



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAVERHILL EDUCATION	:	
ASSOCIATION, NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	
	:	CASE NO. T-0232:22
v.	:	
HAVERHILL COOPERATIVE SCHOOL	:	DECISION NO. 97-115
DISTRICT AND S.A.U. No. 23	:	
	:	
Respondent	:	

APPEARANCES

Representing Haverhill Education Association, NEA-NH:

James Allmendinger, Esq.

Representing Haverhill Cooperative School District
& SAU No. 23:

Bradley Kidder, Esq.

Also appearing:

Regis M. Roy, Haverhill Cooperative Education Assoc.
Margie Wilson, Haverhill Cooperative Education Assoc.
John Buck, Haverhill Cooperative Education Assoc.
Sarah Root, UniServ Director, NEA-New Hampshire
Linda Nelson, Superintendent SAU #23
Charles Harris, Haverhill Cooperative School Board

BACKGROUND

The Haverhill Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Haverhill Cooperative School District and SAU No. 23 (collectively "District" herein) on July 2, 1997 alleging violations of RSA 273-A:5 I (a), (e), (h) and (i) relating to failure to bargain and subcontracting out school nurse services for School Year 1997-98 after assurances to the contrary from the Superintendent to the incumbent. The District filed its answer on July 14, 1997. Meanwhile, the Association filed an addendum to its ULP on July 7, 1997 in letter form. The District filed an amendment to its answer, in letter form,

on July 17, 1997. This matter was then set for hearing on September 23, 1997 due to prior conflicts in attorney schedules. This matter was heard before the undersigned hearing officer on September 23, 1997 and November 5, 1997. The record was held open for post-hearing submittals which were postmarked on or before November 21, 1997, and for receipt of the parties' current CBA, received on December 3, 1997.

FINDINGS OF FACT

1. The Haverhill Cooperative School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Haverhill Education Association, NEA-New Hampshire is the duly certified bargaining agent for teachers, school nurse/teacher, guidance counselors and other non-administrative certified professional staff employed by the District. (Case No. T-0232.)
3. The District and the Association are parties to a collective bargaining agreement (CBA) for the period July 1, 1995 through June 30, 1998; however, the parties did not reach a tentative agreement on this document until October of 1996 following mediation efforts in June and July of that year. (Testimony of Regis Roy and Charles Harris.) Notwithstanding an attempt by the District to change the composition of the recognition clause through its proposal of February 26, 1996 (Association Exhibit No. 2) to exclude nurses from the bargaining if they spend "a minimum of 50% of their time performing administrative or other non-teaching duties," the parties' tentative agreement included an understanding to keep all contract language the same. Thus, the recognition clause has read since July 1, 1990, and will continue to read until June 30, 1998, that the Association is the "exclusive representative of all permanent full-time teachers, including the librarian, guidance counselor and nurse teacher employed by the ...District."
4. In spite of the fact that the parties did not reach tentative agreement (TA) on their 1995-98 contract until October of 1996, they began negotiations in 1993, before the 1990-94 CBA was to expire. From the commencement of negotiations through the tentative agreement, the parties experienced a deteriorating and fragile health environment in the District, inclusive of student suicides, AIDS and seizure cases,

severe allergy cases, the need to administer medications and, in one case, a student who required oxygen and periodic suction. (Testimony of Nurse Wilson, Cindy Lane, Superintendent Nelson and John Buck.) On September 5, 1995, Nurse Wilson memorialized these worsening conditions to Superintendent Nelson in a four-page memo, itemizing special needs in grades 4 through 8 and expressing certain of her concerns for students, the nursing profession and liability issues. (School Board Exhibit No. 1.) Six days later, Nelson sent a memo to Wilson and her principal, Sharlene Tracy, stating that the available additional part-time position had been allocated to special education, rather than nursing, because it had a higher priority. (School Board Exhibit No. 2.) Nelson also said Wilson's "letters present a compelling case for expanded coverage" and that she had made an appointment to talk with Cottage Hospital "to pursue possible shared resources."

5. On October 16, 1995, Wilson wrote a memo to Tracy about "medically fragile" student needs at the middle school, citing her schedule which only called for her to be at that building 2.5 days per week and raising questions about professional performance standards and liability. (Board Exhibit No. 3.) On October 17, 1995, Tracy sent a memo to Nelson about a reconfiguration of nursing services, which, if implemented, would put Wilson in the middle school for 5 days per week. (Board Exhibit No. 4.) On October 27, 1995, Nelson issued a memo to Wilson, Tracy and others which reassigned Wilson to the middle school "full time" and assigned Donna Gaylord to the high school (WHS) on Mondays and Wednesdays and to the elementary school (WES) on Tuesdays and Thursdays. In the memo, Nelson also mentioned that she would be talking with Cottage Hospital during the week of November 6th "to discuss ways in which the hospital might provide emergency back-up for WES and WHS for the remainder of the year." (Board Exhibit No. 5.) Following this, Donna Gaylord resigned November 20, 1995, effective January 18, 1996 (Board Exhibit No. 6.)
6. On December 29, 1995, Cottage Hospital and the District entered into an agreement to provide on-site nursing coverage at WES and WHS "a minimum of 3.75 hours each school day per building." This agreement was for the period January 2, 1996 through June 30, 1996 at a cost not to exceed \$16,000. The agreement also called for "health and

screening services," "development of student health education and wellness programs" and a mutual effort "to work together to develop a student health program for the 1996-97 school year." It contained a clause which said that "the school nurse provided by the hospital, in consultation with school personnel, will be responsible for all aspects of the school nurse duties at each school." (Board Exhibit No. 7.) Roy, Wilson and Buck all testified they understood the nurses hired under this agreement to be "temporary" and not in the bargaining unit.

7. On February 6, 1996, the school nurses had a meeting which included nurse-teacher Wilson, Will Hill, RN, and Cottage Hospital nurses Teschner and Gould. The group discussed professional topics and problems related to the schedule for Teschner and Gould, i.e., their limited availability for after school professional or parental meetings. Minutes of the meeting, taken by Wilson, referred to the "temporary situation of contracted nursing services." (Association No. 7.)
8. During mediation on June 7, 1996, the school board proposed "grandfathering" the "current nurse" in the bargaining unit "with any succeeding nurses excluded." The Association proposed "Clarify contract not to change" after which the board reproposed grandfathering before the mediation session adjourned. (Association Exhibit No. 3.) There is no evidence of a signed tentative agreement (TA) on this issue. This offer or position of the board was after its attempt to renegotiate the definition of "nurses" who would be included in the bargaining unit in February of 1996. (Finding No. 3.) Thereafter, the parties achieved tentative agreement on the entire CBA in October of 1996.
9. Superintendent Nelson's testimony confirmed that the District's contract with Cottage Hospital was renewed or continued, under the same terms as appeared in Board Exhibit No. 7, for School Year 1996-97, although there is no written memorialization of that extension, as confirmed by testimony of Harris. Likewise, there is no mention of this contract continuation in Nelson's memo to Sarah Root, UniServ Director, on May 21, 1997, which gives the chronology of such documents. (Association Exhibit No. 5.)
10. Wilson testified that Nelson discussed the status of temporary nursing coverage with her on December 7, 1996 and assured her that her job was not threatened.

This was followed by a meeting with Nelson, Tracy, Wilson, Buck and others on December 12, 1996 where they discussed issues involving nursing coverage, especially during that part of the day after the Cottage Hospital nurses had left. During this meeting, Nelson referred to Wilson as the "district nurse" with oversight responsibility for all three schools.

11. On January 9, 1997, Nelson held a meeting with Wilson, Roy and Pat Amsden to tell Wilson that the District "was pursuing a contract with Cottage Hospital for all nursing coverage for the 1997-98 school year." Wilson recalled this as being a job elimination notice meeting where she was praised for her work performance but that the change in structure was being made strictly as an economic decision. During the meeting, Nelson told Wilson she would get an offer to continue her employment within the school system but that it would be as an employee of Cottage Hospital, not of the District. On January 15, 1997, the Director of Patient Services at Cottage wrote Nelson about its interest in hiring Wilson for the middle school position for the 1997-98 school year. (Appendix No. 3.) Wilson testified that she had no offer from Cottage until July 22, 1997. She did not accept it because it was \$14.50 per hour without benefits and because she had to find a source of job-related insurance coverage. Nelson supported the restructuring change in her testimony by saying that the nurses' role as classroom teachers had vanished and that their roles in health teaching and curriculum have disappeared, too.
12. UniServ Director Root wrote a letter to Nelson on January 13, 1997, protesting the contracting-out of the nurse-teacher's job functions. (Appendix No. 2.) When she received no reply, Root wrote School Board Chair Charles Harris on February 3, 1997 "appealing for a grievance hearing with the Haverhill School Board." (Appendix No. 4.) By letter of February 3, 1997, Harris denied the grievance as being untimely. (Appendix No. 5.) By letter of February 11, 1997, NEA-New Hampshire attorney James Allmendinger cited irregularities in Harris's decision and asked him to reconsider his decision not to treat Appendix No. 2 as a grievance. (Appendix No. 6.) On April 4, 1997, Nelson wrote Wilson telling her that she would not be renominated for a nursing contract in the District for the 1996-97 [sic] school year. (Appendix No. 8.) On April 30, 1997 Harris wrote Roy denying the

grievance brought on behalf of Wilson on April 10, 1997, saying that the non-renomination remains in force. (Appendix No. 9.)

DECISION AND ORDER

It is obvious to this hearing officer that the parties' multiple agendas, separate and apart from the overall goal of achieving a mutually acceptable contract settlement, have them in a quagmire which has stalled not only their contractual relationship but also their labor-management relationship, to the extent the latter governs both their current and future relationships. This situation may be better understood by a chronological assessment of key activities.

The parties bargained for the 1995-98 CBA from 1993 until the TA in October of 1996. Thirteen months later they memorialized the settlement by signing the 1995-98 CBA. During the course of those negotiations, the foregoing findings indicate that both administrative and nursing personnel were aware of a deteriorating, "medically fragile" student health environment complicated with staffing problems. (Finding Nos. 4 and 5.) This prompted an agreement with Cottage Hospital ("Cottage") for "emergency" or "back-up" nursing services at WES and WHS from January 2 through June 30, 1996, a situation considered "temporary" throughout that six month period. (Finding Nos. 5, 6 and 7.) At some time, not memorialized by any written document(s), the agreement with Cottage was extended for the 1996-97 school year. (Finding No. 9.) By January 9, 1997, the Superintendent announced that the District was pursuing a contract with Cottage for School Year 1997-98, which was ultimately negotiated through School Year 1999-2000. (Finding No. 11 and Board Exhibit No. 12.)

The foregoing chronology is to be contrasted to the parties' efforts to conclude their negotiations. Skipping forward from 1993, it is undisputed that the District sought to exclude a broad category of nurses from the bargaining unit on February 26, 1996, engaged in mediation in June of 1996 and concluded that process with an offer to "grandfather" certain personnel. (Finding Nos. 3 and 8.) The Association left the mediation process with its proposal to "clarify contract not to change." (Association Exhibit No. 3.) When the 1995-98 CBA was signed, it contained the same recognition language as appeared in the 1990-94 CBA vis-à-vis the nurse-teacher position, notwithstanding that the Association's signatory's signature was not dated until "11/26/97," more than a year after the tentative agreement. Whether one considers the 1990-94 CBA to be operative under *status quo* when the ULP was filed or whether the 1995-98 CBA was controlling even though signed in November of 1997, the result is the same because the recognition clause, agreed by the parties, was the same.

From this set of circumstances (inclusive of negotiating history, the proposal and withdrawal of an attempt to negotiate a change in the composition of the bargaining unit and then the TA as later memorialized in the 1995-98 CBA), one can reasonably conclude that the Association thought that the parties had dealt with the nurse-teacher issue and that the matter had come to closure with the TA. For the District to have pursued and perfected something different prior to, and more importantly after, the TA is evidence of bad faith in the bargaining process, violative of RSA 273-A:5 I (e) and compounded by the secrecy and lack of candor brought to the bargaining table. This violation is aggravated by the fact that there was an attempt to negotiate the nurse-teacher issue and when that was not accomplished, one of the parties engaged in "self-help." The PELRB has explicitly said, "To allow subcontracting after this bargaining process fails to maintain the balance [of power] contemplated by the [collective bargaining] process because the remaining [unit employees] would have been inappropriately induced to make concessions over a subject which, by subcontracting, become worthless." Lebanon Support Staff v. Lebanon School District, Decision No. 97-098 (November 5, 1997).

The Association also alleged a violation of RSA 273-A:5 I (i). In Hillsboro-Deering School Custodians v. Hillsboro-Deering School District, Decision No. 96-081 (November 8, 1996), the PELRB, in finding a 273-a:5 I (i) violation, said, "The subcontracting decision is further exacerbated by the fact that the same job functions are still being done on behalf of the District, in some cases by the same individuals, under totally new, unilaterally-imposed and non-negotiated working conditions, through sub-contractors of the District, thus permitting the District to abrogate and ignore the terms of its CBA with the Union." Essentially the same, but not identical, conditions apply here, especially had Wilson accepted the employment offer referenced in Finding No. 11 and Appendix No. 3. The District failed to show by any meaningful evidence, let alone a preponderance of evidence, that the elimination of curriculum duties and classroom teaching responsibilities for nurses made any significant change in their routine job requirements. This was established by Wilson's transfer to the middle school full time back in 1995 for reasons of medical necessity. (Finding No. 5.) The unrefuted testimony from Roy was that nurses historically have never spent half or more of their time teaching, yet they have always been in the bargaining unit. Thus, one must conclude that the change in nomenclature was intended to justify excluding future nurse employees from the bargaining unit without a meaningful change in their job responsibilities as they existed prior to being subcontracted to Cottage.

The PELRB has considered two other sub-contracting cases recently, i.e., Hillsboro, supra, (same work, some of same workers, different employer) and Fall Mountain Regional Education Support Personnel Association, Decision No. 97-041 (April 4, 1997), (same work, same number of workers, same employer, different job titles).

In each case there were violations of RSA 273-A:5 I (i). In this case the variables are: same work, potentially same workers (had Wilson accepted the offer from Cottage), same location(s), different employer and different job title, i.e., nurse versus nurse-teacher. When one weighs bargaining history (the attempt to negotiate out or grandfather existing nurse teachers), the secrecy (Finding No. 9) of the on-going arrangements with Cottage, the outcome of Hillsboro and Fall Mountain, supra, and the signed CBA by the District after they had made the 1997-2000 deal with Cottage dated June 27, 1997 (Board Exhibit No. 12), these all point to a violation of RSA 273-A:5 I (i) for impermissible subcontracting.

If the only violation in this case were the RSA 273-A:5 I (e) charge, above, the remedy could be fashioned as it was in Fall Mountain Teachers, Decision No. 97-118 (December 19, 1997), which calls for negotiations to be reopened under RSA 273-A:12 IV when the impasse is not resolved following the action of the legislative body. The finding of a RSA 273-A:5 I (i) violation has been addressed by the PELRB in past cases with a cease and desist order and restoration to the status quo until resolved through negotiations or until the expiration of the agreement covering the affected employee(s), i.e., June 30, 1998, under the parties' 1995-98 CBA, whichever comes sooner. See Hillsboro, Fall Mountain Educational Support Personnel and Lebanon, supra. The remedy in this case shall be for the District to CEASE and DESIST from the above violations of RSA 273-A:5 I (e) and (i) and to adhere to the terms and conditions of its CBA with the Association through its termination on June 30, 1998. Any current or former unit members, namely Wilson and any unnamed others so situated, shall be made whole for loss of wages or benefits suffered during and resulting from the impermissible subcontracting.

So ordered.

Signed this 9th day of January, 1998.



PARKER DENACO
Hearing Officer