



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS, LOCAL 320, MERRIMACK, NEW
HAMPSHIRE

Complainant

v.

TOWN OF MERRIMACK, NEW HAMPSHIRE

Respondent

CASE NO. P-0723:3

DECISION NO. 85-03

APPEARANCES

Representing International Brotherhood of Police Officers, Local 320, Merrimack, N.H.

Theresa M. Dowdy, Counsel
John Wm. Queen
Richard Dumont

Representing Town of Merrimack, New Hampshire

Gary W. Wulf
David Hodgen

Also in Attendance

Joseph R. Devine
William Mulligan
Meredith Fine
Andrea Clement
Michael Buteau
Nancy Gagnon
Richard Tremont
Theodore Trask
Carole Trask

L.E. Kelly
David R. Cataldo
Michael R. Milligan
Mark J. Schofield
Bradford J. Prose
Charles E. Smith
Ron Hansen
William J. Castin
Paul Stavenger

BACKGROUND

The International Brotherhood of Police Officers, Local 320 (union), representing certain police officers of the Merrimack, New Hampshire Police Department, filed an unfair labor practice charge against the Town of Merrimack on March 26, 1984. The union alleged that the Town has unilaterally changed an

agreement signed December 1983 and effective since September 1, 1983, in several areas:

- (1) changed past practice with respect to workers' compensation payments;
- (2) refusal of sick leave and disability benefits, contrary to past practice;
- (3) requirement of doctor's certificate for any days sickness, contrary to past practice. All in violation of RSA 273-A.

The Town of Merrimack (Town) denied any unfair labor practices and pointed out that it was administering specific language of the new contract and that "...in many ways the current contract replaces past practice". Additionally, the Town pointed out that the new contract contains a "zipper clause" precluding any additional argument, negotiations or bargaining during the life of this contract. The Town also insisted the union should use the grievance procedure in the contract.

A hearing was held at the Public Employee Labor Relations Board's Concord office on September 13, 1984, and continued on October 16, 1984, with all parties represented.

At the hearing on September 13, 1984, the union was permitted to amend its petition to include a charge of harassment of union officers.

FINDINGS OF FACT

After hearing lengthy testimony and studying the many exhibits, the following facts were established:

- (1) lengthy negotiations took place between the Town and the union to reach an agreement on a contract successor to the one expiring on August 31, 1983. The negotiations were both controversial and productive and a successor agreement was arrived at and then signed on December 1, 1983, retroactive to September 1, 1983;
- (2) following the signing of the new contract, certain changes were instituted by the Town which were different than past practices:
 - (a) by December 15, 1983, the police chief did inform employees that from then on, any workers' compensation payments would be "made up" by reducing the person's sick leave proportionately;
 - (b) at some point it was announced that a doctor's certificate might be required for even one day of sickness;
 - (c) after Sergeant Clements requested disability leave, in February of 1984, it was announced to employees that the disability ("time-loss") insurance had been terminated (for the local police only). In fact, the Town did not terminate these provisions until after this request, claiming it was "administering" the contract.
- (3) past practice on workers' compensation, for at least 8 years, had been for the worker to turn over workers' compensation checks to the Town, in return the Town would pay the worker their full salary. No discussion during negotiation was held on this provision. The current contract says simply (Act XVI, Section 3) "The Town of Merrimack agrees to provide workers' compensation coverage and benefits as prescribed and to the extent required by New Hampshire law".

- (4) with respect to requiring a medical doctor's certificate for being out sick, past practice had been not to require a certificate for only one or two days sickness. The current contract states simply (Act XVI, Section 2C) "The Town reserves the right to require acceptable evidence of the cause of sick leave prior to payment of such leave. Such evidence shall be a valid statement from a doctor."
- (5) the previous health insurance package had included a "time-loss" benefit for non work-related illnesses, etc. as part of the benefits package. The previous health plan remained in effect until changed by the Town in March of 1984. The current contract states, (Act XVI, Section 1.a) in part
- "1. Health Insurance
- a) Full-time employees shall be eligible for group health insurance upon completion of thirty (30) days continuous service."
- (6) during the course of negotiations the Town had sought to place a "cap" or ceiling on the cost of benefits to the Town, with the employees paying the extra cost after the ceiling had been reached. The Town and the union did not agree on this "cap", and discussion moved to other subjects.
- (7) union leaders testified they had been "reassured" by Town Administrator Hodgen that the health insurance package was unchanged when they signed the agreement. Mr. Hodgen denies giving any such guarantee.
- (8) the union had begun to grieve these complaints but did not pursue the grievance procedure beyond step two on the advice of their counsel.
- (9) there is no uniform benefits package for all Town employees for all three (3) unions in the Town, necessitating different arrangements for different groups of employees.
- (10) regarding the "harassment" of union officers, testimony was received indicating some degree of animus toward the union officers existed in the "atmosphere" surrounding the Town officers, the Chief of Police and some of the police union officers but no specific action was established as a result of this.
- (11) the Town and the union have failed to develop "legitimate performance evaluation procedure" as called for by the contract (Act XII, Sect. 4 d.). "A joint committee including representatives from the union and the department shall develop the legitimate evaluation procedure as referenced in a). above." The chief has taken certain actions on his own as a result of this failure to agree.

RULINGS OF LAW

The Public Employee Labor Relations Board finds that in certain instances the Town did commit an unfair labor practice in this case:

Disability benefits: The language of the contract with respect to "health insurance" is not so clear or so specific as to clearly exclude the providing of disability or "time-loss" benefits as had been past practice. The fact that the health insurance package ("your group insurance plan"), continued in effect when the contract was in effect (for 6 months) would indicate to a reasonable observer that the phrase in the contract refers to this (past practice) insurance coverage and not to some other, unspecified plan.

The Town's unilateral action, changing the disability coverage, constitutes a refusal to bargain a legitimate "condition of employment" and a breach of a collective bargaining agreement under RSA 273-A:5, I (e) and (h), and constitutes an unfair labor practice prohibited by the statute.

Workers Compensation: While the past practice of the Town is clear, we find that the language of the contract is also and clearly runs counter to and negates past practice. The contract simply states that the Town will do what is required by law.

Since this provision was not discussed during the negotiations at all, the simple statement that the Town will comply with the law cannot be permitted to cancel a clearly established past practice. The Town has committed an unfair labor practice in changing the method of workers' compensation payment from past practice without negotiating with the union.

Requirement of Doctor's Certificate: This element of the contract was not discussed during negotiations and since the past practice is clear, the current contract language must be seen as modified by past practice so that no doctor's certificate will be required for one or two days illness. The Town is guilty of unfair labor practices by changing the "conditions of employment" without negotiating.

Harassing and discrimination of union members: We find that the statements and/or "warnings" (which were never disputed), which have been testified to, might in the future result in discrimination against union members who are performing their legally protected duties under the statute. We caution the Town officials that any action based on animus against union activity protected under the statute will constitute unfair labor practices.

DECISION AND ORDER

The Public Employee Labor Relations Board believes that RSA 273-A requires parties to negotiate the "conditions of employment" so that where negotiations have not taken place, and a past practice exists, we must rule that the past practice continues in effect.

The Public Employee Labor Relations Board expects that both sides would clearly explain their contract proposals during negotiations. We also recognize that each side has the obligation to make sure they understand the provisions of a contract they are agreeing to. Ignorance of a collectively agreed to contract cannot ipso-facto be cause for unfair practice charges.

We find the Town of Merrimack is guilty of unfair labor practices under RSA 273-A:5, I (e) and (h) having unilaterally changed the contract to eliminate disability benefits; method of payment for workers' compensation and requirement of doctor's certificate and we order:

- (1) a return to the previous provision of disability benefits, method of workers' compensation payment, and method of requiring doctor's certificate for three or more days illness;