a cause of action must be dismissed. Although the PELRB, under appropriate circumstances, closely examines allegations that a course of action transpiring over a period greater than six months should be considered a single continuing cause of action or that the event "triggering" the limitation on actions bar did not occur until some date within six months of the complaint filing, this case does not present such circumstances. The parties suspended their collective bargaining sessions following the vote of "indefinite postponement" by the Board of Alderman on July 25, 2006. If the Union had a good faith belief at that time sufficient to support a complaint alleging improper labor practices, it had the opportunity and the right to file such a complaint with the PELRB. It did not choose to do so. By that choice, the Union allowed such charges to become stale under the provisions of RSA 273-A:6, VII and are therefore barred from complaining of those actions now. The City's motion to dismiss Union allegations of improper practices committed prior to September 6, 2006 is therefore granted.

The parties agree that they returned to the bargaining table in October of 2006 to renegotiate proposed collective bargaining agreements and to reach proposed agreement on terms. (Finding of Fact #11 and #12). The evidence presented at the hearing, in summary, merely establish in more detail the stipulated facts agreed to by the parties that appear above. The sequence appears to me to have been one contemplated, in the main, by the statute. The parties' negotiating teams reached a tentative agreement that required ratification by the respective "public employer" and appropriate employee bargaining unit members. Those parties did ratify the terms contained within the proposed CBA. However the legislative body of the City as stipulated by the parties, (Finding of Fact #3) the Board of Aldermen, did not approve the funds for the proposed CBA.

The Union's complaint, detailed in expression and comprehensive in nature, can be refined to a question of whether the vote undertaken by the Board of Aldermen on January 23, 2007 (Exhibit #24) to reject a cost item contained within the proposed collective bargaining agreement constitutes a violation of RSA 273-A:5, I.

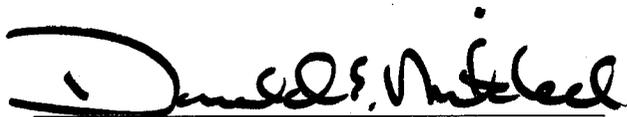
I find that it does not violate the statute. The relevant law provides that, "If the [Board of Aldermen] rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on all or part of the entire agreement." RSA 273-A:3, II (c). Further, the Board of Aldermen is the proper "legislative body", pursuant to RSA 273-A:1, VII, that is necessary to the adoption of the CBA. The relevant fact in this regard is that the BOA voted 8 to 7 in support of an amendment that resulted in the rejection of a cost item in the proposed CBA. It is obvious that after such a long process of negotiations that action frustrated the Union, if not all

negotiators involved in the process until that vote. It was not, under these circumstances, a violation of the letter of the law. However, where a mutually respectful and continuing relationship between a public employer and its employees is necessary to the uninterrupted delivery of public services, reliance upon only the letter of the law to the exclusion of its purpose does little to promote cooperative and harmonious labor relations. The parties are to return to negotiations as contemplated by law.

The Union's complaint is, nonetheless, dismissed in its entirety and pursuant to law, the parties are to return to negotiations forthwith.

So Ordered.

Signed this 5TH day of July, 2007



Donald E. Mitchell, Esq.
Hearing Officer

Distribution:

Vincent A. Wengers, Jr., Esq.
Stephen M. Bennett, Esq.