

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

THE STATE OF NEW HAMPSHIRE :

Petitioner :

CASE NO. S-0382

and :

DECISION NO. 89-80

STATE EMPLOYEES' ASSOCIATION OF NEW
HAMPSHIRE, INC., LOCAL 1984, SEIU,
AFL-CIO :

Respondent :

Representing The State of New Hampshire:

David S. Peck, Esq., Assistant Attorney General

Representing The State Employees' Association of New Hampshire, Inc.

Glenn R. Milner, Esq., Counsel

Also attending:

Frank Cronin, S.E.A.
Tom Hardiman, S.E.A.
Dennis Parker, S.E.A.
Chris Henchey, S.E.A.
Ruth B. Ayer, Dept. of Education
Jack Jarvis, Labor Department
Jim DeSouza, WKXL Radio
Felice Beliveau, Concord Monitor

BACKGROUND

This case comes before the Public Employee Labor Relations Board on the joint Petition for Declaratory Judgment filed by the parties. That Petition, dated August 10, 1989, sets forth agreed facts. There are no facts in dispute in this matter and the PELRB adopts the agreed upon facts stated by the parties. Briefly, the SEA, exclusive representative of all state classified employees within certified bargaining units, and the state entered into negotiations for new two year collective bargaining agreement in the fall of 1988. The parties bargaining teams reached agreement on terms of a new collective bargaining agreement containing cost items, terms and conditions of employment affecting state employees generally and terms and conditions of employment unique to individual bargaining units. The cost items in the collective bargaining agreement were presented to the Joint Committee on Employment Relations and were approved by the New Hampshire Legislature on June 28, 1989. SEA members

voted on the 1989 - 1991 collective bargaining agreement in July 1989. The voting results were that the total vote of all bargaining units approved the collective bargaining agreement by a margin of 1578 to 894 votes. Six bargaining units, however, rejected the collective bargaining agreement. This is the first time in the history of collective bargaining between the state and its employees under RSA 273-A that any bargaining units have rejected a contract which has been adopted by the majority of members of all state bargaining units.

The facts recited above give rise to the issue presented to the PELRB by the joint Petition for Declaratory Judgment. That question basically is whether RSA 273-A, specifically 273-A:3 and 273-A:9, result in the items common to all employees and cost items in the collective bargaining agreement being ratified as to employees with only items unique to the six units which voted against the contract being returned to those units for ratification; or whether the effect of the rejection of the contract by those six units is to return the entire contract to those units for renegotiation, including items which are common to those units and all other state employees? A further question is whether the fact that the majority of all of the members voting to ratify the contract results in all items being adopted, notwithstanding rejection by certain of the state units in which case nothing would be returned to those units for renegotiation?

A hearing was held at the offices of the PELRB on October 19, 1989. Each party submitted a memorandum of law and summarized its legal arguments before the Board.

FINDINGS OF FACT AND RULINGS OF LAW

The facts in this matter not being in dispute, the Board adopts those agreed upon by the parties in the joint petition.

In adopting RSA 273-A, the New Hampshire Legislature undertook the task of including in one statute negotiating rules for all levels of government in the State of New Hampshire. From the smallest town's police department to the University System to the county governments and the state as a whole, the legislature adopted one statute. However, unique in that statute, the legislature included RSA 273-A:9. This provision provides as follows:

"RSA 273-A:9 Bargaining by State Employees. Cost items and terms and conditions of employment affecting state employees generally shall be negotiated by the state, represented by the negotiating committee set out below, with all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the state negotiating committee. . ."

The statute also states in, in its statement of policy, the following:

"The legislature declares that it is the policy of the state to foster harmonious and cooperative relations between public employers and their employees and to protect the public by encouraging the orderly and uninterrupted operation of government. . ."

Regrettably, the statute is not complete in its specific language in answering the question posed to the PELRB in this case. There is no set of rules on voting unique to a state employees negotiated contract. Indeed, the Supreme Court of the State of New Hampshire has ". . .consistently recognized that the legislature has vested the PELRB with the authority to define the terms of RSA chapter 273-A and to fill in the small interstices." State Employees Association vs. Cheney, 119 N.H. 822 (1979) at 826.

The PELRB has considered the arguments of the parties. Briefly, the state argues that in adopting RSA 273-A:9, the legislature set forth a separate bargaining scheme for the state and that a logical extension of the language of that statute is that if the majority of state employees voted to ratify a contract containing terms and conditions covering all state employees generally, those terms and conditions and items are ratified for all, whether or not any specific units reject the contract. The state concedes the possibility that individual units which reject the contract may have returned to them items of specific applicability to those units.

The SEA, on the other hand, argues that the clear purpose of the statute is one of convenience for bargaining by all state bargaining units. Since there is no specific language requiring the result for which the state argues, the SEA maintains that the general rules for ratification apply. Under these rules, each unit gets to vote on the contract and, if a unit rejects the contract, the contract is not adopted as to that unit and bargaining must be resumed on all matters.

The state further argues that to have any result other than that which it believes is correct would do violence to other state statutes, specifically those involving employee classification, personnel system and the like. As an example, it sets forth the proposition that renegotiating with specific units could result in employees in those units in the same pay grades as employees in units adopting the contract having different rates of pay for similar jobs. It is argued that the legislature could not have intended such a result since it adopted uniform classification systems and other state employee-related statutes both before and after the adoption of RSA 273-A.

This is a case of first impression and requires the Board to exercise its discretion to work out the "interstices" cited by the Supreme Court in the above cited case. The PELRB believes that the legislature intended to establish a separate scheme for bargaining and ratification among state employees. The legislature in passing 273-A did not mean to interfere with the efficient operation of government and, at the same time, sought to grant to public employees in New Hampshire rights to bargain. The tension between those two goals resulted in compromises and one of them, the PELRB believes, was to establish a system for state bargaining which lumped all employees together as to issues and items generally applicable. To adopt the scheme advocated by the SEA would invite confusion and potentially multiple divisions. It is obvious that the legislature intended to have all state employees bargain and vote on items applicable to them all generally. Therefore, the Board believes that the position of the state is correct and that in adopting RSA 273-A:9, the legislature enacted into law a scheme which requires the application of commonly negotiated terms to all organized state employees if the majority of those organized state employees vote to accept them, whether or not individual units may vote no. Conversely, as to items unique to individual units, those items must be renegotiated by the state and the specific units in the event that the units involved reject the contract.

In making this decision, the PELRB does not rule on any hypothetical question concerning what rules for negotiations would apply in the event that different units of state employees were represented by different collective bargaining agents, what ground rules would be required, what weight should be given to the opinions of the different unions, and similar questions. Although raised at the hearing, those questions are not germane to the issue before the Board.

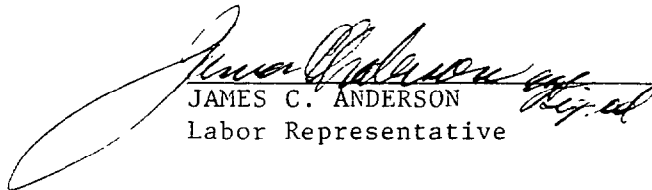
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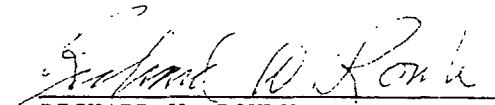
The Board having decided this case in accordance with the position of the State of New Hampshire, issues the following order:

Those items unique to the units rejecting the collective bargaining agreement shall be renegotiated by the state and the units which rejected the 1989 - 1991 collective bargaining agreement. Items of general applicability and cost items are adopted for state employees in all bargaining units. RSA 273-A:9 shall be interpreted in accordance with this decision for future state negotiations.

So Ordered.

Signed this 14th day of November, 1989.


JAMES C. ANDERSON
Labor Representative


RICHARD W. ROULX
Management Representative

Chairman Edward J. Haseltine presiding. James C. Anderson and Richard W. Roulx voting majority. Chairman Edward J. Haseltine dissenting. Also present, Executive Director, Evelyn C. LeBrun and Board Counsel, Bradford E. Cook.

DISSENTING OPINION

I must respectfully dissent from the decision of the majority in this case. While I do not disagree on the matter of the effect of the vote of the majority of all state employees binding those employees as to items of general applicability, I do not believe the legislature of the State of New Hampshire intended to create a situation in which negotiations would be prolonged to the extent possible under the majority decision. It is my belief that RSA 273-A:9 establishes a negotiating scheme and, while a vote of all is effective as to items of common applicability, the vote of all to ratify the contract also has the effect of adopting those items applicable to individual units for the following reasons:

1. The New Hampshire legislature certainly intended to deal with state employees separately as indicated by RSA 273-A:9 "Bargaining by State Employees"

2. Oral argument at the hearing indicated that all sub-units in the master agreement between the SEA and the state were afforded the opportunity to nominate representatives from their unit to be members of the negotiating team. One representative was selected as a member of the SEA negotiating team from one of the units voting to reject the negotiated agreement.
3. It becomes clear that the concerns of the so called sub-units (bargaining unit) were adequately represented, addressed and bargained for as the final negotiated agreement contains specific reference to the sub-units such as state police department, Health & Welfare Dept., etc..., (see contract agreement beginning with page 52 thru 107 all dealing with sub-unit agreement which appears to be conclusive evidence of total consideration.)
4. The negotiated agreement was ratified by majority vote and all SEA members were provided the opportunity of voting.
5. To now come after a majority voted to approve the agreement and say we, as group or unit are dissatisfied is comparable to wanting a second bite of the apple.
6. RSA 273-A:9 provides a scheme of negotiating by state employees and certainly the legislature intended to provide for certain sub-group units to be considered and dealt with as to their uniqueness and requirements, which consideration was given at the bargaining table by the negotiating committee. I find that complete consideration of the individual units and their specialized requirements were properly addressed at the negotiation meetings by the parties and satisfies the requirements imposed by RSA 273-A.
7. If sub-units were to be granted the option of returning to the table to renegotiate then it is my position that as a practical matter all items agreed to in the agreement should be on the table for negotiations, including wages and terms and conditions.
8. To permit sub-units to reopen and renegotiate after proper and complete negotiations by the parties and majority approval could and would result in precedent setting and create a chaotic atmosphere in labor relations.

I would not allow the return of individual items to those units which rejected the contract. To the extent that the majority opinion allows the return of any items for renegotiations, I DISSENT.


EDWARD J. HASELTINE
Chairman