



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Shaker Regional Education Association/NEA-NH

Complainant

v.

Shaker Regional School District

Respondent

Case No. T-0300-11

Decision No. 2005-131

Shaker Regional School District

Complainant

v.

Shaker Regional Education Association/NEA-NH

Respondent

Case No. T-0300-13

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Shaker Regional Education Association/NEA-NH (hereinafter "the Association") filed an improper practice charge on June 23, 2005 alleging that the Shaker Regional School District (hereinafter "the District") violated RSA 273-A:5, I (a), (e), (g), (h) and (i) as a result of its actions relating to health insurance benefits. More specifically, the Association states that during the term of the parties' current collective bargaining agreement (CBA), the health insurance provider, namely the New Hampshire School Care Coalition (SchoolCare), eliminated the Point of Service (POS) option and replaced it with Open Access Point of Service (OAPOS) effective July 1, 2005 at no added cost to the District. The Association's complaint indicates that OAPOS was already a health insurance option offered to employees. As alleged by the Association, SchoolCare informed the parties that OAPOS was now replacing POS and the premium cost previously associated with OAPOS had been reduced in order to match the cost of the now defunct POS plan. The Association further alleges that during April 2005 it became

aware that the District intended to charge bargaining unit employees, who did not elect to change their health insurance to the HMO option, 25% of the premium for the OAPOS plan despite the fact that it was replacing the POS plan in which employees were responsible for 11% of the premium. The Association states that it issued a demand to bargain over the intended change on April 14, 2005 and, after meetings with the District, declared impasse on June 15, 2005.

The Association contends, among other things, that by charging employees 25% in FY 2005/2006 for the same health insurance benefit for which they had negotiated an 11% co-pay is a unilateral change in working conditions resulting in unjust economic enrichment to the District. As remedies, the Association requests that the PELRB issue an order compelling the District to comply with RSA 273-A with respect to unilateral changes in working conditions, and specifically health insurance, and any other remedy it deems fair and just.

The District filed an answer and cross complaint on July 8, 2005. In its Answer, the District denies that it has committed any unfair labor practice and submits that it is following the terms of the parties' CBA that requires employees to contribute 6% for the HMO plan and 25% for the OAPOS plan. According to the District, a side-by-side comparison of the OAPOS plan offered prior to July 1, 2005 and the one thereafter discloses no change in benefit level. Moreover, it maintains that the now obsolete POS plan is vastly different in benefit level than the OAPOS plan. The District specifically denies the Association's allegation that it has implemented an unilateral change by assigning a 25% cost premium to employees, stating that the parties' 2004-2006 CBA has always required a 25% employee contribution for OAPOS. While reserving its right to take the position that the change imposed by SchoolCare does not require the District to negotiate, mediate or fact find, it acknowledges that it did meet with the Association to discuss the changes imposed by SchoolCare.

In its' cross claim of unfair labor practice, the District alleges that the Association violated RSA 273-A:5 II (a) & (d) as a result of its failure to negotiate in good faith regarding health insurance. It states, inter alia, that during meetings held on June 2, 2005 and June 15, 2005, the Association made no offer of any type other than to demand that the District reduce employee contributions for the OAPOS plan from 25% to 11%. The District also alleges that the Association's charge is entirely baseless, frivolous, and brought in bad faith, for the sole purpose of coercing the District into accepting the Association's unreasonable demands. Accordingly, the District requests that the PELRB deny the Association's unfair labor practice charge, find that the Association has committed an unfair labor practice, order the Association to pay the District's attorney's fees and costs, and grant such other and further relief as justice may require.

The Association filed its answer denying the District's charge on July 25, 2005. By way of further answer, the Association asserts that the District has failed and refused to budget sufficient funds to cover the negotiated POS benefit under the CBA for 2005-2006 and withheld that information from the Association until negotiation meetings over the health insurance change occurred in June 2005.

A pre-hearing conference was convened at PELRB offices on September 30, 2005.

PARTICIPATING REPRESENTATIVES

For the Association: Steve R. Sacks, Esq.

For the District: Matthew H. Upton, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Does the Board have jurisdiction in the(se) matter(s)?
- (2) If so, as a result of the third party health insurance provider's elimination of a health insurance option under the parties' CBA, (a) did the District commit an unfair labor practice by unilaterally increasing the insurance co-pay for certain employees on or about July 1, 2005 or otherwise bargaining in bad faith relative to health insurance, and/or (b) did the Association commit an unfair labor practice by its conduct in June 2005 or otherwise bargaining in bad faith relative to health insurance?
- (3) If so, what shall be the remedy(ies)?

WITNESSES

For the Association:

1. Michelle Walter, Association President
2. Marc Benson, NH-NEA, SchoolCare

For the District:

1. Mike Cozort, Superintendent
2. Debbie Gay, Business Administrator
3. Linda Murphy, Human Resources Coordinator
4. Preston Tuthill, Member, Shaker Regional School Board
5. Thomas Goulette, Member, Shaker Regional School Board

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party.

EXHIBITS

Joint Exhibits:

1. 2004-2006 Collective Bargaining Agreement
2. Correspondence (letters/e-mail) between Association officials and School Board Officials

For the Association:

None other than those marked above as "joint."

For the District:

1. June '05 Proposals of the Board
2. Documents relating to the benefit levels of health plans

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. PELRB Case Nos. T-0300-11 and T-0300-13 are hereby consolidated.
2. On or before **November 1, 2005**, the parties representatives shall file memorandums of law as to the question of Board jurisdiction, in light of the Court's holdings in *Appeal of State of New Hampshire*, 147 N.H. 106 (2001), *Appeal of Campton School District*, 138 N.H. 267 (1994), and *Appeal of Hooksett School District*, 126 N.H. 202 (1985).
3. On or before **November 1, 2005**, the parties shall exchange all necessary documents in preparation for hearing, to include health insurance election forms, with names and other identifying information redacted, as necessary.
4. The parties' representatives shall meet, or otherwise confer, in order to compose a mutual statement of agreed facts and exhibits. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file that document with the PELRB on or before **November 15, 2005**.
5. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for

identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

6. Unless otherwise ordered as a result of the filing of any subsequent motion, or for other good cause shown, an evidentiary hearing between the parties will be held on:

December 1, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 30th day of September, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Steve Sacks, Esq.
Matthew H. Upton, Esq.