



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PROFESSIONAL FIREFIGHTERS OF
GOFFSTOWN, LOCAL 3420
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, AFL-CIO, CLC

Petitioner

and

TOWN OF GOFFSTOWN

Respondent

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Case No. F-0143-7

Decision No. 2001-029

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esquire
For the Respondent: Paul T. Fitzgerald, Esquire

BACKGROUND

The Professional Firefighters of Goffstown, Local 3420 of the International Association of Firefighters, AFL-CIO,CLC (IAFF) filed unfair labor practice charges on January 18, 2001 pursuant to RSA 273-A:5 I (c), (e), (f), (g), (h), and (i) alleging that the Town of Goffstown (Town) and its agents breached the Collective Bargaining Agreement (CBA) by failing and refusing to provide certain health insurance premium increases alleged to be required of them in the parties current "status quo" relationship and further that the Town is not negotiating in good faith and is ignoring a past practice pursued in a previous similar situation and thereby making a change in working conditions by unilaterally withholding the required increase in the cost of health insurance for unit members.

The Town of Goffstown answers by first agreeing that the collective bargaining agreement (CBA) has expired. The Town then proceeds to deny that the Union has properly applied the law as to the continuation of certain benefits following the expiration of the CBA. It denies certain allegations that it has singled the Union out by not paying for health insurance premium increases. Beyond these responses to the Union's complaint, it alleges on its own behalf that the Union's complaint is of a nature requiring

it to proceed under the Grievance Clause of the parties' CBA. By filing with the PELRB, the Town alleges that it is the Union that has breached the parties' CBA by not following the grievance process. The Town seeks a dismissal of the Union's complaint. For its part, the Union requests relief in the form of a finding that the Town has engaged in an unfair labor practice and requests that the PELRB order the Town to provide the appropriate health insurance premium on behalf of the subject employees.

After participation at a Pre-Hearing Conference, the parties agreed to submit their claims to the Board without an evidentiary hearing. Instead, this case was submitted upon their respective pleadings, their respective supportive Memoranda of Law, their joint exhibits attached to pleadings and their Amended Agreed Statement of Facts. The parties agreed that the issues to be addressed were:

1. Whether or not under the terms of the parties' Collective Bargaining Agreement, (CBA) the Complainant must complete steps of the Grievance Procedure provision before seeking relief from the Public Employees Labor Relations Board?
2. Whether or not the Town is required to pay the HMO cost of the health insurance plan following the expiration of the parties' CBA, regardless of the cost?

The Board considered all of the submitted documents and deliberated the parties' respective claims. Upon concluding its deliberations, the Board made the following findings and decision.

FINDINGS OF FACT

The facts appearing below were jointly submitted by agreement of the parties. The Board hereby incorporates them into this decision as its "Findings of Fact" in this matter.

1. The Town of Goffstown (hereinafter "Town") is a public employer as that term is defined in RSA 273-A: 1(X) and maintains a principal place of business at 16 Main Street, in the Town of Goffstown, County of Hillsborough and State of New Hampshire.
2. The Professional Firefighters of Goffstown, Local 3420, IAFF, AFL-CIO, CLC. (hereinafter "Local 3420") is the exclusive bargaining representative of all full time employees of the Goffstown Fire Department, including firefighters and lieutenants by order of the Public Employee Labor Relations Board on June 15, 1992. (*Professional Firefighters of Goffstown and Town of Goffstown*, Case No. F-143);
3. The relationship between the parties is governed by a CBA negotiated between the parties that expired on December 31, 2000.

4. The parties are currently in the process of attempting to negotiate a successor CBA;
5. Article 29.1 of the collective bargaining agreement between the parties reads as follows:

“29.1 After six (6) full months of service, any member of the bargaining unit shall be eligible for participation in the Town’s cafeteria insurance and savings benefit plan. This plan will provide each employee a dollar amount of each month for the purpose of choosing the benefits they require. If the cost of benefits are less than the amount provided by the Town, the balance, less 30% will be put into the employee paycheck weekly. If the benefits cost more than the amount provided by the Town, the cost over the provided amount will be deducted each week from the employee’s paycheck.

For calendar year 1997 the following amounts will be available monthly for each bargaining unit employee on their Town of Goffstown health insurance plan:

Single	\$302.00
2-Person	\$302.00
Family	\$428.00

Anyone not receiving any health insurance coverage from the Town will be at the 2-person rate. Each dollar amount available will be increased (decreased) based on the HMO increase (decrease). All employees shall be entitled to receive the family rate allotment upon acquiring the appropriate number of dependents to make them eligible for such allotment and selecting a family health insurance plan through the Town.”

6. The parties’ relationship had previously been governed by a collective bargaining agreement that expired on December 31, 1997. (see Attachment B)
7. The parties agree that the following amounts were made available For bargaining unit employees of the Town of Goffstown health insurance plan:

	Single/2 Person Plan Weekly/Monthly	Family Weekly/Monthly
Jan-Dec 1995	\$73.38/\$317.74	\$104.08/\$450.67
Jan-Dec 1996	\$74.53/\$322.71	\$105.69/\$457.64
Jan-Dec 1997	\$69.69/\$302.00	\$ 98.82/\$428.00
Jan-Dec 1998	\$91.04/\$394.20	\$129.09/\$558.60

Jan-Dec 1999	\$100.25/\$434.08	\$142.15/\$615.51
Jan-Dec 2000	\$107.51/\$465.52	\$152.44/\$660.58

8. As of January 2001, other town employees received an increase in the amount available monthly for contribution to the Town of Goffstown health insurance plan in the amount of \$ 173.55 weekly for the family plan.
9. Members of Local 3420 did not receive any increase in calendar year 2001.
10. For the calendar year 2001, the Town of Goffstown provided the following amounts weekly for each member of the town not a member of Local 3420 on the Town of Goffstown health insurance plan:

Single \$122.40 per week or \$530.00 per month
Family \$173.55 per week or \$751.47 per month
Fitness incentive \$5.00 or \$21.65 per month
11. The union filed an unfair labor practice charge with the New Hampshire Public Employees Labor Relations Board. The union did not file a grievance.
12. The relationship between the Town and the Police Officers union, also known as the International Brotherhood of Police Officers, Local 371, is governed by a collective bargaining agreement negotiated between the Town and the Police Officers union that expired on December 31, 2000. The Town and the Police Officers union have reached a tentative agreement awaiting approval of all cost items in the month of March 2001 at Town Meeting.
13. The members of the Police Officers union have received the increases listed in paragraph 10.

DECISION AND ORDER

The first issue considered by the Board involves the jurisdiction conferred upon it under the provisions of RSA 273-A and the obligations and rights of the respective parties conferred upon them under the provisions of their collective bargaining relationship. In this specific instance, the parties' collective bargaining agreement ("CBA") had expired on December 31, 2000 and they were in a *status quo* relationship at the time the Union filed its complaint on January 18, 2001. The Board reviewed the jointly submitted copy of the expired CBA (Joint Exhibit #1) which contains the following language defining "grievance" and addressing the finality of the last step in the grievance process:

"ARTICLE 14

GRIEVANCE PROCEDURE

14.1 A grievance shall be defined as an alleged violation, misinterpretation or misapplication with respect to one or more members of the bargaining unit of any provision of this agreement. See RSA 273-A:1, V.

14.4 The decision of the Board of Selectmen shall be final and not subject to further appeal or redetermination."

This language is identical to language contained within the parties' preceding CBA (Joint Exhibit #2) which had also expired before the parties could come to terms on a successor CBA, leaving the parties in a *status quo* relationship on that previous occasion as well.

A previous matter involving these same parties raised by another Union complaint (See PELRB Decision No. 1998-108) called for the Board to consider this language for the purpose of deciding, at that time, whether or not the Union could file an unfair labor practice complaint before the PELRB notwithstanding the definitional language and the "finality" provision contained in the CBA as it related to the method by which the Town calculated longevity payments.

The Union would have us apply the doctrine of *res judicata* to the instant proceeding and summarily grant its claim of unfair labor practices against the Town. In opposition, the Town would have us find that the request for unfair labor charges be dismissed and the parties be referred to the grievance process contained within the expired CBA. *Res judicata* is generally interpreted to cover all the various ways in which a judgment in one action will have a binding effect in another. This includes the effect of the former judgment as a bar or merger where the later action proceeds on all or part of the very claim which was the subject of the former. Donald P. Morin, Sr. v. J. H. Valliere Co., 113 N.H. 431, *citing Sanderson v. Balfour*, 109 N.H. 213 (1968). We hesitate to find that we can apply *res judicata* because we do not find in this instance that the matter at issue here can be determined to be the same cause of action that was at issue in the previous proceedings that resulted in Board Decision No. 1998-108. However, that does not preclude the Board from making a similar procedural finding having reviewed all of the parties' submissions in this instant matter.

It is well settled that the Board has primary jurisdiction of all violations of RSA 273-A:5 pursuant to RSA 273-A:6 I. The Union has alleged, albeit in an aggregate manner as pointed out by the Town, several statutory violations committed by the Town. We agree with the Town that allegations of a "lock-out", pursuant to RSA-A:5 (f), are not supported by the complainant's pleadings or the parties' agreed facts and that that alleged statutory violation may indeed seem misplaced. However, since the remaining allegations contained in the pleadings include alleged statutory violations we are compelled by our

statutory responsibilities to consider them. We find that we should proceed similarly as we have in the past where a party has plead violations of RSA 273-A:5 I. Therefore, the Board proceeds now to consider the merits of the Union's allegations in light of the facts presented in this case upon the parties' pleadings, memoranda, and agreed facts submitted in lieu of an evidentiary proceeding. To the extent that the Town alleges that the Union has committed an unfair labor practice for bringing its complaint to the PELRB, it is dismissed

We understand the Town's frustration with the form in which the complaint has been drafted, that is, collecting all statutory references at its conclusion. The preferred format would be to declare relevant actions germane to a single cause of action and allege that statutory violation and then, even if a set of numbered allegations needed to be repeated to form the basis for a second, third, or fourth cause of action, declare those relevant actions necessary to form the basis for the next alleged violation and enumerate the statutory provision. However, we find that the Union's complaint sufficiently meets the requirements of Pub 201.02 (b) in this case given the respective pleadings of the parties, the conduct of a pre-hearing conference and the quality of the subsequent respective memoranda submitted by counsel. We believe that the Town was apprised of its alleged actions with sufficient definiteness to have notice of what conduct was at issue in the Union's claim of an unfair labor practice.

Having addressed the procedural and jurisdictional issue, we undertake to determine whether or not the Town is required to pay the HMO cost of the health insurance plan following the expiration of the parties' CBA, regardless of the cost? Our review of the agreed facts submitted by the parties presents us with a situation in which a public employer and exclusive bargaining representative (Findings of Fact #1 and #2) have been unable to reach agreement on the terms of a successor collective binding agreement before the expiration of their last CBA. (Findings of Fact # 3 and #4). They thus placed themselves in a *status quo* relationship. "It is important to state that the parties to collective bargaining are in a position to settle, in advance, the consequences of allowing the term of the collective bargaining agreement to end without a new agreement in place." Appeal of Alton School District, 140 N.H. 303, 316. This is particularly so between these parties who found themselves in a status quo relationship previously and had to come to this Board for resolution. (PELRB Decision # 1998-108). This time the issue is not the calculation of longevity. This time it involves the level of contribution by the Town to the health insurance program provided to the employees.

The relevant provision in the parties' lapsed CBA is detailed above in Finding of Fact #5 and need not be duplicated in its entirety here. In essence it creates in the Town an obligation to "provide each employee with a *dollar amount*" (emphasis added) that will be applied to their benefit package, including the provision of HMO coverage. It is apparent that such a provision constitutes a so-called "cost item" in the parlance of labor relations, certainly since the Appeal of Sanborn Regional School Board, 133 N.H. 513 (1990). More recently, parties involved in collective bargaining were given further information regarding the consequences of "drifting" into a status quo relationship. In Appeal of Alton School District, 140 N.H. 303, 315 the court ruled that if the public

employer "paid only a defined dollar amount toward the cost of insurance, it need only continue that contribution." The court also restated its position about cost items in that same case. *Id.* 307, 312.

Here we read the obligation of the Town, under the terms of the parties' lapsed CBA to fall into the "defined dollar" category. The facts agreed to by the parties in submitting this case to the Board do not establish that the Town's legislative body approved this cost item with knowledge that the contribution would increase by a fixed dollar amount. Therefore we find that the Town is obligated to pay no more than the amount of the dollar contribution to which it was obligated at the time the CBA lapsed.

Further, upon due consideration of the parties' pleadings, memoranda and findings of facts #8, #10, #12 and #13, we find no unfair labor practice to have been committed by the Town related to the allegations of the Union that the Town has engaged in conduct that demonstrates that it has discriminated in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization in violation of RSA 273-A:5 (c); nor that it refused to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit any cost item to the legislative body that was agreed upon in negotiations in violation of RSA 273-A:5 I (e); nor failed to comply with Chapter 273-A or any rule adopted under it in violation of RSA-A:5 I (g); nor committed a breach of the parties collective bargaining agreement in violation of RSA 273-A:5 I (h); nor made any law, regulation, or rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by it in violation of RSA 273-A:5 I (i).

Lastly, the Board does not find sufficient evidence upon which to determine that there was a past practice established between the parties that created an obligation to make an additional dollar amount payment without legislative approval.

The Union's charges of unfair labor practice against the Town are dismissed.

So Ordered.

Signed this 24 th day of April, 2001


Bruce K. Johnson,
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members Seymour Osman and E. Vincent Hall present and voting.