



Appeal to NH Supreme Court
withdrawn on April 7, 1998,
Supreme Court Case No. 98-102.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD EDUCATION ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

CONCORD SCHOOL BOARD

Respondent

CASE NO. T-0220:32

DECISION NO. 97-082

APPEARANCES

Representing Concord Education Association/NEA-NH:

Wally B. Cumings, UniServ Director

Representing Concord School Board:

Edward Kaplan, Esq., Counsel

Also appearing:

David Royle, C.E.A.
Kim Paskalis, C.E.A.
Deb Connelly, C.E.A.
Mary Jo Haney, C.E.A.
Jane Morin, C.E.A.
Kerry L. Clock, C.E.A.
Margaret Lind, C.E.A.
Linda Labbe, C.E.A.
Doug McNutt, C.S.D.
Curtis J. Sokness, Superintendent, C.S.D.
Jeannine Poole, Esq., C.S.D.
Brigitte Ruggerio, C.S.D.
Rob Prohl, C.S.D

BACKGROUND

On January 29, 1997, the Concord Education Association/NEA-New Hampshire filed unfair labor practice charges against the Concord School Board alleging violations of RSA 273-A:5 I (a), (e), (g), (h) and (i) for failing to bargain in good faith, contracting out nursing services during the term of a CBA and refusing to bargain the matter. The Concord School Board responded on February 13, 1997, and a hearing was held on the matter on May 22, 1997. The record was held open for evidence designated Board Exhibit No. 3 which evidence was received on May 27, 1997. An interim order was issued on May 29, 1997, requesting the parties to provide briefs in response to certain questions regarding the practice of subcontracting bargaining unit positions. The briefs were received from the Concord School Board on June 27, 1997, and from NEA-New Hampshire on June 30, 1997.

FINDINGS OF FACT

1. The Concord School Board (Board) employs teachers and other personnel in the operation of its school system and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Concord Education Association/NEA-New Hampshire (Association) is the duly certified bargaining agent for teachers and school nurses employed in Concord schools.
3. The Board and the Association are parties to a collective bargaining agreement (CBA) for the period, September 1, 1996, through August 31, 1999. The CBA was tentatively agreed to in June, 1996, and signed by the employer on July 29, 1996. This CBA, as did its predecessor, covers school nurses. The current CBA contains two separate salary schedules which specifically address the salaries to be paid degreed and non-degreed nurses during the term of the CBA (Association Exhibit A, Appendices C and I).
4. The first action to subcontract school nursing services from Concord Regional Visiting Nurse Association (CRVNA) occurred in 1995. School nurses were issued non-renewal notices in early 1995 effective at the end of that school year. The School Board reconsidered its action and voted, in April, 1995, not to subcontract school nurse positions until September, 1998. However, later in 1995, the Board voted to replace a retiring

school nurse with a CRVNA nurse which became the subject of PELRB Decision 95-095. Then, in June, 1996, the School Board voted to implement subcontracting to be effective in September 1997.

5. In preparation for implementation of subcontracting, an advertisement for nurses, requesting specifically nurses with little experience in school nursing, was issued, after which, four nurses were hired for terms of one year at relatively low salaries. In October, 1996, Rob Prohl, Assistant Superintendent and Director of Pupil Personnel Services, called a meeting at which nurses were informed that all nursing services would be contracted to Concord Regional Visiting Nurses Association beginning in September 1997.
6. Superintendent Curt Sokness testified that the School Board has advanced reasons for deciding to subcontract nursing positions which include the need to increase the availability of nursing services and the need for proper supervision of those providing health services, as well as for monetary reasons. The current CBA will not support retaining nurse employees. Mr. Sokness recalls requests by David Royle, bargaining unit president, to negotiate the issue of subcontracting nursing services in 1995 and November, 1996. The matter was not pursued because the Board considers the subject of subcontracting to be non-negotiable.
7. The current CBA contains no provision for the changeover from employing nursing personnel to subcontracting for nursing personnel. Subcontracting was not raised as a bargaining issue during negotiations for the present CBA though one or more School Board members concurrently sat on both the negotiating team for the CBA and on the School Board when it voted to discontinue employing nurses in June, 1996.
8. Douglas McNutt is a School Board member who sat on both committees in 1996. He was a member of the negotiating committee for the current CBA and voted to ratify the CBA on June 6, 1996. He is a member of the Pupil Personnel Services Committee, which championed the plan to privatize nursing services for the 1997-98 school year. That

committee's plan to privatize was discussed at the School Board meeting of May 22, 1996, (Board Exhibit No. 2), and was approved by the Board, also on June 6, 1996, upon Mr. McNutt's motion (Board Exhibit No. 3). Mr. McNutt testified that he did not raise the subject of the plan to privatize to bargaining unit members. No bargaining unit member asked about privatization and he felt no obligation to enlighten bargaining unit members since he believes the matter of subcontracting for nurses to be non-negotiable.

9. Jane Morin has been an elementary level school nurse in Concord for eighteen years. She had intended to use the early retirement provision of the contract and had planned accordingly (Association Exhibit A, Article V M). She has missed her opportunity to do so this year. If she is retired in 1997, she will lose the opportunity to access this benefit. Her reliance on the School Board's decision that privatization would not occur until 1998-99 will cost her in excess of \$40,000.
10. The decision to subcontract nursing services in Concord and related matters have been the subjects of numerous cases before this Board. PELRB Decisions No. 95-095, 95-123, 96-023, and 97-027 are incorporated by reference; the last of which declares the consequences should the Concord School Board fail to employ school nurses for 1997-98 school year.
11. As of the date of the hearing, the Concord School Board had issued no contracts to nurses for the 1997-98 school year. However, it is stipulated by the parties that, on June 5, 1997, currently employed nurses were sent letters rehiring them for the 1997/98 school year with notice that they will not be re-employed in the 1998/99 school year because of a June 2, 1997, School Board decision to subcontract school nurse services beginning in September, 1998, in lieu of 1997.

DECISION AND ORDER

Circumstances exist under which a public employer may exercise its prerogative, reserved by RSA 273-A:1 XI, to reorganize its staff

by subcontracting during the term of a contract for services being performed by bargaining unit members. This is such a case.

RSA 273-A:1 XI provides that terms and conditions of employment are negotiable but broad policy matters are excluded from negotiation. Appeal of Watson, 122 N.H. 664, 667 and 668 (1982). The decision to eliminate the employment of school nurses for the reasons stated by member McNutt and Superintendent Sokness (See finding No. 6) is a broad policy change. Appeal of State, 138 N.H. 716, 722 (1994). Even though the parties have not been in agreement as to the negotiability of the method of reorganization, subcontracting, it has been an active subject between the parties since 1995. The Association cannot now claim surprise by the Board's actions. We affirm our declaratory judgment involving these parties, PELRB Decision No. 97-027 (April 4, 1997), relative to the requirement of bargaining in good faith. Notwithstanding the Association's desires to the contrary, it cannot delay indefinitely this reorganization. Given the longevity of the Board's persisting in its endeavors to restructure school nursing services, the time for reorganization has now arrived. Both parties were aware that the Board had not abandoned its plan to cease employing school nurses. That being the case, it behooved the Association, in adequately representing its members, to raise the subject of subcontracting during negotiations since the School Board's position on negotiability was known to the Association negotiators since 1995 and the likelihood of a Board decision to subcontract in 1997 or 1998 continued to exist.

The Concord School Board in 1995 had announced its decision to subcontract for the services of school nurses in 1998. The School Board was ordered to honor that decision in the arbitration decision, AAA Case No. 1139-0014-95 (April 8, 1996). This Board declared the same in our Decision No. 97-027. Post hearing, the School Board has acted accordingly and the main question presented, the legality of subcontracting in 1997, is moot. Further, the Association's notice to bargain was sufficient and the parties are to proceed forthwith to bargain the impact of subcontracting the school nurse positions.

So ordered.

Signed this 17th day of September, 1997.


EDWARD J. HASELTINE
Chairman

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