



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire

v.

Rockingham County

Case No. G-0162-3
Decision No. 2012-233

Appearances: Jeffrey Padellaro, Business Agent, for the Complainant
Thomas M. Closson, Esq., for the Respondent

Background:

The Union filed an unfair labor practice complaint on March 26, 2012 claiming that the County violated RSA 273-A:5, I (c), (e), and (h) when, during the parties' contract negotiations, it unilaterally changed the terms of the employees' healthcare coverage, reneged on negotiated settlements, and attempted to discourage membership in the union by offering certain programs to non-union employees only. The Union described the alleged unfair labor practices in its complaint as follows:

1. The Employer has violated 273-A:5 (e) when it failed to bargain in good faith. The Employer has attempted to interfere with good faith bargaining by unilaterally changing the terms and conditions of the of the employees' healthcare coverage, which is coercing the employees to make a concession that the Employer has sought through bargaining, but has been unable to obtain through bargaining.

The Employer has also reneged on negotiated settlements in the bargaining process.

2. The Employer has violated 273-A:5 (h) when it failed to honor the contract regarding the cost of healthcare and the maintenance of the status quo during negotiations for a successor Collective Bargaining Agreement. The Employer has made unilateral changes in

policy, which has significantly impacted the employees covered hereunder in a negative way.

3. The Employer has violated 273-A:5 (c) when it discriminated against bargaining unit employees by discouraging membership in an employee organization. The Employer stated publicly that they would be offering programs for non-union employees only, which open (sic) discourages union membership.

The Union requests that the PELRB order the County to cease and desist from violating RSA 273-A:5, I (c), (e), and (h).

The County denies the charges. According to the County, because the Union's complaint is, in substance, a re-filing of an earlier December 2011 complaint¹, the Union's claims should be limited to the time period during and prior to December, 2011. The County asserts the Union's claims are barred in whole or part by a December, 2011 Memorandum of Understanding and that the Union's claims are otherwise without merit. The County requests dismissal of the complaint. A hearing was held on the Union's complaint on August 1, 2012² and both parties' filed post-hearing briefs on August 22, 2012. The decision in this case is as follows:

Findings of Fact

1. The Union represents certain employees of the Rockingham County Corrections, including correctional officers, by virtue of this Board's April 10, 2008 amended certification, PELRB Decision No. 2008-089.

2. The County is a public employer pursuant to RSA 273-A:1, IX.

3. The parties' last collective bargaining agreement expired on June 10, 2010 (2010 CBA).

See County Exhibit 2.³

¹ The first case was dismissed on procedural grounds but re-filed without objection from the County; both parties agreed and understood at hearing that this complaint was the same as the December 2011 complaint.

² The case was originally scheduled for hearing on May 10, 2012 but the hearing was rescheduled at the parties' request.

³ All County and Union Exhibits are accepted as full exhibits in the record.

4. As reflected in Union Exhibit 2, by May, 2011 the parties had negotiated a tentative successor CBA. The tentative CBA was subject to final approval by the Union and also final approval by the County delegates. Wage provisions included a mixture of base wage rate adjustment and cost of living adjustment over 3 years totaling 9.24%.

5. In June 2011 the Union failed to ratify the tentative CBA, which eliminated the need for the County delegates to act on the tentative CBA. The Union's rejection of the tentative CBA meant the parties had to return to the bargaining table and attempt to reach a new tentative agreement. Although both parties were somewhat vague about the exact bargaining timetable, it appears from the record that the parties returned to the bargaining table within 2-3 months after the Union rejected the tentative CBA, and up to 4-5 months after the conclusion of the negotiations which produced the tentative CBA ultimately rejected by the Union.

6. Upon the parties' return to the bargaining table, following the Union's rejection of the tentative CBA, the County bargaining team did not offer or agree to the same or an equivalent wage/cost of living proposal as the one contained in the tentative CBA (9.24% over 3 years) and did not propose or agree to a multi-year agreement. Instead, the County proposed a one time stipend of approximately \$300.00 and a one year agreement.

7. Articles 22.1 and 22.2 of the expired CBA address employee health insurance, and provide as follows:

22.1 Health Insurance: Regular full-time employees shall receive the New Hampshire Municipal Association Trust⁴ Point of Service (POS) or Health Maintenance Organization (HMO) health insurance plan. Unless application for group membership is made within ten (10) days of employment, the employee must wait for the annual open period for submitting an application.

22.2 The County/Employee share of the plan premiums shall be according to the following schedule. County contributions shall begin on the date when the group membership is effective, discontinue upon termination of enrollment in the group, separation from County employment, or change to other than a full-time position.

⁴ Now part of the New Hampshire Local Government Center, or "LGC."

	<u>County</u>	<u>Employee</u>
Single	90%	10%
2-Person	80%	20%
Family	80%	20%

8. In 2011 there were approximately 67 employees in the correctional officers bargaining unit involved in this case. These bargaining unit employees were the only Rockingham County employees enrolled in an LGC health insurance plans. The LGC Health Trust rated the bargaining unit as part of the Under 100 Pool, which is the rating the LGC Health Trust gives to members with fewer than 100 eligible employees.

9. At some point during 2011 the County learned that Primex, a provider of health insurance products for municipal employees among other things, would not offer such health insurance products in 2012. The County had previously provided a Primex health insurance product to non-bargaining unit employees.

10. Given the unavailability of a Primex health insurance product the County decided to offer several LGC Health Trust insurance plans to non-bargaining unit employees (LGC NH HMO Matthew Thornton SOS and LGC NE HMO Access Blue SOS, referenced on County Exhibit 1, page 1).

11. The County's decision to offer LGC health insurance options to bargaining and non-bargaining unit employees caused the LGC Health Trust to change the County's insurance rating from the Under 100 Pool to an individual or single employer rating. See County Exhibit 3.

12. This rating change resulted in premium increases for the LGC policies referenced in Article 22 of the 2010 CBA. For example, for the LGC POS plan, the total monthly premium for an employee on the single plan increased from \$757.00 to \$1,301.00, the 2 person plan premium

increased from \$1,514.00 to \$2,602.00. Other POS and HMO plans had similar levels of premium increase.

13. The Union did anticipate some premium increase in the vicinity of 8% based upon communications from the LGC Health Trust and prior experience but did not anticipate a premium increase in the amount that actually occurred.

14. At the end of December, 2011 the County and the Union agreed that bargaining unit employees would be offered additional and less expensive insurance options than the two choices prescribed in Article 22 (LGC POS and LGC HMO), all as outlined in a Memorandum of Understanding, County Exhibit 1. The less expensive choices included Northern New England Benefits Trust (NNEBT) BC/BS of MA HMO Blue; LGC NH HMO Matthew Thornton SOS; and LGC NE HMO Access Blue SOS.

15. The parties also agreed in the Memorandum of Understanding that the Union waived "any claim that the County has violated the doctrine of 'status quo' by entering in this agreement with the Teamsters."

16. Most bargaining unit employees have elected to continue with the LGC HMO or POS plans referenced in Article 22 and therefore are paying approximately 60 to 70% more in monthly premiums. For example, the unit employee monthly premium expense for the LGC POS family plan increased from \$408 to \$702 (likewise, the employer monthly premium expense increased from \$1,635 to \$2,811).

17. The County provided non-bargaining unit employees with the opportunity to "cash in" accumulated annual leave but did not propose a similar arrangement to bargaining unit employees.

Decision and Order

Decision Summary:

The County did not violate the status quo with respect to health insurance premium expense as charged by the Union and the Union's unfair labor practice complaint is otherwise dismissed.

Jurisdiction:

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

Discussion:

The issue for decision raised by paragraphs 1 and 2 of the Union's complaint is whether the County violated its bargaining obligations and its obligation to maintain the status quo during the period subsequent to the expiration of the 2010 CBA. This claim is based upon the dollar increase in bargaining unit employee premiums which resulted from LGC Health Trust's decision to change the County's rating from the under 100 pool to single employer.

Both parties agree that following the expiration of the 2010 CBA unit employees remain entitled to health insurance per Article 22 consistent with the status quo doctrine but the parties' dispute what the status quo doctrine requires in this case. "[M]aintaining the status quo during collective bargaining after a previous CBA has expired is essential to preserving the balance of power guaranteed by RSA chapter 273-A." *Appeal of Milton School District*, 137 N.H. 240, 245 (1993)(quotations and citations omitted). "The principle of maintaining the status quo demands that all terms and conditions of employment remain the same during collective bargaining after a CBA has expired. *Id.* at 247. This means that "the conditions under which [bargaining unit members] worked endure throughout the collective bargaining process." *Appeal of Milton* at 247.

To maintain the status quo, the [public employer] must continue the [health insurance] benefits without a change in substance or effect... if the [public employer] paid the full cost of membership in certain health insurance plans less a specified co-payment, the [public employer] must continue to do so. If the [public employer] paid only a defined dollar amount toward the cost of insurance, it need only continue that contribution.

Appeal of Alton School District, 140 N.H. 303, 315 (1995).

The County's request for dismissal of this, or any other, portion of the Union's complaint on the basis of release language contained in the December, 2011 Memorandum of Understanding (County Exhibit 1) is denied. The language in question (the Union waives "any claim that the County has violated the doctrine of 'status quo' by entering in this agreement with the Teamsters") is only a bar to a claim that the Memorandum of Understanding is itself a violation of the County's status quo obligations. The Union has not made such a claim.

The catalyst for the increase in the overall insurance premium for the LGC POS and HMO plans was the LGC Health Trust's change in the County's insurance rating status from the Under 100 Pool to an individual rating, as explained in Ms. Clayton's December 22, 2011 email (County Exhibit 3). The LGC Health Trust made this rating change after the County asked the LGC Health Trust to provide insurance options for non-bargaining unit employees, a legitimate and reasonable request given the withdrawal of Primex from this market. The County's purpose and intent was to find and offer alternatives to the previously available Primex option, and not to frustrate, hinder, or undermine the bargaining process. It should be emphasized that the County has experienced the same percentage premium increase as unit employees with respect to the Article 22 LGC HMO and POS plans.

The burden of the premium increase must be apportioned consistent with the terms and conditions established under the expired 2010 CBA, and in this regard the relevant legal inquiry is whether the County has continued the LGC POS and HMO health insurance benefits without a change in substance or effect. There has not been any change in substance or effect as to the

plans themselves, and the same is true with respect to the allocation of premium responsibility between the County and unit employees. Both continue to pay the premium established by the LGC Health Trust according to same percentage schedule.

The County's rating status did change, however, and this caused a significant premium increase, but the change did not violate the status quo for several reasons. The change itself was an act by a third party (the LGC Health Trust) taken in response to the County's reasonable and legitimate request for LGC insurance options for non-bargaining unit employees. Additionally, the parties had experienced premium increases in the past, and there was no evidence that the parties ever agreed to place a cap or set any high or low limits on the extent to which unit employees would be responsible for premium increases. Further, there was no evidence that the parties ever took the County's Under 100 Pool rating status into account during prior negotiations. In other words, there is no evidence that during bargaining the parties expressly or implicitly understood and agreed that the County was obligated to take whatever action necessary, such as foregoing LGC insurance options for non-bargaining unit employees, in order to preserve an Under 100 Pool rating status. There is also no evidence that the County agreed that the amount of premium expense to be paid by unit employees would always be determined based upon an Under 100 Pool rating status, regardless of whether the LGC Health Trust imposed a different rating as happened in this case.

By utilizing a percentage premium schedule, the parties adopted one of several common approaches to the allocation of the cost of health insurance benefits between public employers and public employees. Other commonly used allocation arrangements options include a fixed dollar contribution by employees (i.e. \$150 per month) or a fixed dollar contribution by the employer (i.e. employer agrees to pay up to \$10,000 per year and any additional plan expense is responsibility of the employee). The distinctions between these different approaches must be

observed and maintained during a status quo period. The interpretation of the County's status quo obligations in the present case that is most consistent with the terms and conditions established under Article 22 of the 2010 CBA is one which requires that unit employees remain responsible for their percentage share of premium expense. This is so despite the fact that the actual premium expense increased in an unanticipated amount on account of the change in the County's rating status.

It does appear that neither the County nor the Union anticipated the rating and premium changes that occurred, and neither party is content with the extent to which their respective contributions to the cost of the LGC HMO and POS plans has increased. The increase in premiums, and the related impact on unit employees, is a subject that is suitable for discussion at the bargaining table, and the parties are encouraged to proceed on that basis. The parties have already made some progress in this regard, as reflected by the December, 2011 Memorandum of Understanding.


The Union also claims in paragraph one of its complaint that the County has "reneged on negotiated settlements in the bargaining process." There is insufficient evidence to support this charge and this portion of the Union's complaint is dismissed on that basis. The Union's remaining claim is whether, as charged in paragraph three of the complaint, the County discriminated against bargaining unit employees by discouraging membership in an employee organization when non-bargaining unit employees (but not bargaining unit employees) were provided with the option to obtain compensation for accrued leave time.⁵ However, there was also insufficient evidence submitted at hearing to support and prove this claim.

⁵ At hearing the Union also complained that the County did not bargain in good faith upon the resumption of negotiations following the Union's refusal in June, 2011 to ratify the tentative agreement. The Union contends that the County's less favorable proposals/positions on matters such as wages and contract duration constituted regressive bargaining and were improper. However, this charge is not covered by the complaint as filed, and the Union did not seek amendment of its complaint per Pub 201.04, and so it will not be decided in this decision.

In accordance with the foregoing, the Union's complaint that the County has committed unfair labor practices is dismissed.

So ordered.

October 18, 2012



Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

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