



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD SCHOOL BOARD

Petitioner

v.

CONCORD EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Respondent

CASE NO. T-0220:31

DECISION NO. 97-027

APPEARANCES

Representing Concord School Board:

Edward Kaplan, Esq.

Representing Concord Education Association, NEA-NH:

Wally Cumings, UniServ Director

Also appearing:

David Harrigan, Concord School District
David Royle, Concord Education Association
K.L. Clock, Concord Education Association
Janet Meyer, Concord Education Association
Deborah A. Connelly, Concord Education Association
Mary Jo Haney, Concord Education Association
Jane Morin, Concord Education Association
Kim Paskalis, Concord Education Association
Robert B. Prohl, Concord School District

BACKGROUND

The Concord School District (District) filed a Petition for Declaratory Judgment on December 27, 1996, regarding the subcontracting of school nurse positions. The Concord Education

Association, NEA-New Hampshire (Association) filed its answer on January 9, 1997, which was amended on January 27, 1997. A hearing was held before the Board on February 6, 1997. Subsequently, the Association filed a Motion to Reopen the Hearing on February 20, 1997, and the Concord School District filed its objections thereto on March 5, 1997.

FINDINGS OF FACT

1. The Concord School District employs teachers, nurses, and support staff in the operation of its schools and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. Concord Education Association, NEA-New Hampshire is the duly certified bargaining agent for teachers and school nurses employed by the Concord School Board.
3. The Concord School District and the Concord Education Association are parties to a collective bargaining agreement (CBA) for the period September 1, 1996 through August 31, 1999, which specifically covers school nurses. This agreement succeeded the CBA for the period, September 1, 1993 through August 31, 1996.
4. Early in 1995, the School Board had begun discussing changes with regard to school nursing coverage. On April 3, 1995, the School Board announced that it would begin contracting out all nursing positions by September 1, 1998. However, in June 1995, the School District contracted out the nurse's position at the Conant School when its school nurse retired. This caused the Association to file a grievance. That matter was the subject of PELRB Decision No. 95-95 and an arbitration decision dated April 8, 1996, AAA Case No. 1139-0014-95, under which the School District was to continue to retain school nurse positions in the bargaining unit throughout the 1996-97 school year.
5. On June 6, 1996, the Concord School Board of the School District voted in public session to cease to employ school nurses and to subcontract with Concord Regional Visiting Nurses Association (VNA) for the services of school nurses for the 1997-98 school year. Negotiations for a new CBA continued during the summer of 1996 culminating with the signing of the new agreement on July 29, 1996. On October 18, 1996, the District notified the Union that all school nurses

were to be discharged at the end of the 1996-97 school year.

6. Three new school nurses were hired for the 1996-97 school year. They were told that they would likely be temporary employees although it was possible that the School Board would recant its decision to contract with the VNA for all school nurse services.
7. Of the original school nurses who remain, at least one was eligible to retire but chose not to retire from her school nurse position. She made her retirement plans in reliance on the School Board's vote to subcontract her position no earlier than 1998.

DECISION AND ORDER

The Concord Education Association's Motion to Reopen the hearing is denied. The challenged testimony is immaterial to the decision.

The Concord School Board seeks a declaratory judgment to affirm its authority to proceed with its plan to subcontract out all school nursing positions and to terminate the school nurses now employed in the various schools in preparation for the 1997-98 school year.

Approximately two years ago, the Concord School Board announced its intention to replace school nurses beginning in September, 1998. The School Board's intention to subcontract with the Concord Area Visiting Nurses Association for school nurses had long been widely known, (Finding No. 4), when negotiations for a new contract were under way during the spring and summer of 1996, prior to the termination date of the CBA on August 31, 1996. The school nurse position is a bargaining unit position. The parties bargained over wages and other terms and conditions of employment for positions in the bargaining unit including that of school nurse. The Concord Education Association had the opportunity during June and July to demand to bargain over the previously announced elimination of the school nurse positions in 1998 but that opportunity was not pursued and was lost with the signing of the new CBA on July 29, 1996.

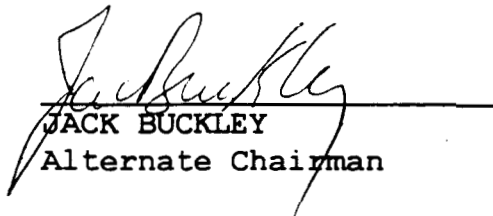
The decision to subcontract the nurses' positions for the next school year, 1997-98, is a different matter. The School Board's actions of negotiating for school nurse positions in bargaining sessions while simultaneously acting to eliminate their employment raise the question of bad faith bargaining.

Should the School Board now follow this ambiguous behavior with the termination of these bargaining unit employees, its action will not be affirmed by this Board as a permissible exercise of a management right.

The parties raise the issue of the applicability of our recent ruling in Hillsboro-Deering School District Custodians, AFSCME Local 2715 v. Hillsboro-Deering School District, Decision No. 96-081 (1996) to this fact situation. The facts are largely inapposite in that the complained of conduct in Hillsboro-Deering occurred mid-contract while the conduct in the present case occurred during negotiations. Both the process of subcontracting and the process of negotiating for a CBA are acknowledged to require the parties to act in good faith for the particular exercise of the process to be appropriate. Elkouri and Elkouri, How Arbitration Works, 746-754, and 1144 (5th ed. 1997). Exeter Education Association/NEA-New Hampshire v. SAU #16, Exeter Regional School Board, Decision No. 97-008 at 5 (1997) quoting Statement of Purpose, Chapter 490, Session Laws 1975. Considering the facts of this case, which involve contract negotiations and subcontracting, the School Board had an affirmative duty to act in good faith during June negotiating sessions by informing the Association of its intention to subcontract. The School Board's failure to raise the subject of its June decision to subcontract for VNA employees to fill the nurses' positions and its intention to act on the decision in the next school year opens the School Board to unfair labor practice charges for misleading the Association's negotiators during bargaining sessions. This may be mitigated by maintaining the status quo by continuing the employment of nurses for the next school year, 1997-98.

So ordered.

Signed this 4th day of APRIL, 1997.


 JACK BUCKLEY
 Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members Richard Molan and Richard Roulx present and voting.