



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hopkinton School Custodians, Teamsters Local 633

v.

Hopkinton School District

Case No. E-0003-1

Decision No. 2012-039

Appearances: Kevin P. Foley, Teamsters Local 633 Business Agent, Manchester, New Hampshire for the Complainant

Jay C. Boynton, Esq., Andover, New Hampshire, for the Respondent

Background:

The Union filed an unfair labor practice complaint on August 24, 2011 claiming that the School District committed an unfair labor practice in violation of RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter; (b)(to dominate or to interfere in the formation or administration of any employee organization); and (h)(to breach a collective bargaining agreement) when it unilaterally moved a bargaining unit member from full-time to part-time employment and allegedly engaged in direct dealing with the bargaining unit member. The Union requests that the PELRB find that the District committed an unfair labor practice, order the District to restore the full-time position, and order the District to cease and desist from directly dealing with bargaining unit members.

The District denies the charges and asserts that the bargaining unit member requested part-time employment and that the disputed conduct was a proper and legitimate exercise of management rights. The District requests that the PELRB dismiss the Union's complaint.

The parties agreed to submit the case for decision based on stipulated facts, exhibits, and briefs. Both parties have submitted briefs, and the stipulations are reflected in the findings of fact set forth below. The parties stipulated exhibits 1-9 have been marked and are included in the record for decision and incorporated by reference in this decision, all of which has been reviewed by the Board. Exhibit 10 is accepted into the record over the Union's objection and is also incorporated by reference in this decision.

Findings of Fact

1. The Hopkinton School Custodians, Teamsters Local 633 (Union) is the certified exclusive representative of all custodians employed in the District.

2. The District is a public employer as that term is defined by RSA 273-A:1, IX.

3. The parties' current collective bargaining agreement covers the July 1, 2009 to June 30, 2014 time period and contains the following recognition clause:

The Board agrees to recognize the Union as the sole and exclusive bargaining agent in the matter of wages, hours and other conditions of employment for all custodians employed by the above named Public Employer.

The term custodian includes regular full-time and regular part-time custodians, as well as the Day and Night Supervisor positions.

4. As reflected in Joint Exhibit 2, on or about June 27, 2011 Gordon Hedderig, a full time District custodian/bargaining unit employee, submitted the following written request directly to the District:

I am requesting part time work as a custodian if possible. I would like to work a schedule from 25 to 30 hours a week. I realize I would have to revamp my medical benefits I am open for that discussion. I would not need dental program nor the union dues. I would like to discuss my options. Is it possible to start this program starting July 11, 2011. (sic)

/s/ Gordon Hedderig

5. The Union was not notified of Mr. Hedderig's request.

6. The District did not bargain with, discuss, or otherwise review Mr. Hedderig's request with the Union in any way.

7. As reflected in Joint Exhibit 3, by letter dated July 11, 2011 the District responded to Mr.

Hedderig as follows:

I hope this letter finds you well. The purpose of this letter is to respond to your request for a reduced position in the Hopkinton School District. Mr. Clark, Mr. Fortier, and I reviewed your request. The District could support a 20-hour position as it is important to attract and retain qualified applicants and ensure the efficiency (set up/take down, project completion) of the position remains strong.

If this level of a position is of interest, please let me know.

Thank you for all you do.

Steven M. Chamberlin
Superintendent of Schools

The Union was not copied on this letter. The listed recipients were Michelle Clark, Business Administrator, Hopkinton School District; Christopher Kelley, Principal, Hopkinton Middle and High Schools; Richard Fortier, Director of Facilities, Hopkinton School District; and the File.

8. As reflected in Joint Exhibit 8, by July 19, 2011 the Union had become aware of the circumstances described in the preceding findings of fact and sent a letter of complaint to the Superintendent.

9. On July 26, 2011 the Superintendent, Business Administrator, and Director of Facilities met with Mr. Hedderig.

10. As reflected in Joint Exhibit 4, on August 2, 2011 the Hopkinton School Board approved the Superintendent's request to change Mr. Hedderig's employment arrangement with the District.

11. On August 4, 2011 and August 15, 2011 the District posted another part time, 20 hours per week custodian position at Hopkinton Middle and High Schools.

12. As reflected in Joint Exhibit 10, a computer screen shot, in 2004 another full time custodial employee was allowed to change hours worked per week from 40 to 24 hours but the

surrounding circumstances, including the extent of the Union's involvement in this change, are unclear.

13. The CBA does not include any provisions as to the minimum number of full time custodial employees, nor does it set forth any process that will be followed if a full time employee wishes to job share a full time position or transition from a full time position into less than full time status.

Decision and Order

Decision Summary:

The District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), and (h) on account of its direct dealing with a bargaining unit employee over the terms and conditions of employment and its related failure to bargain with the Union about the transition of a full time employee into less than full time employment and the corresponding establishment of what is in substance a full time position shared by two employees. The District is ordered to cease and desist from direct dealing and, upon the Union's demand as stated in this decision, commence bargaining with the Union concerning these matters. The Union's claim based on the reduction in the number of full time employees is dismissed.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

PELRB bargaining unit certifications identify the positions covered by the certification; they do not specify any minimum or specific number of employees a public employer is required to employ in any particular bargaining unit position, although RSA 273-A:8 requires at least ten employees in order to form a new bargaining unit. A public employer may, but is not obligated, to bargain over number of personnel during the collective bargaining process since this subject is

a permissive, but not mandatory, subject of bargaining. See RSA 273-A:1, XI ("managerial policy within the exclusive prerogative of the public employer ...(includes) selection, direction and number of its personnel"); *Appeal of Berlin Education Association*, 125 N.H. 779 (1984)(public employer need not negotiate "selection, direction and number of its personnel"); *Appeal of State*, 138 N.H. 716 (1994)(public employer may choose to bargain non-mandatory subjects of bargaining). In this case the parties' collective bargaining agreement does not address number of personnel, and in accordance with the court's prior interpretation of a public employer's management rights, the District was entitled on the facts presented in this case to unilaterally reduce the number of full time employees. See *Appeal of Internat'l Assoc. of Firefighters*, 123 N.H. 404 (1983)(no violation of RSA 273-A when public employer unilaterally reduced firefighter platoon size from six to five but maintained existing wage and benefit levels).

This case also does not involve a public employer's unilateral and wholesale replacement of the full time work force with part time employees, hired to work at reduced wages and benefits, an arrangement that primarily affects mandatory subjects of bargaining like wages and hours and which the court has previously held constitutes an unfair labor practice. See *Appeal of Nashua*, 141 N.H. 768 (1997)(pointing out that "a public employer's 'greater' power to create or eliminate a position or program does not necessarily include the 'lesser' power to unilaterally determine wages and hours for the position or program.")

For these reasons, any claim that the District has committed an unfair labor practice by reducing the number of full time employees is dismissed, since such action is not contrary to the parties' collective bargaining agreement and is not otherwise prohibited by the provisions of RSA 273-A. However, as discussed below, the District did commit an unfair labor practice because of its direct dealing with a bargaining unit employee and its concomitant failure to bargain the terms and conditions of employment for custodians like Mr. Hedderig with the Union.

The terms and conditions of employment for bargaining unit employees, such as “wages hours, and other conditions of employment,” constitute a mandatory subject of bargaining, and public employers, like the District, are obligated to negotiate with the Union the terms and conditions of employment for employees performing bargaining unit work, like the custodial employees involved in this case. *See* RSA 273-A:1, XI; RSA 273-A:11, I (a) and (b); and preceding discussion.

When Mr. Hedderig approached District officials in June, 2011 he submitted a proposal about the terms and conditions of his employment as a custodian, including a request for 25 to 30 hours of work per week. This case does not involve a situation where Mr. Hedderig was submitting an application for a vacant but existing bargaining unit position. Instead, this case involves Mr. Hedderig’s request to renegotiate and restructure his employment with the District in a manner that would allow him to continue to exclusively perform bargaining unit work but under a new arrangement. At that point it was incumbent upon the District to advise Mr. Hedderig that his general request to restructure his employment into something less than a full time arrangement and the specifics about how terms and conditions of his employment would be restructured and rearranged was a matter that had to be addressed and negotiated with the Union. However, the record reflects the District instead proceeded to deal directly with Mr. Hedderig and reach agreement on changes to his employment arrangement. The District did not notify the Union and did not bargain with the Union concerning these matters. As a result, the District acted contrary to its statutory obligation to negotiate with the Union and refrain from bargaining directly with bargaining unit employees.

Whether the final arrangements the District made concerning the terms and conditions of employment for Mr. Hedderig (and of any employee subsequently hired to perform the remaining duties and obligations of Mr. Hedderig’s previous full time position) are fair and equitable is not relevant, and the board makes no finding in this regard. What matters in this

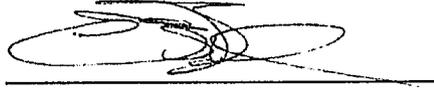
case is that the District excluded the Union from the bargaining process and engaged in improper direct dealing with a bargaining unit employee as discussed. As a result, the Union was deprived of its statutory right to bargain the terms and conditions (wages, hours and other conditions) of employment for bargaining unit employees who are to share the full time position, a subject that is not currently addressed by the parties' collective bargaining agreement. The Union's bargaining proposals in these circumstance might address matters such as the ability of any bargaining unit employee to participate in a job share of a full time position, to request and receive a reduction in the number of hours worked, wages to be paid, work schedule in a job share, including work hours in the event a job share employee leaves employment, opportunity or obligation to work hours beyond a negotiated number per week, availability of and access to health insurance and other benefits, and similar related matters. The District's actions interfered with a bargaining unit employees exercise of rights conferred by RSA 273-A, which include the right to exclusive representation by the Union in the negotiation of the terms and conditions of employment, and the District interfered with the administration of the Union by failing to recognize the Union's right to represent bargaining unit employees like Mr. Hedderig and engaging with Mr. Hedderig in a manner that suggested the Union's guidance and representation was not needed and unnecessary. The District also failed to meet its contractual agreement to "recognize the Union as the sole and exclusive bargaining agent in the matter of wages, hours and other conditions of employment for all custodians employed..." See Finding of Fact 3 and Joint Exhibit 1.

In accordance with the foregoing we find the District did commit an unfair labor practice in violation of RSA 273-A:5, I (a), (b), and (h). The District is ordered to: 1) post this decision in the workplace where it can be easily seen and reviewed by bargaining unit employees for 60 days; 2) cease and desist from any future direct dealing with bargaining unit employees; and 3) upon the Union's demand (to be provided to the District in writing and with reference to this

decision no later than 45 days from the date of this decision) immediately commence bargaining with the Union concerning the terms and conditions of Mr. Hedderig's current employment as well as of any co-employee hired to discharge the remaining duties and responsibilities of Mr. Hedderig's former full time position.

So ordered.

February 20, 2012.



Charles S. Temple, Chair

By unanimous vote of Chair Charles S. Temple, Board Member Kevin E. Cash and Board Member Carol M. Granfield.

Distribution:

Kevin P. Foley

Steven M. Chamberlin

Jay C. Boynton, Esq.