State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF BEDFORD Complainant v. BEDFORD POLICE ASSOCIATION, STATE EMPLOYEES ASSOCIATION, SEIU, LOCAL 1984 Respondent	CASE NO. P-0701:4 DECISION NO. 93-45

APPEARANCES

Representing Town of Bedford:

Russell Hilliard, Esq., Counsel

Representing State Employees Association:

Christopher Henchey, Chief Negotiator

Also appearing:

Ward Freeman, Field Representative
Jon Caverly, Bedford Police Association

BACKGROUND

The Town of Bedford (Town) filed unfair labor practice (ULP) charges against the Bedford Police Association, State Employees Association, S.E.I.U., Local 1984 (Union) on December 23, 1992 alleging a violation of RSA 273-A:5 II (d) relating to an alleged refusal to bargain. The Union filed its answer on January 6, 1993 after which this matter was heard by the undersigned Hearing Officer on March 11, 1993.

FINDINGS OF FACT

1. The Town of Bedford is a "public employer" of police officers and other personnel employed in its Police Department as defined by RSA 273-A:1 X.

2. The Bedford Police Association, State Employees Association of New Hampshire, SEIU Local 1984 is the duly certified bargaining agent of police officers employed by the Town.

3. The Town and the Union are parties to a collective bargaining agreement (CBA) due to expire July 1, 1993. In anticipation of that expiration, they have engaged in bargaining for a successor CBA.

4. During the spring and summer of 1992, the Town and other certified bargaining agents for bargaining units other than that represented by the Bedford Police Association participated in a "Health-Wealth" program aimed at controlling increases in fringe benefit costs. The Bedford Police Association was asked by the Town to participate in this program but declined.

5. On or about September 17, 1992, the Town Manager (Roberson) met with the union negotiator (Freeman) and bargaining unit team members to explain the health wealth package which the Town and other employee organizations had developed. Another meeting occurred on September 21, 1992 to make this explanation to the membership. During these two meetings, the Town made representations that the proposal intended to keep the same health insurance benefits; however, the carrier would change. The Town was unable to and did not identify the new insurance carrier to the Union membership or its negotiators.

6. Another meeting was held between the Town and the Union on October 8, 1992 at which the provisions of the "Health-Wealth" plan were again discussed. The Union objected to a change in the carrier for health insurance unless they were first informed of the identity of that carrier, citing their rights under Article 12.5 requiring that "questions of comparability of benefits among different carriers be resolved through the negotiations process." Town representatives explained that Blue Cross/ Blue Shield would not quote independently of the New Hampshire Municipal Trust unless the Town first declared its intent to cease coverage under the trust. Thereafter, the Union caucused and returned to announce to the Town that it felt no need or desire to change its

coverage in effect under the current collective bargaining agreement.

7. Three negotiations sessions followed. The first was held on October 19, 1992 at which time the Town proposed cuts in overtime, changes in the definition of seniority, funeral leave and short-term disability, a reduction in the Town's contribution for health insurance from 100% to 50%, and numerous administrative changes intended to codify existing conditions. Town Exhibit Nos. 1 and 2. The Union also presented its proposals at this meeting. They involved, by way of example, definition of work week, minimum call back, a general wage increase, and provision for layoff and recall. The proposals of each side were reviewed and discussed by the parties. Town Exhibit No. 3.

8. The second negotiating meeting occurred on October 23, 1992 at which time the Union agreed to various management proposals relative to wording and codifying existing practices but not extending to "big ticket items" involving such benefits as insurance, disability or overtime. Town Exhibit No. 4.

9. The third and final meeting occurred on November 4, 1992. The Union produced an 8 page document of language proposals generated since the last meeting. Town Exhibit No. 5. Thereafter Town representatives expressed reluctance to proceed further with negotiations until the Union made a commitment as to when the Town's proposals would be discussed. The Town Manager testified that the union negotiator said there was "no room to discuss the Town's proposals." The Union negotiator testified that the Town's proposals were "so onerous I couldn't do anything but say 'no.'"

10. Anthony Plante, Finance and Personnel Director, attended the November 4, 1992 meeting and testified that the parties went over the provisions raised by each side. Freeman did not agree with the Town's merit pay plan. Roberson did not agree with the Union's scheduling proposal. Thereafter, the parties caucused. Freeman returned and reported he wanted an additional change to bereavement leave provisions, no insurance reduction to 50%, and no elimination of the short-term disability provisions of the CBA. No negotiating meetings have been set or held since November 4, 1992.

11. The parties' CBA contains an "evergreen clause" which causes it to remain in effect until it is replaced by a successor agreement. Contract, Article 15.1.

DECISION AND ORDER

This case involves a charge of a refusal to bargain over two different topics, namely, insurance and other benefits. The issue involving insurance is a simple one. Article 12.4 of the CBA gives the Town the right to contract for insurance from alternate carriers, "except that any new coverage shall provide coverage which is comparable to the coverage presently in force." Article 12.5 provides that questions of comparability "shall be resolved through the negotiation process prior to any change in carrier permitted under [Article] 12.4." Those negotiations have not happened; the parties have not reached an alternative agreement. Therefore, the right to change carriers referenced in Article 12.4 cannot yet be implemented.

The Union's intransigence on this issue cannot be faulted by the Town given that the identity of the alternative carrier has not been disclosed. Failure to reach an agreement under such circumstances certainly cannot be held to be a refusal to bargain or refusal to agree. There must be something over which the parties can negotiate and agree before either is guilty of a refusal to negotiate. Until such time as either side makes a proposal with respect to health insurance which is inclusive of the identity of the carrier, neither side may complain that the other has refused to negotiate this issue. Freeman's analogy to a "pig in a poke" was an appropriate one. In the meantime, the issue of the carrier's identity is important since, in many instances, it is more important to have a readily acceptable carrier than enhanced benefits through a less acceptable carrier which is not recognized (or noted for prompt payment) by health care providers.

On the broader issue of other topics which the Union allegedly declined to negotiate on and after November 4, 1992, the Union's conduct does not rise to the level of being an unfair labor practice for a refusal to negotiate. To the contrary, the Union is as protected by the provisions of RSA 273-A:3 as is the Town: "the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession." Likewise, the Union's conduct prior to and at the meeting of November 4, 1992 met the requirements of the obligation to bargain, namely, it presented proposals, made concessions (albeit on minor issues) and discussed matters pending for negotiation. While the Town had issues it considered important (e.g., health insurance premium levels), so did the Union (e.g., general wage increase). Merely because the Union was unwilling to move first on the "big tickets" of health insurance, overtime, or short-term disability does not mean its conduct was violative of RSA 273-A:5 II (d).

The current status of this case indicates that the parties have reached an undeclared but de facto impasse. RSA 273-A:12 contemplates the use of a mediator at this point. The parties, singularly or jointly, are directed forthwith to apply for mediation so that negotiations might be resumed with the assistance of a mediator. Meanwhile, all charges of ULP pending in this case are DISMISSED for the reasons set forth herein.

So ordered.

Signed this 30th day of April, 1993.

PARKER DENACO
Hearing Officer