State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTER-LAKES SUPPORT STAFF, NEA-NEW HAMPSHIRE	:	
Complainant	:	CASE NO. M-0739:2
v.	:	
	:	DECISION NO. 1998-088
INTER-LAKES SCHOOL BOARD	:	
Respondent	:	

APPEARANCES

Representing Inter-Lakes Support Staff, NEA-New Hampshire:

Janet Paddleford, UniServ Director

Representing Inter-Lakes School Board:

Gary W. Wulf, Chief Negotiator

Also appearing:

Melissa Sullivan, Inter-Lakes Support Staff
Jeanne Boriso, Inter-Lakes Support Staff
Dolores Humiston, Inter-Lakes Support Staff
Cornelia Brown, Inter-Lakes School District

BACKGROUND

The Inter-Lakes Support Staff, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Inter-Lakes School Board (Board) on July 10, 1998 alleging violations of RSA 273-A:5 I (a), (e) and (g) resulting from (a) a unilateral change in working conditions by changing the method of calculating and paying wages, (b) a unilateral implementation of management's proposal pending negotiations and (c) a refusal to bargain. The School Board filed its answer on July 23, 1998 after which this matter was heard by

the PELRB on September 24, 1998. At the conclusion of that hearing, the PELRB announced and issued an Interim Decision (Decision No. 1998-083, September 30, 1998) maintaining the *status quo* pending the issuance of this decision on the merits.

FINDINGS OF FACT

1. The Inter-Lakes School Board employs teachers, support staff and other certificated and non-certificated personnel in the operation of its school system and, thus, is a public employer within the meaning of RSA 273-A:1 X.

2. The Inter-Lakes Support Staff Association, NEA New Hampshire, is the duly certified bargaining agent for support staff employed by the Inter-Lakes School District, having been so certified on September 22, 1997.

3. The Board and the Association commenced bargaining for their first collective bargaining agreement (CBA) on November 4, 1997 and have yet to reach an agreement even through they have participated in three (3) mediation sessions since May of 1998.

4. At the time the Association was certified as bargaining agent, bargaining unit members were working under individual "Articles of Agreement" which specified their annual salaries and 21 payments on a bi-weekly basis beginning on a certain date. This agreement also specified the number of work hours per day, the number of work days per year and the start and stop dates for those work days. (Association Exhibit No. 1 to ULP.)

5. Bargaining unit members intending to work the 1998-99 school year received similar, but not identical, "Article of Agreement" for that year. This agreement differed from the 1997-98 agreement in that it had an hourly rate inserted and the number, but not the frequency, of bi-weekly pay periods omitted. The annual salary figure was also omitted. (See pleadings, para 6, the Board's answer thereto, Association Exhibit #2 to ULP and Tabs 3 and 4 to Association Hearing Exhibit No. 1.)

6. On June 4, 1998, Mary Drake, President of the Inter-Lakes Support Staff Association, wrote to the Superintendent, noting that the contracts identified as

Articles of Agreement above, had "significant changes from prior years" and raised the issue of utilizing twenty-one "evenly divided... pay periods" in the past. She also reserved the Association's "rights or appeal regarding changes in terms and conditions of employment." (Association Exhibit No. 3 to ULP.)

7. On June 8, 1998, Superintendent Cornelia Brown responded by letter to Drake saying:

> I have received and reviewed your correspondence regarding the alleged change contained in individual contracts issued to support staff members on May 28, 1998. The interpretation should not be that the format indicates that there will be anything but twenty-one pays during the 1998-1999 school year. An annual salary can easily be derived by multiplying the hourly rate by the number of days worked in a contract year and by multiplying the number of hours per day. The District does not perceive this as a change.
>
> Actually, this represents a payroll system modification in order to ensure accuracy. People will be paid based on hours actually worked, including providing earned overtime during the appropriate bi-weekly payroll period.

8. According to testimony from Superintendent Brown, she responded to the Union's "bi-weekly" pay proposal with an "hours worked" counterproposal. However, the "hours worked" issue has not been discussed at negotiations because it was grouped with other "economic issues" which have not been discussed yet, also as confirmed by union rebuttal witness Delores Humiston. Brown expressed concern about continuing the current bi-weekly pay system because the District employs six individuals who are subject to federal regulations applying to Title I funding. There are 58 other members of the bargaining unit not impacted by those federal regulations.

9. In addition to the rationale advanced by Supt. Brown in Finding No. 7 relative to managerial changes to ensure payroll accuracy, the Board and Superintendent also rely on a letter from their auditors, namely Robert E. Sanderson, dated September 17, 1998, more than two (2) months after the filing of the ULP

but before any changes in payment of wages were implemented. The auditor's report concentrated on four (4) basic recommendations:

1. Any employee paid with federal funds cannot be paid in advance of hours worked. The School District could be liable to reimburse the Federal government for any prepayment for services rendered. Any practice which violates this rule should be changed immediately.

2. Unless you have an individual contract to the contrary, I would discontinue paying any hourly employee on any other basis but hourly and certainly not until after the services have been rendered.

3. Time cards/sheets should be required of hourly employees to substantiate all hours worked and any leave hours taken to be compensated. These time cards/sheets should be formally approved by an immediate supervisor.

4. Personnel manuals or collective bargaining agreements should clearly state the hours, benefits, etc., which each category of employees is entitled to during the fiscal year they are employed. (District Ex. No. 1.)

10. While bargaining unit witnesses complained that implementation of all these recommendations would upset their financial planning and cash flow from wage payments, Business Administrator Christine Hayes said such changes were needed to avoid over-paying employees who might leave mid-year to the Articles of Agreement or whose usage of annual leave (i.e.. personal days requiring the Superintendent's approval) or sick leave might not have been reported or reconciled prior to the close of the payroll period.

DECISION

There are two basic premises germane to this decision. First, terms and conditions of employment remain static under the *status quo* doctrine during the course of good faith bargaining, whether it be for a first CBA or a successor CBA. See Appeal of City of Nashua Board of Education, 141 NH 768, 777 (1997), Appeal of Milton School District, 137 NH 240, 245 and 247 (1993) and Appeal of Alton School District, 140 NH 303, 315 (1995) for the principle that the *status quo* doctrine

applies to parties who have yet to negotiate a contract just as it does to parties whose CBA has expired. Second, nothing is more fundamental to the collective bargaining process or to being a "term and condition of employment" under RSA 273-A:1 XI than the payment of wages. Wages, and their frequently of payment, are mandatory subjects of bargaining because, as a topic of negotiation, they (1) are not reserved to the exclusive managerial authority of the public employer, (2) primarily affect terms and conditions of employment rather than matters of broad managerial authority and (3) do not interfere with public control of governmental functions. See Appeal of State, 138 NH 716 at 722 (1994).

Once benefits, in this case wages and frequency of payment, have been determined to be conditions of employment, as we explained in the previous paragraph, then those benefits must "continue to [be] provide[d]... during the *status quo* period." Appeal of Alton School District, 140 NH 303, 315 (1995). The public employer, in this case the Board, "must negotiate with a union so long as the union has been certified by the PELRB 'as the exclusive representative of the bargaining unit.'" *Id.*

The Board asserted two defenses to their actions which warrant comment. First, they claimed that certain unspecified federal regulations prohibit paying any employees in advance of rendering services, also as referenced as Item 1 in District Exhibit No. 1. According to testimony from the Superintendent, there are six Title I aides in the bargaining unit who are paid with federally derived funds. There are also 58 other unit employees who are not impacted by federal funding or regulations. We recognize, as did the New Hampshire Supreme Court in Appeal of City of Concord, 139 NH 277, 280 (1994) that "statutes exist which, in spite of the duty of bargain under RSA Chapter 273-A, deprive the employer of the statutory authority to agree to certain subjects." The same is true of federal statutes or regulations which may conflict with the remedy directed in this case. We expect compliance with our remedy; however, we do not expect that remedy to to be in violation of other laws or regulations. If a future dispute arises between the parties as to violations caused by the remedy directed, the aggrieved party may craft a new ULP with sufficient specificity as to the identity and content of the laws or regulations in conflict so that we may revisit this subject with more information than was provided in this proceeding.

Second, the Board brought us an after-the-fact recommendation from its auditor (District Ex. No. 1) as to certain payroll practices which should be corrected. Just as we did not presume to compare the provisions of RSA 273-A to the universe of state and federal regulations pertaining to the payment of wages, neither will we presume to do so relative to generally accepted accounting practices. Notwithstanding the auditor's recommendations, it would appear that

the methodology does exist to address most, if not all, of their concerns without the need to intrude on the current method and frequency of payment of wages. By way of example we invite the parties to visit the bi-weekly pay program used by the State of New Hampshire. In that system, employees complete a two week pay period before their checks are actually delivered or deposited. This time tested system accomplishes the need to close out a pay period, account for unworked time or leaves, and deliver pay documents without fear of being "short changed" by an employee who may terminate employment before working all the hours for which he or she may have received pay. Quite obviously, then, time cards or sheets may be utilized for accounting purposes or for a "lagged" payroll cycle without impairing the bi-weekly pay system, presumably with adjustments to be made over time when there has been an unexpected deviation, meaning a "reduction," in the number of hours expected to have been worked in a pay period.

The actions of the School Board by unilaterally changing individual "Articles of Agreement" for the 1998-99 school year after the certification of the Association as bargaining agent are violative of RSA 273-A:5 I (e) as a refusal to bargain, just as failure to maintain the *status quo* is also a refusal to bargain. We find no violation of a change in working conditions as to frequency of payment of wages because we understand that the Board had not implemented such a change as of the date this matter was presented to the PELRB. Our order, then, in this case is that the school board shall maintain the *status quo* with respect to wages and their frequency of payment and that it shall engage in negotiations over these matters with the Association.

So ordered.

Signed this 21st day of October, 1998.

EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding. Members E. Vincent Hall and Seymour Osman present and voting.