



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Contoocook Valley Education Association, NEA-New Hampshire	*	
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	*	
Complainant	*	
	*	Case No. T-0275-15
	*	
v.	*	Decision No. 2001-045
	*	
Contoocook Valley School District	*	
	*	
Respondent	*	
	*	

Appearances

Representing the Contoocook Valley Education Association,
NEA-New Hampshire:

James Allmendinger, Esq.

Representing the Contoocook Valley School District:

William J. Phillips, Esq.

Also appearing:

Mary E. Gaul, UniServ Director, NEA-New Hampshire
James Kennedy, NEA-New Hampshire

Background

This matter comes to the PELRB on a Motion for Rehearing granted for the limited purpose of permitting additional oral argument on the parties' positions as made and assessed in Decision No. 2000-116 (November 8, 2000). See Decision No. 2001-019 (April 10, 2001) granting the Association's Motion for Rehearing. The parties, each represented by counsel, appeared before the PELRB at its offices in Concord, New Hampshire on May 22, 2001 for the purpose of making those arguments.

Findings of Fact

The findings of fact are as stated in Decision No. 2000-016. The granting of the Motion for Rehearing was for the limited purpose of permitting additional oral argument on the parties' positions. No additional testimony was offered and no new evidence was accepted.

Decision and Order

The issue in this case has been, and continues to be, teacher evaluations. The topic of teacher evaluations appears as Article 10 of the parties' current (2000-2001) collective bargaining agreement. It is unchanged from the prior contract for the 1998-2000 period. There has been no showing that that language has been violated. We have found no breach of the obligations imposed thereby by either party. Likewise, that language will remain in effect under the *status quo* doctrine even after contract expiration and during the course of negotiations. See Decision No. 2000-116, *supra*, p.6, the Association's opening statement of October 19, 2000, and Appeal of the City of Nashua, 141 N.H. 768 (1997).

In its most recent argument before us, the District advanced, as one theory, that, as long as it does not violate Article X of the CBA, then there is no obligation to bargain. That may be true, in part, in the circumstances of a breach of contract as referred to in RSA 273-A:5 I (h). It, of course, is not true vis-à-vis the obligations imposed in RSA 273-A:3 and 273-A:5 I (e). Quite obviously, the parties, of necessity, are in the process of negotiating a successor agreement to their 2000-2001 CBA which expires on June 30, 2001. If either party believes that the other is not adhering to the obligation to bargain in the context of those negotiations, then its recourse is to file a new ULP alleging the circumstances in question. These proceedings are predicated on the facts as they occurred and were found in the ULP filed July 10, 2000 and decided in Decision No. 2000-116.

The charges which were dismissed in Decision No. 2000-116 were "improper implementation" and "unilateral change in working conditions" issues. The Association failed to meet its burden on those issues. If there has now occurred a "course of negotiations" refusal to bargain which happened after the acts complained of in the July 10, 2000 ULP, then that is a matter for another, new ULP. A new complaint provides the means for the Association to assert the "unwilling to come to the bargaining table" and "unwilling to try to reach an agreement" concerns voiced to us in its recent oral argument. Meanwhile, it is not a ULP for the District to propose removal of Article 10 from the contract or for the Association to refuse to agree. RSA 273-A:3 I. If the District fails to achieve agreement on its proposal, the present contract provisions remain in effect under the *status quo* doctrine. Appeal of Milton School District, 137 N.H. 240 (1993). Unilateral changes to or deletion of a duly negotiated a conduct provision is not a prerogative reserved to only one party when there is a need for impact bargaining, as discussed below.

This brings us to the impact bargaining. There is an obligation to bargain "impact" in those discretionary areas reserved to management under RSA 273-A:1 XI when the action taken impacts "wages and conditions of employment." See also Appeal of State of New Hampshire,

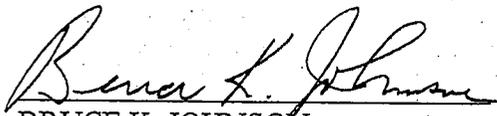
138 NH 716 (1994). The second test of Appeal of State tips the scales in favor of "primarily affects the terms and conditions of employment" and, hence negotiability, over "broad managerial policy" when the proposal in question, which we take to be inclusive of an area impacted by a managerial action, includes "staff wages, hours, and other specifics of staff obligations and remuneration." Were management in this case to have implemented a program by which the "new" evaluation program intruded into these "primarily...terms and conditions of employment" areas, the obligation to bargain would likewise attach. According to the record before us and the representations of the District's counsel at the most recent oral argument, the evaluation plan not only has not been implemented, but its final form has not yet been decided. We are cognizant of the Association's concerns where evaluations may be used as tie-breakers in RIF situations. This obviously, as a condition of employment, is a subject of bargaining, but that obligation does not attach until the party demanding bargaining is able to define the impact of the policy and what it wants to change through negotiations. It stands to reason that we would not expect a new evaluation plan to be implemented unilaterally in any case which would impact "primarily...terms and conditions of employment" without the requisite negotiations and concensus.

We find it difficult, indeed, to impose an obligation to engage in impact bargaining where we have not been able to find an impact. Likewise, we find it equally, if not more, difficult to find reason to reverse or modify our decision and findings in Decision No. 2000-116 after hearing additional oral arguments.

The PELRB's decision in Decision No. 2000-116 is AFFIRMED.

So ordered.

Signed this 11th day of June, 2001.


BRUCE K. JOHNSON
Alternate Chairman

Chairman Bruce K. Johnson presiding. Members Richard Roulx and Richard Molan present and voting.