State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, SEIU, LOCAL 1984 for ROCKINGHAM COUNTY CORRECTIONS EMPLOYEES Complainant v. ROCKINGHAM COUNTY, DEPARTMENT OF CORRECTIONS Respondent	CASE NO. S-0386:7 DECISION NO. 97-120

APPEARANCES

Representing State Employees Association of New Hampshire for Rockingham County Corrections Employees:

Teresa DeNafio-Donovan, Esq., Counsel

Representing Rockingham County:

Gary W. Wulf, Chief Negotiator

Also appearing:

Gene P. Charron, Rockingham County
Dan Sullivan, SEA Chapter 58
Bob DeSchuiteneer, S.E.A.

BACKGROUND

The State Employees Association of New Hampshire, SEIU Local 1984 (Union) on behalf of the Rockingham County Corrections Employees, filed unfair labor practice (ULP) charges against Rockingham County and its Department of Corrections (County) on November 5, 1997 alleging violations of RSA 273-A:5 I (a), (b), (e), (g) and (h) relating to a refusal to bargain, direct dealing with unit members on matters of scheduling and breach of Article 20.4 of the collective

bargaining agreement (CBA). The County filed its response on November 19, 1997 after which this matter was heard by the PELRB on December 9, 1997.

FINDINGS OF FACT

1. Rockingham County is a "public employer" of certain employees who are employed in and by its Department of Corrections, within the meaning of RSA 273-A:1 X.

2. The State Employees Association of New Hampshire, SEIU Local 1984 is the duly certified bargaining agent for organized employees so employed.

3. The County and the Union are parties to a collective bargaining agreement for the period from its date of signing, October 25, 1996, through [illegible]. In the course of arriving at a settlement, represented by the CBA, the parties discussed work schedules and, ultimately, reduced the work week and shifts to writing which appear at Article XX, Sections 1, 2, 3 and 6. Article XX, Section 4 of the CBA goes on to provide:

> Work Schedule: The parties agree that during the term of this Agreement the existing shift schedules for the facility shall be maintained. In selecting employees to fill open shift assignments, the Department shall consider the qualifications of the applicants, and the scheduling needs of the facility, and if the qualifications of the applicants are equal, seniority shall be the determining factor in making the assignment. The Superintendent or Superintendent's designee shall meet with delegates of the Union, to be chosen by the Union, for the purposes of discussing scheduling.

The Union asserts that the conduct alleged violates Article 20.4 due to direct dealing.

4. In November of 1996, employees represented by the Union elected their representatives, one each from the first, second and third shifts, to the joint committee formed under CBA Article 20.4 to discuss potential changes in the shift structure. The joint committee, inclusive of employer members, met thereafter and considered a number of alternatives to replace the "6 and 2" schedule, in-

cluding a "straight 4 and 2," "four tens," a "modified 4 + 2" and a modified combination "5 and 2 plus 4 and 3." After considering a number of these, the union members of joint committee met with union leadership and decided to conduct a "straw poll" relative to these proposals. They also decided that they wanted a decisive vote to take to management, a vote supported by at least two thirds (2/3) of their voters. The Union then conducted an internal straw poll of its members. The Union run non-binding vote approved recommending a change to the "5 and 2 plus 4 and 3" schedule by seventy (70%) percent. According to testimony from local president Daniel Sullivan, this result was then conveyed to management.

5. On October 1, 1997, approximately a month after the straw vote, Corrections Superintendent Gene Charron posted a two page memo of that date, along with four (4) pages of attachments, on a bulletin board near the time clock. He testified it was his intention that employees, both organized and supervisory, should see it so they might inform themselves of the "pros and cons" of each of the proposals which had been considered and discussed by the joint committee. In the memo, which was attached to the ULP, Charron said, "The premise of this correspondence is to show other proposals that were presented at these [joint committee] meetings. It needs to be noted that a great deal of work is involved in attempting to create a schedule and all involved need to be recognized for their efforts." After discussing various proposals, Charron closed his memo with this paragraph:

> Ultimately, whatever the final proposal is, it will have to go before the Commissioners for review. Depending on the final outcome fiscal consideration is necessary also. So take time and review the attached additional proposals. I would appreciate your input.

DECISION AND ORDER

We recently visited the issue of direct dealing in Decision No. 97-118, Fall Mountain Teachers Assn., by making reference to RSA 273-A:11. That portion of the statute confers on certified bargaining agents, also known as "exclusive representatives," the right to represent employees in collective bargaining negotiations and in the settlement of grievances. This is an "exclusive" right to represent employees in the bargaining unit. RSA 273-A:11 I (b).

The County argued that the exclusive status of the bargaining agent did not apply in this case because the activities of the joint committee were consentual, under the CBA, rather than bargaining or settling grievances. We disagree. The parties' conduct in establishing and operating the joint committee is a consentual activity memorialized through Article 20.4 of the CBA. In that agreement, the County agreed that "the Superintendent or the Superintendent's designee shall meet with the delegates of the Union...for the purposes of discussing scheduling." According to unrefuted testimony from Sullivan, if the parties had come to agreement on a new scheduling scheme, it could have been incorporated as a mid-term change to the CBA. Only the Union and the County had the authority to implement such a change, if agreed. Individual employees could not. Thus, we are left with the impression that the County agreed to deal with the Union's representatives in discussing and dealing with this issue, not with bargaining unit members haphazardly and individually. If they failed to do so, as agreed by the CBA, that is a breach and a ULP under RSA 273-A:I 5 (h).

Conversely, if the complained of activity by the County violated the provisions of RSA 273-A:4 or 273-A:11, that would be a violation of RSA 273-A:5 I (g) for failing to adhere to the provisions of Chapter 273-A generally. With this in mind, we turn our attention to the complained of conduct.

We are concerned primarily with one document, the Superintendent's memo of October 1, 1997, and we are concerned with one portion of that memo, the last sentence. It read, "I would appreciate your input." Any reasonable reading of this sentence suggests that the Superintendent was soliciting input or feedback from the readers of his memo, from them as individuals, not as a group or through their "delegates," to use the wording of Article 20.4. Had he sought input from union officials or delegates to the joint committee, he could have sent or given them the memo, not posted it in an employee (time clock) area. This is proscribed behavior because it seeks to induce bargaining unit members to do something individually which was "within the ambit of the bargaining agent." Fall Mountain Teachers Assn., *supra*. It is exacerbated by the fact that the Union's consensus had already been made known to management as the result of the straw vote. Whether intended or not, the Superintendent's plea seeking "input" was tantamount to asking employees, his subordinates, to change a position already taken by their Union, as an organization, on the preference of the "5 and 2 plus 4 and 3" schedule. As we said in Fall Mountain Teachers Association, "it is inappropriate for the administration to seek political support for a position which may vary from the position of the unit's bargaining agent by making direct contact with unit employees."

The employer's conduct was violative of RSA 273-A:5 I (h) for breaching Article 20.4 of the CBA and of RSA 273-A:5 I (g) as rights conferred under RSA 273-A:11 relating to the exclusivity of the bargaining agents' status were infringed upon by submitting additional proposals for employee review, other than the package put forth by the Union for review. While we are mindful that this effort for individual participation by the Superintendent was innocent, and even well-intended, it, nevertheless, possesses the potential for inflaming otherwise workable and efficient labor-management relations. The remedy is to CEASE and DESIST from such conduct in the future.

So ordered.

Signed this 23rd day of December, 1997.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members William F. Kidder and E. Vincent Hall present and voting.