



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD	:	
OF POLICE OFFICERS,	:	
LOCAL 464 ON BEHALF OF	:	
NASHUA POLICE OFFICERS	:	CASE NO. P-0740:6
	:	
Complainant	:	DECISION NO. 95-102
	:	
v.	:	
	:	
CITY OF NASHUA POLICE	:	
COMMISSION	:	
	:	
Respondent	:	

APPEARANCES

Representing I.B.P.O., Local 464:

Peter C. Phillips, Esq.

Representing City of Nashua Police Commission:

Judy Constantian, Esq.

Also appearing:

Deputy Donald Gross, Nashua Police Department
Christopher Peach, I.B.P.O.

BACKGROUND

The International Brotherhood of Police Officers (I.B.P.O.) Local 464 (Union) filed unfair labor practice (ULP) charges against the City of Nashua Police Commission (City) on September 12, 1995 alleging a violation of RSA 273-A:5 I (e) resulting from the City's unilateral change in workers' compensation procedures, namely, the imposition of a managed-care system with a "gatekeeper" for work-related injuries. The City filed its

answer and a motion to dismiss on September 27, 1995, after which this matter was heard by the PELRB on October 19, 1995.

FINDINGS OF FACT

1. The City of Nashua, through its Police Commission, is a "public employer" of personnel employed in its police department within the meaning of RSA 273-A:1 X.
2. The International Brotherhood of Police Officers, Local 464, is the duly certified bargaining agent for all full-time, non-probationary police officers below the rank of sergeant employed by the City.
3. The Union and the City, through its Police Commission, are parties to a collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1996. The provisions of the CBA do not address workers' compensation specifically. Article 34 of the CBA addresses long term disability coverage for non-job-related illnesses or injuries. Article 2, the Recognition Clause, protects the Union's right to bargain any changes in "mandatorily negotiable wages, hours or other terms or conditions of employment." Article 4, the Stability Clause, provides that "no amendment to, modification of, or change in, the terms or provisions of this Agreement shall bind the Commission or the Union unless made and executive in writing and signed by a authorized representative of each party."
4. By letter of March 8, 1995, the City notified its employees (meaning and intending to refer to all of its employees, not merely those in the bargaining unit involved in this case) that it was changing to a managed care program for workers' compensation coverage effective March 13, 1995. Prior to that date, members of the police officers' bargaining unit had been permitted to consult a doctor of their own selection for work-related injuries, except as restricted by the City's participation in a pilot program for managed care coverage between December 1, 1991 and November 15, 1993. There is no evidence that the Union ever objected to the City's participation in this pilot program as it may have influenced workers' compensation care programs for employees in the police officers' bargaining unit during 1991-1993.

5. The New Hampshire General Court (Legislature) enacted Chapter 311 of the laws of 1993 on June 23, 1993. It became RSA 281-A:23 a entitled "Managed Care Programs" and permissively stated that "an employer, employer's insurance carrier or self-insurer that is subject to the provisions of this chapter may satisfy the requirements and provisions of RSA 281-A:23 and the employees' rights under that section by providing a managed care program which has been approved by the commissioner." [Emphasis added.]
6. There is no dispute that the managed-care program adopted by the City is an "approved program" within the meaning of RSA 273-A:23-a.
7. The Union claims that the change to the managed care program was not negotiated, constitutes a unilateral change in working conditions and, consequently, is an unfair labor practice under RSA 273-A:5 I (e). The City claims it was protected in making that change by RSA 281-A:23-a and RSA 273-A:1 XI.

DECISION AND ORDER

As it was presented to us, it is our understanding that the 1993 enactment which became RSA 283-A:23-a was intended to give employers the option of changing to managed care plans for on-the-job injuries covered by workers' compensation laws generally. The statutory language suggests that employees would be protected in any such changeover because the managed care plan must have met certain standards and must have been approved by the Commissioner of Labor. Given the statutory language which says that an employer "may satisfy the requirements and provisions" of RSA 281-A:23 by using a managed care plan, we find no practical difference in "managed care" plans compared to the more traditional coverage contemplated by RSA 281-A:23 and mandated thereby. In either case, coverage is statutorily required. The difference between RSA 281-A:23 and RSA 281-A:23-a is the addition of a "gatekeeper" in the newer, managed care portion of the statute.

In addition to the foregoing considerations, employees may seek care outside the newly-installed managed care network under certain circumstances, inclusive of emergencies. See Union Ex. No. 1. Finally, there is no evidence that the parties have ever negotiated about or over the level of coverage to be provided by the provider or insurer designated by the City. This makes sense

because only the whole city, i.e., the City of Nashua, can be an "employer" for purposes of administering its workers' compensation plan; the police commission, as a subset of the City, cannot arrange, contract for or agree upon a different kind of workers' compensation coverage than what has been established by the City. There was no obligation to bargain under these circumstances.

Accordingly, the ULP charges are hereby DISMISSED.

So Ordered.

Signed this 26th day of October, 1995.



EDWARD J. HASELTINE
Chairman

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