



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Lisbon Association of Paraprofessionals,  
NEA-New Hampshire

Complainant

v.

Lisbon Regional School District  
Respondent

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Case No: E-0007-1

Decision No. 2006-001

APPEARANCES

For the Union: Jay Tolman, NEA-New Hampshire UniServ Director and Steven Sacks, Esq.

For the District: Abigail J. Sykas, Esq., Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C.

BACKGROUND

The Lisbon Association of Paraprofessionals, NEA-New Hampshire, (hereinafter the "Association") filed an unfair labor practice complaint on June 27, 2005 alleging that the Lisbon Regional School District (hereinafter "the District") committed an unfair labor practice in violation of RSA 273-A:5 I (e) failing to negotiate in good faith, (h) breaching the collective bargaining agreement ("CBA"), and (i) undertaking action that invalidates a portion of the CBA. The action from which the Association's charge arises is the District's decision not to pay certain health insurance benefits that the Association maintains it is obligated to pay under the parties' first collective bargaining agreement. The Union argues that the District breached the written agreement entered into by the parties when it denied employee access to the two (2) person and family plans under the health insurance coverage.

The District maintains that the paraprofessionals' previous 2004-2005 health insurance benefits allowed access to single, but not two (2) person or family plan health insurance coverage, and that it did not agree to provide paraprofessionals access to health insurance coverage for 2005-2006 other than single coverage. It also asserts, among other things, that it never ratified an agreement to give paraprofessionals access to health insurance coverage other than single and that District voters did not approve cost items associated with giving paraprofessionals access to health insurance coverage other than single.

A pre-hearing conference was conducted on October 5, 2005 and an evidentiary hearing on the merits was conducted on October 18, 2005 at PELRB offices, Concord, New Hampshire. Prior to the commencement of the evidentiary hearing, conducted by the undersigned, the parties submitted certain stipulations of fact upon which they agreed and several joint exhibits. At the evidentiary hearing both parties were represented by counsel and had the opportunity to present witnesses for examination, to undertake cross-examination, and to offer exhibits into evidence. At the outset of the hearing, the parties' stipulations of facts were accepted into the record and appear below as Findings of Fact numbers 1- 20. At the conclusion of the parties' presentation of evidence, the respondent requested leave to submit a post-hearing legal memorandum to support its position and, with the complainant joining in that request and as a consequence, the parties were given leave to submit the same and the record left open until November 18, 2005. After reviewing all the pleadings and all evidence, assigning appropriate weight to admitted exhibits, and considering the credibility of the testimony of each witness, the undersigned presiding official finds as follows:

#### FINDINGS OF FACT

1. The Lisbon Regional School District ("School District") is a public employer as defined in RSA 273-A:1, X.
2. The Lisbon Association of Paraprofessionals/NEA-NH ("Association") is the duly elected exclusive representative of the bargaining unit which consists of the paraprofessionals employed by the School District who are public employees as defined in RSA 273-A:1, IX.
3. The School District employs four categories of employees under the classification "support staff": custodians, food service employees, secretarial employees and paraprofessionals.
4. Traditionally, the School District has met separately with each category of support staff to hear requests regarding changes to the terms and conditions of their employment, although they were never obligated to do so.
5. The custodians, food service and secretarial employees have historically been provided with different health insurance benefits than the paraprofessional employees. For the last several years, the School District has provided secretarial, custodial, and food service employees access to the Matthew Thornton Couple and Family Health Insurance Plans. Through at least the 2003-2004 school year, Paraprofessionals have only been offered access to the Matthew Thornton Single plan. See Jt. Ex. 4.

6. Prior to the 04-05 school year, the School District met separately with the custodians, food service, secretarial, and paraprofessional employees to receive requests regarding the terms and conditions of their employment for the 04-05 school year.
7. As a result of each of those meetings, the custodians, food service, and secretarial employees continued to be provided with access to health insurance benefits up to a family plan.
8. For the 2004-2005 school year, the School District issued individual contracts to the members of each of the four different categories of support staff. See Jt. Ex. 9. Each of these contracts addressed health insurance in subparagraph 2(f), except for the custodian's contract, which included the relevant language in paragraph 2(g). The first sentence of the relevant subparagraph of paragraph 2 in each contract stated as follows:
  - a. The custodian contract stated: "Health Insurance-(Matthew Thornton plan up to a FAMILY.)"
  - b. The food service employee contract stated: "Health Insurance-(Matthew Thornton plan up to a FAMILY.)"
  - c. The secretary contract stated: "Health Insurance-(Matthew Thornton plan up to a FAMILY.)"
  - d. The paraprofessional contract stated: "Health Insurance-(Matthew Thornton plan up to a SINGLE.)"
9. In each 2004-05 contract, the remainder of the relevant subparagraph of paragraph 2 included parenthetical language as follows: "(District will pay 100% of Single coverage and 95% of Couple or Family coverage. The District's share of health insurance cost will be capped at 15% annual increases over 2003-2004 rates. Support Staff on the Matthew Thornton Couple plan will receive a \$550 annual stipend; those on the Family plan will receive a \$650 annual stipend.). Part-time employees will have benefit prorated to FTE percentage.)"
10. In paragraph 2(f), the 2004-05 paraprofessional contract additionally provided that paraprofessionals had the alternative of taking three additional sick/personal days, non-accumulative, in lieu of access to the health insurance benefit. See Jt. Ex. 4.
11. For the 2004-2005 school year the School District budgeted only for single coverage to be provided to paraprofessionals. See Jt. Ex. 5.
12. In the 2004-2005 school year, no paraprofessional requested access to health insurance coverage under any plan other than a single plan.

13. Until November of 2004, none of the employees were represented for the purposes of collective bargaining. The Association was certified as the exclusive representative for the paraprofessionals on November 22, 2004. See Jt. Ex. 8.
14. For the 2005-2006 school year, the School District and the Association negotiated a one-year agreement regarding the paraprofessionals (the "CBA") which contained no changes from the benefits provided by the 04-05 individual paraprofessional contracts, except that the paraprofessional's wages increased, and they were given one additional paid holiday.
15. The language in the CBA is virtually identical to that in the individual 2004-2005 paraprofessional contracts except that (1) the 15% cap was revised to reflect 2004-05 rates, rather than 2003-04 rates; and (2) the word "Support Staff" at the beginning of the third sentence was changed to "Paraprofessionals":

Health Insurance-(Matthew Thornton plan up to a SINGLE. (District will pay one hundred percent of single coverage and 95% of couple or family coverage. The District's share of health insurance cost will be capped at 15% annual increases over 2004-05 rates. Paraprofessionals on the Matthew Thornton Couple plan will receive a \$550 annual stipend; those on the Family plan will receive a \$650 annual stipend.) OR three additional sick/personal days non-accumulative. Part-time employees will have benefits prorated to FTE percentage.) See Jt. Ex. 1.

16. Paragraph 2(g) of the paraprofessionals' individual contracts for the 2005-2006 school year provides:

Health Insurance-(Matthew Thornton plan up to a SINGLE. (District will pay one hundred percent of Single coverage and 95% of Couple or Family coverage. The District's share of health insurance cost will be capped at 15% annual increases over 2004-05 rates. Support staff on the Matthew Thornton Couple plan will receive a \$550 annual stipend; those on the Family plan will receive a \$650 annual stipend.) OR three additional sick/personal days non-accumulative. Part-time employees will have benefits prorated to FTE percentage.) See Jt. Ex. 4.

17. At the School District's annual meeting on March 16, 2005 for fiscal year 2005-06, the School Board approved a warrant article relative to raising and appropriating money for the cost items contained in the CBA. See Jt. Exs. 2, 3.
18. The School District initially issued the 2005-2006 individual paraprofessional contracts without the parenthetical language describing the percentage and the stipends.

19. The Association objected to leaving this language out, and the contracts were reissued with the language and a cover letter stating that the School District did not waive its position that Paraprofessionals were entitled to access only up to single coverage.
20. On or about June 27, 2005, the Association filed an improper practice charge alleging the School District improperly refused to pay for paraprofessionals to access health insurance coverage under any plan other than a single plan.
21. The document executed on February 7, 2005 was prepared by David Webster, Field Consultant for the Association and presented to the District representatives for signature.
22. Mr. Webster "borrowed" language from another document, referred to as an "individual contract", which was utilized by the parties in previous years prior to the certification of the bargaining unit of paraprofessionals in issue in these proceedings. The language used in the "individual contracts" was prepared by the District.
23. No substantive negotiation transpired between the representatives of both sides regarding the specific health coverage plans to be included as a benefit to the bargaining unit members during the sessions conducted prior to the signing of the CBA.
24. That individual employees who are now in the bargaining unit did not subscribe to couple of family plan coverage prior to the formation of the bargaining unit does not establish either that they were prevented from doing so by contractual limitation nor does it establish that they could have and simply did not for any variety of reasons.
25. The actions of both parties' representatives leading up to the finalization of a their CBA appeared to be rushed and characterized by less than clear articulation of specific positions.
26. Some contract language that has been used to characterize the extent of health insurance coverage available to other employees, *e.g.* custodians, secretarial and food service employees, used the words of limitation "up to FAMILY". In the context of the CBA at issue here and previous individual contracts with the employees who are now within this bargaining unit, the corresponding words of limitation used are "up to SINGLE".

## DECISION AND ORDER

### JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has primary jurisdiction to adjudicate claims between the duly elected "exclusive representative" of a certified bargaining unit comprised of public employees, as that designation is applied in RSA 273-A:10, and a "public employer" as defined in RSA 273-A:1,I. (See RSA 273-A:6,I).

In this case, the Association has complained that actions of the District constitute violations of RSA 273-A:5,I (e) failing to negotiate in good faith, (h) breaching the collective bargaining agreement ("CBA"), and (i) undertaking action that invalidates a portion of the CBA. By reason of these alleged violations of the statute, PELRB jurisdiction in this matter is appropriate pursuant to RSA 273-A:6, I.

### DISCUSSION

At the outset, the District's arguments that the Association's claim is barred by operation of the doctrine of laches, estoppel and waiver are determined by the Hearing Officer not to apply. Prior to the certification of the bargaining unit by the PELRB on November 22, 2004 the Association did not exist and the individual employees who are to be affected by these instant proceedings had no standing to bring this claim before the PELRB. A party's right to bring an unfair labor practice cannot be cut off by the operation of any of these doctrines before that right to make a claim can even arise.

The Hearing Officer's substantive analysis of this case begins with a review of the language contained in the parties' existing collective bargaining agreement ("CBA" or "agreement"), specifically language relating to the issue of health insurance coverage for the bargaining unit members. The parties signed a document (Joint Exhibit #1) on February 7, 2005 that both agree constitutes their collective bargaining agreement in effect for the "School Year 2005-2006". Paragraph "g" of that agreement provides:

"Health Insurance-(Matthew Thornton plan up to a SINGLE. (District will pay one hundred percent of single coverage and 95% of couple or family coverage. The District's share of health insurance cost will be capped at 15% annual increases over 2004-05 rates. Paraprofessionals on the Matthew Thornton Couple plan will receive a \$550 annual stipend; those on the Family plan will receive a \$650 annual stipend.) OR three additional sick/personal days non-accumulative. Part-time employees will have benefits prorated to FTE percentage.)"

Each of the parties interpret this provision differently. The Association's interpretation is that the provision binds the District to provide "couple or family coverage" in addition to single person medical insurance coverage. The District's

interpretation is that the provision limits its coverage to single person coverage. I find that either interpretation could be reasonably applied to the language as it appears. When contracting parties can reasonably differ as to the meaning of a contract provision, that provision is deemed ambiguous. On the one hand the lead declarative sentence would seem to limit the extent of coverage to the single person plan. On the other hand, the subsequent parenthetical statements would seem to address circumstances involving plans beyond the single plan coverage. On the one hand, the emphatic "SINGLE" renders the parenthetical statements without effect, save to confuse the reader. On the other hand, the subsequent parenthetical statements render the emphasized declarative "SINGLE" without effect, save to confuse the reader. Each serves to nullify the other and create ambiguity.

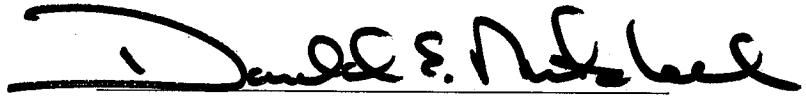
Faced with this ambiguity, the Hearing Officer has reviewed the complete agreement and concluded that the ambiguity remains since no other content adds clarity to the parties' intent at the time they entered into this agreement. With no helpful guidance emanating from the agreement, the Hearing Officer weighed all of the testimony provided at the hearing and reviewed the exhibits admitted into evidence in an attempt to discern what it was the parties agreed to regarding health insurance coverage. The efforts of both sides to reveal their respective interpretations through the submission of additional evidence, leads the Hearing Officer to conclude that there was never a mutual understanding between the parties as to the scope of coverage to be made available to the bargaining units.

Neither party has sufficiently established that there was any significant discussion of health plan coverage at any negotiation session other than that benefits provided to the employees, who are now members of the bargaining unit, would be the same as the benefits provided to them as individual employees in the previous school year, with the exceptions of increased wages and an additional paid holiday. The language that related to health insurance plan coverage in the only contracts existing before the formation of the Association for the previous year, *i.e.* the individual contracts for these employees effective for the school year 2004-2005, is essentially the same language, for all relevant purposes, at issue in these proceedings. The past ambiguous language was simply grafted to the CBA at issue here without any attempt to clarify the provision.

The Hearing Officer finds that there is no meeting of the minds of these two parties as to the extent of health insurance coverage the members of the Association are entitled to under the existing CBA. Therefore the Association's charges are dismissed. The parties are to return to negotiations forthwith to reach agreement on this mandatory topic of collective bargaining.

Having decided the matter on this basis, the Hearing Officer dismisses the District's argument that there was a mutual mistake of fact. Further, having ordered the parties back to negotiations, the Hearing Officer does not reach the issue of whether the parties' CBA is valid in light of RSA 273-A:4.

Signed this 6<sup>th</sup> day of January, 2006.

A handwritten signature in black ink, appearing to read "Donald E. Mitchell". The signature is written in a cursive style with a prominent horizontal stroke at the beginning.

Donald E. Mitchell, Esq  
Presiding Official

Distribution:

Jay Tolman, UniServ Director

Michael S. Elwell, Esq.