State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE (Conway Administrative Employees) Complainant v. TOWN OF CONWAY Respondent	CASE NO: M-0654:3 M-0654:4 DECISION NO. 93-52

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

Representing Town of Conway:

Robert R. Tawney, Chief Negotiator

Also appearing:

James Fennessy, Town of Conway Employee
Raymond E. Leavitt, Jr., Selectmen
Cynthia B. Briggs, Selectmen
James B. Somerville, Conway Town Manager

BACKGROUND

Teamsters Local 633 of New Hampshire (Union) filed unfair practice (ULP) charges on behalf of organized administrative employees against the Town of Conway (Town) on December 24, 1992 alleging violations of RSA 273-A:5 I (a), (b), (c) and (e) resulting from layoffs announced to become effective January 1, 1993 because the Town and the Union had failed to reach an agreement on health insurance costs. The Town responded by filing an answer on January 13, 1993. On February 4, 1993, the Union filed an amended charge to Case No. M-0654:3 and further requested reinstatement of health insurance coverage as it had existed in

1992. The Town filed an answer on February 18, 1993 after which both sets of pleadings were consolidated for hearing and heard by the PELRB on March 4, 1992.

FINDINGS OF FACT

1. The Town of Conway is a "public employer" of administrative personnel, as contemplated by RSA 273-A:1 X.

2. Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for administrative employees in the employ of the Town.

3. Teamsters Local 633 was certified as bargaining agent on March 19, 1992 as the result of a bargaining agent election held on March 16, 1992. Negotiations for a first contract have occurred and continued from September of 1992 until February 4, 1992 without meaningful results towards that objective.

4. During the course of negotiations, the issue of health insurance coverage and premiums was of considerable importance to each side. By December 14, 1992, the two negotiating teams reached an agreement on health insurance. The bargaining unit membership approved the package on that same date. The Selectmen rejected the package two days later, by letter dated December 16, 1992. The last paragraph of that letter said, "Due to the timing, the Board [of Selectmen] has instructed the Town Manager to proceed with the layoff notices which will be posted on December 19th unless" the union were to drop its request for confidentiality of the CBA and its request relating to the reimbursable insurance amount. That letter was signed by the Town Manager and addressed to two bargaining unit/team members in Center Conway. There is no notation that a copy was sent to Union Representative Tom Noonan, notwithstanding the fact that Noonan was identified as a member of the bargaining team in the parties' Ground Rules for Negotiations dated May 28, 1992.

5. The Town Manager thereafter posted a Notice dated December 18, 1992 which identified five unit employees to be laid off. It said, "As of this date the Town and the Teamsters Local #633 have failed to reach an agreement concerning health insurance costs...Should there be a resolution by December 31, 1992, implementation of the layoffs shall not take place."

Distribution was to "all bargaining unit members" but no copy was provided to Noonan who was out of state on Christmas vacation.

6. The bargaining unit members, again without Noonan, met on December 22, 1992. They decided to hold firm on the issue of their health insurance proposal.

7. During the week of December 28, 1992, unit member/Tax Assessor Fennessy spoke to the Town Manager and Selectman Leavitt who advised that layoffs would occur if the union did not take action on the matter of health insurance.

8. On December 29, 1992, the unit members held a meeting again without Noonan's being sent a notice or being present, at which they "reluctantly" agreed to the Town's position to change insurance to Comp 300 with a 30% contribution. This action was taken to avoid the five layoffs. Noonan was unaware of the December 18th notice (Finding No. 5) and the results of the December 29th meeting until his return from Christmas holidays. Town officials were unaware of the acceptance by unit members until Fennessy mentioned it to the Town Manager on December 31, 1992 after which the Town Manager and a Selectman confirmed the action.

9. On January 18, 1993 the Town Manager wrote a letter to team members Burns and Fessessy, again omitting Noonan, setting forth the terms of what he categorized as the parties' "Temporary Agreement" through June 30, 1993. It included the change in health insurance benefits to Comp 300 and a 30% contribution rate through payroll deduction. Acknowledgement was requested. There is no evidence that bargaining unit members in any way repudiated the terms of the January 18, 1993 letter.

10. The parties' Ground Rules for Negotiations provided at Item 6 that, "Each side's negotiating team has authority to reach tentative agreements, but any contract to be final must, from the Town's standpoint, be approved by the Board of Selectmen and from the Union's standpoint, be ratified by the Union's membership." There is no evidence that the Union membership did not approve, albeit reluctantly, the terms of the Town Manager's January 18, 1993 letter.

11. The parties' Ground Rules for Negotiations provided at Item 10 that, "For purposes of creating a negotiating agenda, non-economic matters will be addressed first and once agreement is reached on them, economic matters will be considered in the negotiations." There is no evidence that the parties had concluded negotiations on non-economic matters when the Union was confronted with the December 18, 1992 layoff notice. (Finding No. 5)

12. According to testimony from the Town Manager, the Town needed to find savings of $27,000 to $30,000 in order to create a 50% reduction in the cost of health insurance benefits for bargaining unit employees, consistent with what selectmen believed to be a mandate from voters at the 1992 Conway Town Meeting. Five layoffs, per the notice of December 18, 1992, would have generated annualized savings of $27,000 in insurance costs but would have created a cash surplus far in excess of the $27,000 targeted amount because of savings simultaneously created in the salary account for employees in this bargaining unit.

DECISION AND ORDER

This case presents many of the same issues addressed in AFSCME Local 3657/Conway Police v. Town of Conway, Decision No. 93-50, (April 28th, 1993), with the distinguishing characteristic that the police case involved an expired CBA and in this case, no CBA had ever been negotiated. The PELRB's policy is the same in each instance. The conditions existing at the time of CBA expiration or at the time of certification should be maintained during the course of bargaining. To hold differently, especially in the case of a newly organized and certified unit, would be tantamount to permitting retribution or penalties on the employees for having organized. This is inconsistent with protections afforded under RSA 273-A:5 I (a); hence, the existence of the PELRB's status quo policy.

As we noted in Conway Police, supra, "the employer's conduct in announcing...more layoffs than it would have taken to fund the deficit in health insurance benefits is suspect." In this case, we must add the extra consideration of the Town's addressing all notice directly to its employees, avoiding, consciously or not, the Teamster representative who was the one professional negotiator on the Union's side. Not unlike Conway Police, we again must ask (1) why this was done, (2) what its intended impact may be on unit members, and (3) what its actual impact was on unit members. The

employer's conduct caused the unit employees to capitulate, albeit "reluctantly," to avoid layoffs.

Finally, and again similar to Conway Police, the circle is closed with the Town's memo of December 18, 1992, stating that the layoffs might be avoided should the insurance issue be resolved by December 31, 1992. (Finding No. 5). We reiterate "whether by intention or impact, this is coercive and violative of RSA 273-A:3 I. Neither side can be forced into making such a concession." Considering both Conway Police and AFSCME et al v. City of Claremont, Decision No. 82-46 (July 8, 1982) cited therein, we find that the employer could not reduce benefits while negotiations were being conducted. Once the employer threatened layoffs if a "resolution" was not forthcoming by a given date, that threat became coercive and violative of RSA 273-A:3 I, thus constituting a ULP Under RSA 273-A:5 I (a) and (e). The Town's "direct dealing" with unit employees to the exclusion of the professional union representative, an individual known to both sides dating to organizational efforts within the unit, violated RSA 273-A:5 I (b) to the end that unit employees were forced to deal with a crisis situation in the absence of their professional representative. The Town Manager concluded wrongly and acted inappropriately when he said it was the duty of unit members to reach and deal with Noonan. The certified bargaining agent is Teamsters Local 633. It was the Town's duty to reach the union spokesman, showing, at a minimum an attempt to keep him informed, as well as it was its duty to adhere to the statutorily imposed obligation to bargain with the duly certified representative of the union. We find that the circumstances of this case evidence characteristics of deadline bargaining (accept by a certain date or else), direct dealing, and avoidance of negotiating with the unit's exclusive representative (Teamsters Local 633), all of which are proscribed conduct under Appeal of Franklin Education Association, 136 N.H. 332 at 335-337 (1992). Accordingly, we affirm our conclusion of a RSA 273-A:5 I (e) violation.

Notwithstanding our previous findings, we find, under the Ground Rules (Finding No. 10) that there was adequate authority for the membership to have voted on and approved the terms of the "Temporary Agreement" (Finding No. 9). We find no need to upset the terms of that agreement during the pendency of on-going negotiations in this case. Likewise, given the circumstances under which the terms of the Temporary Agreement were reached, we find no waiver on the part of the unit which would ban continuing negotiations on topics covered by the Temporary Agreement.

Based on our findings of ULP's under RSA 273-A:5 I (a), (b) and (e), we direct the following remedies. (1) The parties shall forthwith engage in collective negotiations for an initial CBA.

(2) Any proposals made by the Town to or on behalf of a settlement which would impact unit members, including proposals relating to the setting of a schedule for negotiations, shall be forwarded to the certified bargaining agent no later than the time at which the same documents are given or provided to bargaining unit members who are employees of the Town. (3) The parties shall keep the PELRB informed of progress with negotiations, including mediation and fact finding, not less frequently than monthly. (4) Notwithstanding the agreement of December 29, 1993 in order to avoid layoffs and the Ground Rules, under the circumstances of this case, nothing contained in either of those documents, either as to timeliness or substance, shall be used to ban the Union from making negotiations proposals pertaining to quid pro quos to bring them even with health insurance packages negotiated for or granted to other employees of the Town. (5) Since the terms of the January 18, 1993 "Temporary Agreement" letter are to expire, by its own terms, on June 30, 1993, if the parties have not concluded negotiations for a successor collective bargaining agreement by that date, the conditions pertaining to health insurance benefits shall revert to what they were prior to January 1, 1993, on July 1, 1993.

So ordered.

Signed this 29th day of April, 1993.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Frances LeFavour and Richard E. Molan, Esq., present and voting.