State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, SEIU LOCAL 1984		
Complainant		CASE NOS. S-0392 S-0392:1
v.		
		DECISION NO. 96-004
STATE OF NEW HAMPSHIRE		
Respondent		

APPEARANCES

Representing State Employees Association:

Michael Reynolds, Esq.

Representing State of New Hampshire:

Douglas Jones, Esq.

Also appearing:

David Wyatt, State Employees Association
Maureen Timmins, State Employees Association
Ward P. Freeman, State Employees Association
Thomas Manning, State of New Hampshire

BACKGROUND

The State Employees Association of New Hampshire, SEIU, Local 1984, AFL-CIO (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire (State), Governor Stephen Merrill and Commissioner Terry L. Morton on October 16, 1995 alleging violations of RSA 273-A:5 I (h) and (I) relative to HB-32 because (a) it would deny Health and Human Services (HHS)

employees the right to negotiate subjects covered by the merit system exclusion if RSA 21-I is revoked, (b) it revokes RSA 21-I, which, in turn, vacates the benefits of rules promulgated thereunder (c) it would abrogate, modify or allow any agent or employee of the state to ignore then-existing personnel rules as well as rights and benefits covered by the collective bargaining agreement (CBA), and (d) it would irrevocably harm classified employees of HHS. Thereafter, the union filed an amendment to its ULP complaint on October 26, 1995. The State filed responsive pleadings in the form of a Motion to Dismiss and a Motion to Strike Amendment on October 31, 1995.

The legislation, HB-32, complained of in the October 16, 1995 ULP was passed in special session on November 1, 1995. The Union filed another ULP complaint on November 14, 1995 alleging violations of RSA 273-A:5 I (e), (h) and (i) resulting from the its filing a demand to open negotiations on the impact of the newly - passed legislation on employees of the HHS Department and being denied those negotiations by the State. The Union also sought to bargain over certain subjects formerly barred by the merit system exclusion since the passage of HB-32, it argued, eliminated the bar to negotiating terms and conditions of employment previously barred by that exclusion. The State filed a Motion to Dismiss on November 21, 1995.

Both cases were then consolidated for hearing before the PELRB on December 21, 1995.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of personnel employed in and by its Department of Health and Human Services within the meaning of RSA 273-A:1 X.

2. The State Employees Association of New Hampshire, Inc., SEIU Local 1984, AFL-CIO, is the duly certified bargaining agent for employees of the State of New Hampshire in its Department of Health and Human Services.

3. The State and the Union are parties to a CBA for the period July 1, 1995 through June 30, 1997. Article 2.1 of the contract provides that "the Employer retains all rights to manage, direct and control its operations in all particulars, subject to the provisions of law, personnel regulations and the provisions of this Agreement, to the extent

they are applicable." "Personnel regulations" is synonymous with "personnel rules" as used in the foregoing context. Article 14.1 of the CBA provides that "[e]mployees shall be provided all the rights and benefits to which they are entitled by law and this Agreement." Wage scales, across-the-board benefits and specific provisions and benefits applying to given departments or sub-groups of employees are all contained in the CBA. Article 1.5 of the CBA, under the "Recognition" clause, provides that "[t]he provisions of the Agreement shall be applied equally to all employees in the bargaining unit in accordance with state and federal law."

4. The CBA contains a specific provision for "renegotiation" at Article 21.2. It provides that "[r]enegotiation of this Agreement will be effected by written notice by one Party to the other not later than October 18, 1996 or earlier by mutual agreement. Negotiations shall commence within fifteen (15) days after the receipt of such notice."

5. Portions of HB-32 complained about by the Union include, but are not necessarily limited to (1) Part 2.I (page 3) the Commissioner's ability to act "notwithstanding any provision of law to the contrary," (2) Part 2, I-b (page 3) giving governor and council authority to transfer or reassign personnel within and between any division, office, unit or other component of the department, (3) Part 2, I-C (page 3) giving the Commissioner the authority to delegate, transfer or assign the authority to administer and operate any program or service of the department to any employee, division, office, bureau, or other component of the department, (4) Part 59 (page 62) giving the Commissioner the authority to reallocate or reclassify any position within the department in consultation with the director of personnel, (5) Part 60 (page 63) giving the Commissioner the alleged authority to "regulate" the pay of reclassified employees, (6) Part 60-IV (page 63) prohibiting the exercise of "bumping" rights "notwithstanding any law or administrative rule," and (7) Part 65 (page 88) pertaining to restric-

tions on entitlement to and utilization of certain benefits earned by classified employees who have subsequently been appointed to unclassified positions in the department.

6. HB-32 was passed by the Legislature on November 1, 1995 and signed by the Governor. The legislation professed its purposes in several areas. Section 1, I said, [t]he purpose of this act is to enable the department of health and human services to carry out a restructuring of its organization to adapt to the changing needs of the state's citizenry, to accommodate new directions in federal funding mechanisms and program requirements, to eliminate barriers to the effective provision of services, and to achieve efficiencies in operations of the department." Section 1, II said, [t]he general court recognizes that the present structure of the department of health and human services can be an impediment to the coordinated, efficient provisions of services and that the department has developed a framework for reorganization to eliminate functional duplications among existing divisions, to provide for a comprehensive, unified approach to departmental management and administration, and to focus its resources more equitably and efficiently in promoting the health, safety, self-sufficiency, and general welfare of the citizens of New Hampshire." Section 2, amending RSA 126-A:1,states that "[t]he purpose of this chapter is to provide an integrated, administrative structure for the design and delivery of a comprehensive and coordinated system of health and human services which is family-centered and community-based for the citizens of New Hampshire."

7. By their pleadings and answer to Case No. S-0392:1, Item No. 4, the parties are in agreement that the passage of HB-32 abolished the applicability of personnel rules promulgated pursuant to RSA 21-I as it relates to the Department of Health and Human Services. The Union avers that the abolition of those personnel rules has vacated the merit system exclusion with respect to transfer, promotion, classification, discipline, layoff and recall of employees of HHS.

8. By their pleadings and answer to Case No. S-0392:1, Item No. 11, the parties agree that the Union filed

a demand to open negotiations over the impact of newly passed legislation (HB-32) on the terms and conditions of employment of New Hampshire state employees. By letter of November 6, 1995 from Thomas Manning, Manager of Employee Relations, to Ward Freeman, Director of Negotiations for the Union, the State said its obligation to bargain had been satisfied, that the scope of bargaining had not been broadened as the result of the passage of HB-32, and declined to reopen negotiations.

DECISION AND ORDER

These proceedings involve two unfair labor practice (ULP) complaints. The first complaint, filed October 16, 1995, is prospective in nature, as shown by the pleadings. For example, the Union alleged that HB 32 "cites an intent" (Complaint, para. 7), contains provisions, which if implemented ... "(Complaint, para. 12), and makes allegations "if HB-32 is enacted..." (Complaint, para. 13, 14 and 15). (Emphasis added.) Thus, at the time case No. S-0392 was filed, no act or acts violative of RSA 273-A:5 had been committed. This state of events did not go unnoticed by the State. In its answer the State asserted that "this matter is not ripe," that HB-32 "has not been enacted into law," that RSA 273-A:5 I (h) and (i) speak of "actions which have already occurred," and that if bargained-for benefits are lost, the "employee has a fully adequate remedy under the grievance procedure...of the CBA." (Answer, Paras. 2, 3 and 12.) We agree with this assessment and DISMISS Case No. S-0392 because of the prospective nature of the claims asserted.

The second complaint was filed on November 14, 1995, after HB-32 was passed and signed into law. Without citing any specific events or examples of reduced or eliminated benefits, the Union asserted that the passage of HB-32 violated RSA 273-A:5 I (h) and (i), as before, and also RSA 273-A:5 I (e) because it had made a demand to negotiate areas previously exempted from negotiations under RSA 273-A:3 III and had been rejected.

We find no commission of an unfair labor practice in the second case for four (4) reasons. First, there was no showing of specific harm or violations of statute or the CBA alleged to have occurred after HB-32 was passed. Second, while the Union sought to negotiate areas previously exempted from negotiations under RSA 273-A:3 III, there was no showing or allegation that benefits previously regulated by the personnel rules and regulations were not still being applied to employees at HHS. Third, the State, in its pleadings and in argument, has affirmed the existence and

continuing availability of the grievance procedure found in the CBA notwithstanding the passage of HB-32, and, thus, would now be hard-pressed to reverse its position on this issue if a HHS grievance were to be processed. Fourth, to the extent new authority has been extended to the Commissioner of HHS, the Commissioner and this agency derive his/their authority from the same source, the Legislature. That body has the authority to change the mandate of the Department and the Commissioner of HHS as it would for this agency. It would be inappropriate for us to fail to recognize that authority. Accordingly, we also DISMISS Case No. S-0392:1.

So ordered.

Signed this 13th day of MARCH, 1996.

EDWARD J. HASELTINE
Chairman

By majority opinion, Chairman Haseltine and Member Roulx voting in the majority and Member Hall voting in the minority.

Member Hall's dissent:

I concur in the dismissal of Case No. S-0392 but not with the dismissal of Case No. S-0392:1. In the second complaint, the Legislature had acted and now the representatives of the State want the benefit of both the passage of HB 32 as it eliminates the provisions and benefits of the personnel rules and regulations and the ability to reject additional impact bargaining requests now that the bar created by RSA 273-A:3 III no longer applies. State negotiators should not be allowed to have it both ways. Either the conditions of employment should be guaranteed as they existed when the current CBA was negotiated to be effective through June 30, 1997 (Finding No. 3) or the elimination of the bar created by RSA 273-A:3 III should permit the Union to enter into mandatory interim negotiations with the State over items formerly controlled by the merit system, namely, transfer, promotion, classification, discipline, lay-off and recall. Interim negotiations are appropriate because of external actions, i.e., legislative action, having changed "terms and conditions of employment" without the involvement or concurrence of the Union and its membership which has been impacted by those changes.