



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LISBON TEACHERS ASSOCIATION, :
 NEA-NEW HAMPSHIRE :
 Respondent :
 v. :
 LISBON REGIONAL SCHOOL DISTRICT :
 Respondent :

CASE NO. T-0273:11
DECISION NO. 1998-067

Representing Lisbon Teachers Association:

James Allmendinger, Esq.

Representing Lisbon Regional School District:

Robert Leslie, Esq.

Also appearing:

- Brian Sullivan, NEA-New Hampshire
- Kathleen Campbell, Lisbon Teachers Association
- Louise Coleman, Lisbon Teachers Association
- Jim McIntosh, Lisbon Board of Education
- Bob Horan, Superintendent Lisbon Regional School District

BACKGROUND

The Lisbon Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Lisbon Regional School District (District) on May 12, 1998 alleging violations of RSA 273-A:5 I (a), (e), (g), (h), and (i) relating to unilateral changes in working conditions, refusal to bargain and breach of contract when the District announced the intended sub-contracting of school nurse duties to a non-bargaining unit employee. The District filed its answer on May 27, 1998 after which this matter was heard by the PELRB on July 7, 1998.

FINDINGS OF FACT

1. The Lisbon Regional School District employs teachers and other personnel, inclusive of a school nurse position, in the operation its school system and, thus, is a "public employer" within the meaning of RSA 273-A:X.
2. The Lisbon Teachers Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers, librarians, nurses and guidance personnel employed by the District. (Association Exhibit Nos. 6 and 7.)
3. The Association and the District are parties to a collective bargaining agreement (CBA) for the period August 1, 1997 through July 31, 1999. School nurses are a job title which remains covered under the terms of the CBA for its duration. Article XIII of the agreement is entitled "Fair Treatment" and provides:

With the exception of a reduction in force, teachers have a reasonable expectation of continued employment provided that their services are competent, efficient, and satisfactory. With the exception of the provisions of RSA 189:14A as they apply to probationary teachers, no teacher shall be discharged, suspended, punished or penalized, without a supportive statement of facts. All information forming the basis for any such action shall be made available to the teacher.

As members of the bargaining unit, school nurses have historically been, and continue to be, treated the same as teachers for purposes of contractual benefits.

4. On November 14, 1997, Association President Emory Younkins received a certified letter from Superintendent Robert Horan saying that "the Lisbon Regional School Board has decided to eliminate the school nurse position and...will be sub-contracting for nursing services effective August 1, 1999. In this regard, we are serving notice to you that in negotiating a successor agreement we will not negotiate a salary or benefits for a school nurse position." (Association

Exhibit No. 12.) This followed earlier public deliberations on this issue, as detailed in Finding No. 6.

5. On January 28, 1998, UniServ Director Brian Sullivan wrote to Horan requesting specific reasons for the Board's decision to eliminate the school nurse position. (Association Exhibit No. 13) On May 26, 1998, after the filing of the ULP, Sullivan sent Horan a memo to initiate a grievance at the Superintendent's level relating to the school nurse position (Association Exhibit No. 14). It appears from Association Exhibit No. 15 that there was a grievance hearing at the Superintendent's level on June 9, 1998 and that it was denied. It also appears from Association Exhibit No. 15 that no written disposition was ever provided and that Sullivan wrote a letter on June 22, 1998 to inquire about this and to appeal to the board level. On June 30, 1998 Sullivan wrote Horan again to waive the board level hearing and to proceed directly to the PELRB hearing on July 7, 1998 (Association Exhibit No. 16).
6. The issue of subcontracting school nurse services is not new to this district. During an exchange of bargaining proposals on December 17, 1996, the District told the Association, "[W]e are making it known that the Superintendent of Schools has recommended to the Board of Education the elimination of the Nursing position starting with the 1997-98 school year. We will be meeting the school needs through a contracted service agreement." (Association Exhibit No. 9.) On February 4, 1997, Horan wrote the school nurse saying, "The reason for the non-renewal of your contract is due to elimination of the position of school nurse. The Lisbon Regional School intends to contract for this service with an independent contractor." (Association Exhibit No. 10.) The incumbent appealed this notification to the Lisbon School Board which held a hearing on February 12, 1997 and issued a decision on February 24, 1997 upholding the Superintendent's decision not to renew her contract. (Association Exhibit No. 5.) These actions were ultimately overturned by action of the voters at the Lisbon Regional School District Annual Meeting held on March 13, 1997 whereby the school nurse position was funded for school Year 1997-98. (Association Exhibit No. 17.) Thereafter, the subcontracting issue, for School Year 1998-99, was again considered by the Lisbon School Board when it

met on September 10, 1997 (Association Exhibit No. 18).

DECISION AND ORDER

This case involves a multitude of competing interests. They include such issues as the duty to bargain, the implications from mandatory versus permissive subjects of bargaining, managerial prerogatives under RSA 273-A:1 XI, and coercive effects on the Association's right to represent all employees in the bargaining unit under RSA 273-A:11 I. When there has been an attempt to sub-contract services formerly performed completely or in large part by bargaining unit employees during the term of a CBA, we have said that "the entire fabric of the collective bargaining relationship is completely unraveled" thereby, making it violative of RSA 273-A:5 I (h) and (i). Hillsboro-Deering School District Custodians, Decision No. 1996-081 (November 8, 1996). This decision also noted that it did not "say that the District can never properly decide to subcontract; it does mean that it cannot decide to subcontract during the negotiated term of a CBA in order to accomplish existing work agreed to be or formerly or customarily performed by bargaining unit employees." Id.

In Concord Education Association, Decision No. 1997-082 (September 17, 1997), where school nurses were covered by a three year contract from September 1, 1996 to August 31, 1999, currently employed nurses were sent rehiring letters for the 1997-98 school year on June 5, 1997 and told that they would not be reemployed for School Year 1998-99 because of a school board decision to subcontract school nurse services commencing in September of 1998. A similar initiative to subcontract nursing services had occurred in 1995 when incumbents were given non-renewal notices for the 1995-96 school year. Because the certified bargaining agent had knowledge of the Board's efforts and desire to subcontract these services before the current CBA was signed, the PELRB said that the Association "cannot delay indefinitely this reorganization. Given the longevity of the Board's persisting in its endeavors to restructure school nursing services [over a period of time longer than the current CBA], the time for reorganization has now arrived."

This philosophy reappeared and was refined in Lebanon Support Staff, Decision No. 1997-098 (November 5, 1997) where a subcontracting decision was made after the parties concluded their contract negotiations but before the effective date of the successor CBA. Notwithstanding that we found numerous violations involving RSA 273-A:5 I (a), (e), (h) and (i), we also said that "nothing contained herein is intended to prohibit...the District [from] announcing its intent to subcontract at the conclusion of the current CBA," referring to the contract on which they had concluded negotiations.

Finally, in Haverhill Education Association, Decision No. 97-115 (January 9, 1998), after a finding of violations resulting from a unilateral change in working conditions during the term of a CBA, the Haverhill Cooperative School District was directed to return to the *status quo* and "to adhere to the terms and conditions of its CBA with the Association through its termination on June 30, 1998." (Emphasis added.)

Through this series of cases, it is apparent that there is an appropriate time when management may make changes in its organizational structure. If this were not the case and management was required to maintain a given organizational structure or category of employees indefinitely, it would lose control of its expenditures and its ability to "continue control of governmental functions." RSA 273-A:1 XI.

It makes sense that the break point for changes in organizational structure should come at the conclusion of a given CBA. This maintains the integrity of the CBA during its term, notwithstanding that mid-term negotiations may occur at any time as the result of an agreement of the parties. The issue of contract integrity is an important one because it permits and requires the parties to rely on the substantive provisions of the contract they have negotiated for its entire term. It also avoids impermissible attempts to repudiate the terms of an already negotiated CBA (Haverhill and Hillsboro, *supra*) and avoids meaningless bargaining efforts over which one side has made concessions in order to achieve a settlement and then finds only an empty promise (Lebanon, *supra*).

There is further support for maintaining the integrity of the contract and for the vitality of the *status quo* doctrine to be found in Appeal of City of Nashua Board of Education, 141 N.H. 768, 777 (1997). The New Hampshire Supreme Court observed, "Terms and conditions of employment imposed as the result of the *status quo* doctrine do not become final forever; they only last during the process of good faith collective bargaining." Thus, by the development of our decisions and the Court's language in Appeal of City of Nashua Board of Education, we conclude that the Lisbon Regional School District acted reasonably, prudently and in concert with RSA 273-A when it gave notice of its intent to eliminate the school nurse position and not negotiate salary or benefits for it for School Year 1999-2000, after the conclusion of the current CBA.

Technically, we comment on the parties' conduct and the notice given by Horan (Association Exhibit No. 12) to the Association. We are reminded by the New Hampshire Supreme Court that "the PELRB has the sole authority to certify a modified bargaining unit." Appeal of Londonderry School District, slip., op. March 23, 1998. For purposes of certification of the bargaining unit, the District cannot

unilaterally change the composition of the bargaining unit. Likewise, it cannot refuse to bargain for positions in the unit. Conversely, it can determine not to fill certain of those positions. In such an eventuality, the obligation to bargain, inclusive of the non-filled position, continues. The New Hampshire Supreme Court explained such a circumstance in Appeal of State of New Hampshire, 138 N.H. 716, 722 (1994) when it said, as an example, "[A]lthough a school district's decision about whether or not to offer extra curricular programs is part of broad managerial policy, staff wages, hours and other specifics of staff obligations and remuneration primarily affect terms and conditions of employment." It would be a ULP for either side to refuse (and to perfect that refusal, which has yet to occur here) to bargain about any topics even before receiving demands from the other party. Thus, the obligation to bargain continues, neither side can refuse its obligation to do so, and both sides must be responsive to a demand to bargain impact on existing and laid off employees should the District proceed with leaving certain bargaining unit positions unfilled for School Year 1999-2000.

The ULP is DISMISSED.

So ordered

Signed this 12th day of AUGUST, 1998.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard Molan present and voting.