



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE TROOPERS
ASSOCIATION and SGT.
BERNIE SPARKS, III

Complainant

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF SAFETY,
DIVISION OF STATE POLICE

Respondent

CASE NO. P-0754:4

DECISION NO. 96-047

APPEARANCES

Representing N.H. Troopers Association:

James W. Donchess, Esq.

Representing State of New Hampshire:

Douglas Jones, Esq.

Also appearing:

Louis Copponi, N.H. Troopers Association
Michael G. Doucette, N.H. Troopers Association
Thomas Manning, State of New Hampshire

BACKGROUND

The New Hampshire Troopers Association (Union) filed unfair labor practice (ULP) charges against the State of New Hampshire, Department of Safety, Division of State Police (State) on March 7, 1996 alleging violations of RSA 273-A:5 I (e) when the State refused to bargain about and implemented unilateral charges in working conditions by requiring the Union to comply with and live

under the master agreement, agreed to in coalition bargaining with the State Employees Association for 1995-1997. The State filed its answer on March 26, 1996. The Union filed a motion to add the State of New Hampshire as a party respondent on April 1, 1996, said motion being granted during hearing on this matter by the PELRB. After an intervening continuance sought by and granted to the parties for an April 11, 1996 hearing date, this matter was heard by the PELRB on June 4, 1996.

FINDINGS OF FACT

1. The State of New Hampshire, through its Department of Safety, is a "public employer" of state police officers and related personnel within the meaning of RSA 273-A:1 X.
2. The New Hampshire Troopers Association is the duly certified bargaining agent for all sworn personnel up to and including the rank of sergeant. It was so certified on October 18, 1990 and, as such, is authorized to negotiate and enter into written agreements with the public employer relating to terms and conditions of employment.
3. RSA 273-A:9 provides that "cost items and terms and conditions of employment affecting state employees generally shall be negotiated by the state...with all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units...." Under RSA 273-A:11 exclusive representatives are accorded the right to represent employees in collective bargaining negotiations and to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement.
4. During the course of negotiating the 1993-95 contract for all state employees generally the Union participated as a negotiating party and as a signatory to that agreement. Union Exhibit "A." Louis Copponi testified that the Union actively negotiated with the State after July 1, 1991, subsequent to its being certified, until a negotiating session held on October 20, 1995 when the State declared impasse and took the position that the Union was bound by the provisions

of the master agreement which was negotiated by coalition bargaining with the State Employees Association (SEA) for the period July 1, 1995 through June 30, 1997. Union Exhibit "E."

This position was confirmed by a letter from Thomas Manning to Ward Freeman and Copponi dated November 6, 1995. Union Exhibit "D."

5. The Union was not a party or signatory to the 1995-97 CBA, as it had been for the 1993-95 CBA. The Union's efforts at bargaining after the resolution of the 1995-97 master CBA, were, according to Copponi, limited to sub-unit (i.e., state police specific) negotiations. In particular, bargaining started in October of 1994 for the 1995-97 CBA. The Union met with State negotiators to discuss and negotiate written proposals on December 8, 1994, December 16, 1994, February 2, 1995 and April 17, 1995. Ten of the 24 proposals which were exchanged involved matters associated with wages and hours. Between April 17, 1995 and July 1, 1995, the State reached an agreement within the coalition bargaining process, lead by the State Employees Association on the union side, for a master 1995-97 agreement. Thereafter, the State and the Union continued to meet and negotiate on sub-unit issues, inclusive of wage and hour matters, on September 20, 1995 and October 20, 1995. The State declared impasse on these sub-unit negotiations on October 20, 1995.
6. After the State and the union coalition bargainers reached agreement on a wage and benefits package for all state employees generally, each bargaining unit was asked to vote on the package. The membership of the State Troopers Association rejected the proposals by a vote of 138 to 8. Manning testified that he met with Copponi on June 20, 1995 and was so informed of this rejection by the troopers bargaining unit.
7. It is undisputed that Manning wrote Copponi on October 3, 1994. In doing so, Manning acknowledged Copponi's letter to him of September 27, 1994 giving notice of the Union's "intent to bargain for the terms of the upcoming collective bargaining agreement." In his response, Manning told

Copponi:

I can understand your desire to negotiate an agreement which is separate and distinct from agreements negotiated for other state employees but RSA 273-A:9 does control our ability to deal separately on terms and conditions of employment which are not unique to members of your bargaining unit. The Agreement that we reach with your unit will be entirely separate from agreements which govern other state employees even though the terms will be, in most cases, identical.

State Exhibits 2 and 3.

The State considers this to be notice of its intent to coalition bargain for the successor CBA. To date, there has been no "entirely separate" agreement concluded between the State and the Union.

8. The Union's proposals on wages and hours, Union Exhibit "C," were written, exchanged and prompted responses and/or promises of responses from the state between October of 1994 and October of 1995. It was not until October 20, 1995 that the State declared impasse, according to Manning, and took the position that wage issues were settled by the coalition-bargained master agreement.
9. Manning testified that the Union could have had its own separate agreement but that, under his understanding of the purposes and principles of coalition bargaining, the provisions of that separate agreement which were not unique to the terms and conditions of employment of troopers would be identical to the general, non-unique terms and conditions of employment contained in the master CBA. He said that the Union had never given the State notice that it was not going to participate in the coalition bargaining or that it would not accept the general, non-unique benefits conferred by the coalition-bargained successor agreement, excepting the notification of the sub-unit's rejection referenced in Finding No. 6, above. Manning took the position that the State could reach agreement with the Union on specific terms and conditions of employment unique to the sub-unit, especially if they involved non-

cost items. He cited as examples SWAT team stipends, scheduling changes and compensation for special duty.

DECISION AND ORDER

We find no unfair labor practice to have been committed under RSA 273-A:5 I (e) as alleged by the Union. Specifically, we do not find the State's conduct to have been a refusal to bargain after October 20, 1995. The declaration of impasse is not equivalent to an unfair labor practice or a refusal to bargain. It is, instead, a declaration by one or both of the parties that they are deadlocked in their efforts to conclude negotiations, in this case, presumably for a sub-unit successor agreement. The Union failed in its effort to show, if, indeed, it has tried to show, that the State refused to bargain after the October 20, 1995 declaration of impasse.

RSA 273-A:12 explains how the parties may obtain assistance in settling disputes resulting from their attempts to negotiate a contract. It provides a methodology "whenever the parties request the board's assistance or have bargained to impasse." Because the sub-unit bargaining in question occurred after settlement on the coalition-bargained master agreement, we offer no analysis on the time lines described in RSA 273-A:12 I. Suffice it to say that neither party attempted to invoke either mediation or fact finding after the declaration of impasse. Thus, the Union let the State "off the hook" by not pursuing or demanding negotiations or by not invoking mediation as the next step. It cannot now prevail in a refusal to bargain charge by so resting on its laurels.

While we find no ULP in this case, we do take this opportunity to address what appears to be differing perceptions between the Union and the State relative to coalition bargaining, the nature, participation and content of that bargaining as required by statute, and the Union's role the big picture of state employee negotiations in general.

The Troopers Association is the certified bargaining agent for sworn officers through the rank of sergeant in the bargaining unit. While this bargaining unit is much smaller than the bargaining units represented by the SEA, the Troopers Association has every bit as much authority to act on behalf of its membership as the SEA does for its membership. Whether done voluntarily by coalition bargaining or by separate bargaining methodology, the State and the Union are required to engage in collective negotiations upon receipt of a demand or notice to bargain served by one party or the other in a timely fashion.


RSA 273-A:9 requires that "cost items and terms and conditions of employment affecting state employees generally shall be negotiated by the state...with all interested bargaining units." The Troopers Association is the certified bargaining agent for one of those units.

Historically, one of the reasons the Troopers Association was successful in becoming the certified agent for this bargaining unit was to assure that the Association would be able to address issues unique to the unit. To require the Troopers Association to be bound by the terms of the master agreement, absent its voluntary participation in coalition bargaining, would be counter-productive to these purposes and contrary to its status as an independently certified bargaining agent with rights as specified in RSA 273-A:11. Thus, the State and the Union must be prepared to negotiate separately in future negotiations, absent an agreement to engage in coalition bargaining. In so noting, we are mindful that the decision (Decision No. 89-80) relied on by Mr. Manning in State Exhibit 1 (letter to Ward Freeman dated October 19, 1995) occurred at a time when the SEA was the only certified bargaining agent for all of the state bargaining units. The certification of the Troopers Association was after this case; it would be inconsistent with the rights accorded under RSA 273-A:11 to allow the larger SEA to control the bargaining interests of a bargaining unit for which it is not the certified bargaining agent.

The ULP is hereby DISMISSED.

So ordered.

Signed this 21st day of June, 1996.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Haseltine presiding. Members Richard W. Roulx and E. Vincent Hall present and voting.