



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Hillsboro-Deering Federation of Teachers,
AFT #2348, AFT-NH, AFL-CIO**

v.

Hillsboro-Deering School Board

**Case No. E-0045-5
Decision No. 2013-105**

Appearances:

Emmanuel Krasner, Esq., for the Complainant

Edward M. Kaplan, Esq., for the Respondent

Background:

On January 7, 2012 the Union filed an unfair labor practice complaint claiming that the School Board violated RSA 273-A:5, I (e) when it failed to take a ratification vote on a tentative agreement reached by the parties. The Union alleges, among other things, that the Chair of the School Board, who was also a member of the School Board's negotiating team, failed to second a motion to approve the tentative agreement, thereby preventing the vote from taking place. The Union claims that this action by the Chair constitutes an unfair labor practice because, under the law and the parties' agreed upon negotiation ground rules, members of negotiating teams are obligated to "recommend and advocate for adoption of any signed tentative agreements" reached by the teams. The Union requests, among other things, that the PELRB order the School Board, its negotiating team, and/or the School Board Chair (1) to cease and desist from prohibited practices, (2) to publish the PELRB decision on the District's website and post it in conspicuous places in each school, (3) to pay full cost of mediation, including the Union's share (\$627.90), and (4) to reimburse the Union for costs and reasonable expenses incurred in preparing and processing this charge.

The School Board denies the charge. Although the School Board agrees that the parties reached a tentative agreement, it asserts, among other things, that members of the negotiating teams

who disagree with the terms of that agreement are not obligated to support it and that the Union was aware prior to entering into a tentative agreement that one School Board member of the District's negotiating team did not agree with certain terms of the tentative agreement. The School Board requests that the PELRB dismiss the charge.

The undersigned hearing officer conducted a hearing on March 20, 2013 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties submitted post-hearing briefs on April 12, 2013. The parties' stipulations are incorporated in the Findings of Fact below; and the decision is as follows.

Findings of Fact

1. The School Board is a public employer within the meaning of RSA 273-A:1, IX.
2. The Union is the exclusive bargaining representative of certain employees of the Hillsboro-Deering School District. See PELRB Decision No. 2003-100.
3. The District and the Association are parties to a collective bargaining agreement (CBA) effective from July 1, 2009 through June 30, 2013. This CBA was approved at a special School District meeting on October 25, 2011. See Stipulation of Uncontested Facts (Stipulation) at 3 and 4.
4. Article 15 of the CBA requires that the parties commence negotiations on a successor agreement no later than May 1, 2012; and the Union sent its intent to negotiate a successor agreement to the School Board on April 20, 2012. After several unsuccessful attempts to schedule a negotiation session, the parties were able to meet and begin negotiations on a successor agreement on October 24, 2012. At that meeting, the parties discussed ground rules and exchange of proposals. See Stipulation at 5-7 and 10.
5. The School Board's negotiating team was comprised of School Board Chair Richard Pelletier, School Board member Nancy Egner-Denu, Assistant Superintendent Patricia Parenteau,

and Interim Business Administrator Jean Mogan. The Chief Spokesperson for the School Board's negotiating team was Attorney Jeanine Poole. See Stipulation at 8 and Union Exhibit 4.

6. The Union's negotiating team was comprised of Union President Diane Hines, Joseph Walker, John Bramley, and Rhayna Teich. The Chief Spokesperson for the Union's negotiating team was Attorney Terri Donovan. See Stipulation at 9 and Union Exhibit 4.

7. The following negotiation session took place on November 13, 2012. During that session, the parties put a limited number of proposals on the table. The School Board team stated that the removal of the evergreen provision, contained in the current CBA, was necessary to reach an agreement on a successor CBA. The evergreen provision has been a part of the CBAs between the Union and the School Board for more than a decade. The Union's team stated that it would not agree to the removal of the evergreen language. See Stipulation at 11-13.

8. On November 13, 2012 the parties also signed an agreement on ground rules. School Board Chair Pelletier signed the ground rules agreement on behalf of the School Board. See Stipulation at 11 and Union Exhibit 4.

9. Article 4 of the agreement on ground rules provides as follows:

When tentative agreements are reached on individual proposals, the agreed to terms shall be reduced to writing, dated and initialed by the spokesperson of each team. Any tentative agreement(s) reached shall not be final or binding until complete and final agreement is reached on all parts of the contract and ratified by both parties and their governing bodies and the cost items are approved by the voters. *The negotiating teams agree to recommend and advocate for adoption of any signed tentative agreements.* The parties acknowledge that any tentative agreement is subject to approval by voters on cost items as required by law.

See Union Exhibit 4 (emphasis added).

10. Article 11 of the ground rules provides as follows:

A ratification vote by the constituencies of each side (the Hillsboro-Deering Federation of Teachers and the Hillsboro-Deering School Board) of a tentatively agreed upon final package must occur within fifteen (15) calendar days following such agreement being reached in negotiation or earlier if necessary to meet statutory deadlines for submission to school district meeting...

See Union Exhibit 4 (emphasis added).

11. Article 12 of the ground rules agreement provides as follows:

In the event that an impasse is reached in negotiations, as determined by either side with notice to the other party, all issues not tentatively agreed upon nor withdrawn at that point will be submitted to the impasse resolution process, upon application for the same by either party. No additional items may be added to those to be considered by the mediator or fact-finder.

See Union Exhibit 4.

12. Nothing in the parties' ground rules indicates that unanimous approval by each negotiating team is required in order for a tentative agreement to be formed.

13. Article 13 of the ground rules agreement provides that the "rules may be modified by mutual agreement of the parties with said changes being reduced to writing." See Union Exhibit 4.

14. On November 20, 2012 Chief Spokesperson for the School Board's negotiating team Attorney Poole informed the Union that she reviewed the ground rules, including Article 13 requiring mutual agreement to modify the rules, and proposed to the Union to "revise Paragraph 12 of the ground rules to avoid a disagreement whether the parties can submit other proposals and fully explore options in mediation." On November 26, 2013 Chief Spokesperson for the Union's negotiating team Attorney Donovan responded that the Union's team was "not inclined to modify the ground rules at this time." See Union Exhibit 5.

15. At no time after signing the ground rules agreement did the School Board propose to modify or eliminate the Article 4 language requiring members of negotiating teams "to recommend and advocate for adoption of any signed tentative agreements" or Article 11 language requiring the parties to hold a ratification vote on a tentative agreement within certain period of time. See Findings of Fact at 9 and 10.

16. At the all day negotiation session on November 28, 2012, the School Board's negotiating team informed the Union's team that the School Board had met and was still in agreement that "they needed to insist on the removal of the contractual evergreen language." See Stipulation at 15.

17. On December 4, 2012 the Union declared impasse. A mediation session was scheduled for December 12, 2012. The issues for mediation included the following: CBA Article 6, Sec. 6.2.1, 6.2.3, 6.2.4 - Work Year (Assigned/Unassigned Days); CBA Art. 7 - Compensation, including sec. 7.2.3 - Step Advancement evergreen clause; Art. 15 - Duration and Evergreen; Non-Degreed Registered Nurses sidebar agreement; and extra-curricular and co-curricular stipends. See Stipulation at 16-18 and Union Exhibit 7.

18. After ten hours of mediation on December 12, 2012, the parties reached a tentative agreement for a one-year contract. See Stipulation at 19.

19. The tentative agreement "did not include the removal of the evergreen clause." See Stipulation at 20.

20. According to the mediator, he reported to the Union that School Board members on the negotiating team were not unanimous, although he did not know which one of them was against the agreement; and he informed Attorney Poole, in response to her inquiry, that he informed the Union of the lack of unanimity. See Joint Stipulation. Although the mediator was under impression that Union knew who the dissenting member was, it appears that there is a dispute as to this point.

21. At the end of the December 12, 2012 mediation session, the parties reduced the tentative agreement to writing stating the following:

The parties have reached tentative agreement subject to ratification:

- 1 year term ...
- 0% COLA
- Revisions to Art 6.2 [Workyear] as attached
- Incorporation of Non-Degreed Nurses Side Bar Agreement as attached
- Ex D Extra-Curricular Activities
 - Maintain list in current Ex D
 - Add Middle School SADD ... \$550
- MOU relating to High School remains separate from Master Agreement and negotiations of same

The tentative agreement was signed by Attorney Donovan and Attorney Poole and dated December 12, 2012, 7:00 p.m. See Union Exhibit 8.

22. The School Board held a general meeting on December 17, 2012. Board members Richard Pelletier, Virginia Leiby, Nancy Egner-Denu, Terry Cutter, and Paul Plater attended the meeting. The tentative agreement was not discussed in the public session of the meeting. According to Chair Pelletier, the School Board members discussed the tentative agreement during the non-public session. The non-public session minutes were sealed. See Union Exhibit 10.

23. At the end of the December 17, 2012 meeting, after returning from non-public session, Chair Pelletier asked for a motion to approve the tentative agreement reached in mediation and School Board member Egner-Denu moved the adoption of the agreement. No member of the School Board seconded the motion and, therefore, the Board did not vote on the motion. See Union Exhibit 10.

24. Chair Pelletier has seconded various motions on previous occasions during School Board meetings, although not frequently.

25. The Union had scheduled a membership meeting to consider ratification of the tentative agreement after school on December 20, 2012. See Stipulation at 22.

26. On December 20, 2012 several minutes prior to the commencement of the Union ratification meeting, Assistant Business Administrator Mogan told Union President Hines that the School Board failed to second the motion to approve the tentative agreement. Until then, the Union was not aware that the School Board considered ratification of the agreement during the December 17, 2012 meeting. Ms. Hines contacted Attorney Donovan in an attempt to determine if she had further information regarding the School Board's action on the agreement and how to proceed. Attorney Donovan informed Ms. Hines that she did not know that the Board considered ratification of the agreement and failed to vote on it during December 17, 2013 meeting. She advised Ms. Hines to proceed with the ratification meeting.

27. The Union's ratification meeting commenced around 3:30 p.m. on December 20, 2013. The Union membership ratified the tentative agreement.

28. At approximately 4:16 p.m. on December 20, 2012, Attorney Poole sent the following email message to Attorney Donovan:

I am writing to ensure that you are aware of the outcome of the December 17, 2012 Hillsboro-Deering Board meeting. At that meeting the Board considered the tentative agreement reached in mediation on December 12, 2012, subject to ratification, but did not agree to it.

See Stipulation at 23.

29. The School Board made no other attempt to vote on ratification of the tentative agreement.

Decision Summary:

The School Board committed an unfair labor practice in violation of RSA 273-A:5, I (e) when it failed to vote on ratification of the tentative agreement and when its negotiating team member failed to support the agreement during the ratification meeting, as required under the ground rules, the statute, and PELRB decisions.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

The Union claims that the School Board breached its RSA 273-A:5, I (e) obligation to bargain in good faith when, among other things, it failed to take a ratification vote on a tentative agreement reached by the parties and when the School Board Chair, who was also a member of the District's negotiating team, failed to second a motion to approve the tentative agreement.

RSA 273-A:5, I (e) provides that "[i]t shall be a prohibited practice for any public employer ... [t]o refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations."

Further, RSA 273-A:3, I provides that:

It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good

faith. "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

The PELRB has "previously held that the statutorily-imposed obligation to bargain in good faith extends to the process of securing ratification of a tentative agreement." *Stratford Teachers Association, NEA-New Hampshire v. Stratford School District et al.*, PELRB Decision No. 85-85 (October 24, 1985) (emphasis in original). This obligation to bargain in good faith requires that members of negotiating teams support a tentative agreement reached during negotiations at all stages of the approval process, including ratification meetings and town meetings. See *Governor Wentworth Education Association, NEA-New Hampshire v. Governor Wentworth Regional School Board*, PELRB Decision No. 83-60 (December 7, 1983). See also *Keene Education Association/NEA-New Hampshire v. Keene School Board*, PELRB Decision No. 90-54 (July 27, 1990) ("The School Board ha[s] an obligation to actively support an agreement reached by the parties in all forums"). In *Governor Wentworth*, the PELRB stated as follows:

This Board recognizes that there is a duty to support a tentative agreement imposed on negotiation team members... This duty, however, would be a hollow shibboleth if it did not extend to actually voting to support the tentative agreement. The potential for superficial support merely to comply with the duty, while actually failing to vote in favor, would be overwhelming. Therefore, we hold that the duty does extend to voting, violation of which is a prohibited practice, bad faith bargaining.

Governor Wentworth Education Association, NEA-New Hampshire v. Governor Wentworth Regional School Board, supra, PELRB Decision No. 83-60. See also *State Employees' Association of NH, SEIU Local 1984 v. State of New Hampshire*, PELRB Decision No. 2010-047 (March 4, 2010).

Further, in *Town of Merrimack*, the PELRB held that:

[T]he Union and/or employer negotiators must evidence their support for the negotiated agreement and may not under any conditions oppose the mediated or negotiated settlement.

Town of Merrimack, New Hampshire v. International Association of Firefighters, Local 2904, PELRB Decision No. 85-24 (April 2, 1985) (emphasis in original). See also *State Employees'*

Association of New Hampshire/S.E.I.U., Local 1984 v. Town of Exeter, PELRB Decision No. 92-75 (April 24, 1992). The statutorily-imposed duty requiring negotiating team members to vote in support of a tentative agreement necessarily entails a duty to take all actions needed to bring a tentative agreement to a vote. See *Governor Wentworth Education Association, NEA-New Hampshire v. Governor Wentworth Regional School Board*, supra, PELRB Decision No. 83-60. Consequently, a negotiating team member's failure to second a motion to approve a tentative agreement is tantamount to a failure to support the agreement.

Here, it is undisputed that the parties entered into a tentative agreement. Under the statute and the PELRB decisions, once a tentative agreement was reached, the two School Board members on the Board's negotiating team were obligated to actively support the tentative agreement through the process of ratification regardless of their personal feelings about the agreement. In this case, at the School Board's ratification meeting, one of the two School Board's team members, Ms. Egner-Denu, moved to approve the agreement. Neither the other negotiating member, Chair Pelletier, nor any of the non-negotiating members of the School Board seconded the motion. This failure to second the motion prevented the voting from taking place. There is insufficient evidence that Mr. Pelletier was prevented from seconding the motion by any particular School Board rule or procedure. Similarly to the negotiators'/school board members' failure to support a tentative agreement in *Governor Wentworth*, Mr. Pelletier's failure to second the motion constitutes an unfair labor practice because, as a member of the School Board's negotiating team, he was obligated to support the tentative agreement through the process of ratification/approval regardless of whether he personally approved of it.

Furthermore, the parties' conduct during negotiations and the approval process is governed by the ground rules that specifically provide as follows:

4. ...The negotiating teams agree to recommend and advocate for adoption of any signed tentative agreements...
11. A ratification vote by the constituencies of each side (the Hillsboro-Deering Federation of Teachers and the Hillsboro-Deering School

Board) of a tentatively agreed upon final package must occur within fifteen (15) calendar days following such agreement being reached in negotiation ...

Findings of Fact at 9 and 10.

“[G]round rules constitute an agreement, in and of itself, between the parties” and [a]dherence to such mutual ground rules reflects ... in part, the statutory obligation the parties have to negotiate in good faith pursuant to RSA 273-A:3, I and to avoid conduct prohibit[ed] by RSA 273-A:5.” *International Brotherhood of Police Officers, Local 320 v. Town of Merrimack*, PELRB Decision No. 2004-182 (November 22, 2004). Beyond the statutory obligation, “there is an obligation assigned to all parties to contracts to act in good faith in adhering to the terms of their agreements under our system of jurisprudence.” *Id.* See also *AFSCME Local 3657, Merrimack Police and Fire Officers v. Town of Merrimack*, PELRB Decision No. 2004-190 (December 16, 2004). The PELRB previously emphasized that ground rules “play an important role in the collective bargaining process, and their value and utility should not be overlooked.” See *State Employees’ Association of NH, SEIU Local 1984 v. State of New Hampshire*, Decision No. 2010-046 (March 4, 2010).

In interpreting an agreement, a court begins by focusing upon the language of the agreement, as it reflects the parties’ intent. See *Appeal of Nashua Police Commission*, 149 N.H. 688, 690 (2003) (citations and quotation marks omitted). “This intent is determined from the agreement taken as a whole, and by construing its terms according to the common meaning of their words and phrases.” *Id.* Absent fraud, duress, mutual mistake, or ambiguity, the search for the parties’ intent must be restricted to the words of the contract. See *Appeal of Town of Durham*, 149 N.H. 486, 487 (2003). In this case, there is no evidence of fraud, duress, or mutual mistake. Furthermore, the language of the ground rules agreement, Article 4, is clear and unambiguous and requires that negotiating teams recommend and advocate for adoption of any signed tentative agreement. The parties undisputedly entered into a signed tentative agreement, and therefore, both Mr. Pelletier and Ms. Egner-Denu were

required to “recommend and advocate for adoption”¹ of this agreement. Ms. Egner-Denu’s motion to approve the tentative agreement and Mr. Pelletier’s request for said motion, without more, are not sufficient to satisfy the requirement to “recommend and advocate for adoption.” Mr. Pelletier’s failure to second a motion to approve the tentative agreement constitutes a failure to “recommend and advocate for adoption” of the agreement, and therefore, is a breach of the parties’ ground rules agreement.

Further, the clear and unambiguous language of the ground rules agreement Article 11 requires a ratification vote on a tentative agreement to be held within 15 days following the agreement being reached or earlier, under certain circumstances. The School Board’s failure to vote on a tentative agreement constitutes a breach of the ground rules Article 11. The evidence shows that while the School Board’s representative reviewed the terms of the ground rules agreement and proposed modifications to some of the terms, there were no proposals to modify the relevant language in Articles 4 and 11 cited above.

School Board argues, inter alia, that by proceeding with the tentative agreement while knowing that a School Board members on the negotiating team were not unanimous, the Union “tacit[ly] approv[ed] that not all of the school board negotiating team member would be required to ‘recommend and advocate for the adoption’” of the agreement. The Board’s argument is unpersuasive because there is no evidence here that such unanimity was required to form a tentative agreement and because, as explained above, once the agreement was formed, all members of the negotiating teams were required to support it throughout the approval process.

For the foregoing reasons, the School Board breached its RSA 273-A obligation to bargain in good faith and its contractual obligations under the parties’ ground rules agreement when its negotiating team member failed to support the tentative agreement through the ratification process and the School Board failed to hold a vote on ratification of the agreement. Accordingly, the School

¹“Recommend” means “to present as worthy of acceptance or trial ... to endorse as fit, worthy, or competent ... to make acceptable...” See Merriam Webster’s Collegiate Dictionary 976 (10th ed. 1993). “Advocate” means “to plead in favor of ...” See Merriam Webster’s Collegiate Dictionary 18 (10th ed. 1993).

Board shall cease and desist from further violations of its obligation to bargain in good faith and shall publish this decision on the School District's website and post it in conspicuous places in each school. Also, the School Board shall take a vote on ratification of the tentative agreement as soon as practicable or, in the alternative, reimburse the Union for its share of the mediation expenses.² The Union's request for legal expenses is denied as the PELRB "does not have authority to assess attorney fees or costs under the provisions of RSA 273-A." See *International Chemical Workers Union Council, UFCW, Local 1046C v. Merrimack County*

Nursing Home and County of Merrimack, PELRB Decision No. 2009-069.

So ordered.

June 28, 2013


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

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² RSA 273-A:6, VI provides in relevant part:

Upon finding that a party has violated RSA 273-A:5, the board may ... (d) order payment of the costs incurred by a party negotiating in good faith in negotiations found by the board to have been carried on not in good faith by the other party, if the board finds such penalty appropriate to the circumstances ...