



NH Supreme Court affirmed in part, reversed in part this decision on 10-24-95, Slip Opinion No. 93-164, 93-684, 93-685, 140 NH 303 (1995).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF CONWAY/CONWAY SCHOOL DISTRICT:

Complainant

v.

AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES, AFL-CIO,
LOCAL 859

and

CONWAY EDUCATION ASSOCIATION/NEA-NEW
HAMPSHIRE

and

CONWAY ADMINISTRATORS' ASSOCIATION
TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE

and

CONWAY EDUCATIONAL SUPPORT PERSONNEL
ASSOCIATION/NEA-NEW HAMPSHIRE

Respondents

CASE NO. M-0676

DECISION NO. 93-76

APPEARANCES

Representing Town of Conway/Conway School District:

Jay C. Boynton, Esq., Counsel
Harry Benson, Superintendent

Representing AFSCME, Council 93, Local 859:

Harriett P. Spencer, Staff Representative

Representing CEA & CESP/NEA-New Hampshire:

Steven Sacks, Esq., Counsel
Brian Sullivan, UniServ Director

Representing Conway Administrators/Teamsters Local 633:

Robert Christy, Esq., Counsel
Thomas D. Noonan, Business Agent

Also appearing:

Dick Mezquita, S.A.U. #9
Becky Jefferson, S.A.U. #9
Diane Gilmore, S.A.U. #9
Ralph Ruel, S.A.U. #9
Vincent J. Cataldo, S.A.U. #9
Dennis J. Shoemaker, S.A.U. #9
Sandra Jones, C.E.A.
Bette Tibbitts, C.E.S.P.
Ray O'Brien, C.E.A.
Frank Parent, Town of Conway

BACKGROUND

The Conway School District (District) filed a Petition for Declaratory Judgment on January 12, 1993 seeking advice as to whether it was obligated to continue the existing level of health insurance benefits after contract expiration as part of maintaining the status quo even though those benefits had not been approved by the legislative body. The American Federation of State, County and Municipal Employees (AFSCME) filed a response on January 28, 1993; NEA-New Hampshire (NEA) filed on January 29, 1993; and Teamsters Local 633 (Teamsters) filed on January 28, 1993. At the commencement of the hearing before the PELRB on April 15, 1993, Teamsters Local 633 moved to be dismissed as a party because it had never concluded a contract with the District since it had been certified as an exclusive bargaining agent.

FINDINGS OF FACT

1. The Conway School District is a public employer of employees as contemplated by RSA 273-A:1 X.
2. A.F.S.C.M.E. is the duly certified bargaining agent for support personnel in the categories of grounds-keeper, cafeteria workers, custodians and bus drivers. NEA-New Hampshire is the duly certified bargaining agent for Conway Education Association (CEA) and Conway Educational Support Personnel (CESP). Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for the Conway Administrators Association (CAA).
3. Teamsters Local 633 has never concluded negotiations

or signed a contract with the District on behalf of employees in CAA since it has been certified. The most recent policy (dated September 22, 1988) affecting these employees is found at District Ex. No. 4-A which provides, "The Board agrees to pay the cost of a single membership in Blue Cross/Blue Shield, Plan JY, PS365, MM \$1,000,000 or equivalent for each administrator/supervisor. In addition, the Board agrees to pay the cost of a family membership in Blue Cross/Blue Shield Plan JY or equivalent, minus \$9.75 per month, for those administrators/supervisors who qualify for such a program."

4. The last CESP contract was dated January 25, 1989 and expired on June 30, 1992. District Ex. No. 4-B. Article 14.1 thereof provided, "The Board agrees to pay the cost of a single membership in Blue Cross/Blue Shield Plan J.Y., SP365, MM, \$1,000,000 for each employee who qualifies for such a program. In addition the Board agrees to pay the cost of a family membership in Blue Cross/Blue Shield, Plan J.Y., SP365, MM, \$1,000,000 minus \$10.95 per month. For those people who qualify for such a program, the Board agrees to pay the cost of a two-person membership in Blue Cross/Blue Shield Plan JY, SP365, MM \$1,000,000 minus \$9.75 per month...."
5. The last CEA contract was signed April 18, 1989 and expired June 30, 1992, subject to an Addendum dated February 14, 1991 relative to salary schedule for school year 1991-92. District Ex. No. 4-C. Article 22.1 thereof provided, "The Board agrees to pay the cost of a single membership in Blue Cross/Blue Shield Plan JY for each teacher. For those people who qualify for such program, the Board agrees to pay the cost of a family membership in Blue Cross/Blue Shield Plan JY minus \$10.95 per month in the 1989-92 contract years. For those people who qualify for such program, the Board agrees to pay the cost of a two-person membership in Blue Cross/Blue Shield Plan JY minus \$9.75 per month in the 1989-92 contract years."
6. The last AFSCME contract was dated July 1, 1988 and expired June 30, 1990. District Ex. No. 4-D. Article 21.1 thereof provided, "The District agrees to pay the cost of a single membership

in Blue Cross/Blue Shield Plan JY for each bargaining unit employee. In addition, the District agrees to pay up to a maximum of \$2,600 per year in 1988 against the cost of a two-person or family membership in Blue Cross/Blue Shield Plan JY for employees who elect such membership status. It is further agreed that the Board may, at its sole discretion, obtain such insurance from a different carrier, provided the benefits are comparable with those benefits provided by Blue Cross/Blue Shield Plan JY with Major Medical Coverage that is in existence under this Agreement. The District agrees to pay up to a maximum of \$2,800 per year in 1989 against the cost of a two-person or family membership."

7. All three expired CBA's set forth specific termination dates as are reflected in Findings No. 4, 5 and 6, respectively. Additionally, each CBA provides "This Agreement shall not be extended orally and it is expressly understood that it shall expire on the date indicated. Any extensions shall be mutually agreed upon in writing by the parties to the Agreement, and unless such extensions are agreed upon, this contract shall expire on the date indicated herein."
8. All three expired CBA's were negotiated prior to the decision in Appeal of Sanborn Regional School Board, 133 N.H. 513, 579 A.2d 282 (1990). Since that decision, voters in the Conway School District have rejected contract packages which would have maintained current levels of health care benefits and/or which have increased costs for those benefits, as is more specifically noted in Findings No. 9, 10 and 11.
9. The CAA negotiations proceeded through fact finding with a report issued on November 8, 1991. That report recommended the retention of the same level of health insurance benefits as is reflected in Finding No. 3, above. District Ex. No. 5-B. The fact finding report was rejected at the Conway School District Annual Meeting of March 24, 1992. District Ex. No. 3-D.
10. The CEA negotiations resulted in an agreement which was to have expired on June 30, 1994. It would have provided coverage under the New Hampshire Municipal Association Trust, Comp \$100 Managed Care,

with varying degrees of employee contribution effective November 1, 1992 (\$15.70, \$31.39 and \$42.38 per month) which were to have been further revised on July 1, 1993 (\$31.40, \$62.78 and \$84.76). District Ex. No. 5-A. This settlement was rejected at a Conway School District Special Meeting held on November 19, 1992. District Ex. No. 3-F.

11. The AFSCME negotiations concluded with a memorandum of Understanding signed on June 11, 1992 which called for the District to pay 80% of single, two-person or family coverage at the Blue Cross/Blue Shield Comp 100 rate. District Ex. No. 5-C. This settlement was rejected at a Conway School District Special Meeting held on September 1, 1992. This same meeting passed a "will of the people" resolution calling for a 50% employee contribution to health care benefits. District Ex. No. 3-E. Prior to this, District voters rejected a 1990 fact finder's report for this bargaining unit (District Ex. No. 5-C) which had recommended the Board's proposal of leaving the former coverage unchanged at \$2,800 per year. District Ex. No. 3-C.

DECISION AND ORDER

The singular issue in this case concerns the obligation of the District, if any, to maintain health insurance benefits after the expiration of a CBA or during the pendency of negotiations for an initial CBA, as the case may be. A series of recent cases, several of which have been decided since this litigation commenced, causes us to conclude that the District does have the obligation to continue existing benefits during the pendency of negotiations or after the expiration of a former CBA. In the case of an expired CBA, the continuing benefit is controlled by the terms of the expired contract, i.e., whether a continuing cost amount (as with the AFSCME contract at \$2,800 per year) or a continuing level of benefit (as with the CEA and CESP contracts which recite the Blue Cross JY plan). In the case of the former, the status quo is maintained by adhering to the dollar amount; in the case of the latter, by adhering to the contracted-for benefit.

In East Kingston Teachers Association v. East Kingston School Board, Decision No. 92-159 (October 21, 1992), we held, albeit under a different set of circumstances involving a "until a successor contract is ratified" clause, that "it is inappropriate for either side to unilaterally alter the status quo pending the resolution of the successor CBA through the negotiations process." This decision specifically dealt with health benefits. Five months

later we reiterated this principle in Conway Administrators Association/Teamsters Local 633 v. Conway School District, Decision No. 93-33 (March 19, 1993), relative to a unilateral change in the status quo as it pertains to the evaluation process used for bargaining unit members. We held that the "former practice must remain in effect for the duration of negotiations, until the parties have agreed to the contrary.... For us to hold otherwise would be to encourage the lack of settlement so that one side might rely on that lack of settlement as rationale for the unilateral imposition of a new [term or condition of employment.] This would not only be contrary to our prior holdings relating to the status quo but also contrary to effective labor relations and the obligation to bargain in good faith" as is found in RSA 273-A. The PELRB's adoption of the "level playing field" principle dates back nearly seven years to the Interlakes Education Association, case, Decision No. 86-53 (August 7, 1986). There we noted that "we cannot allow either side to take unilateral action, which action may only serve to reduce their motivation to reach an accommodation and agreement with the other side in negotiations." The same need to proscribe unilateral action exists in this case; the same principle should apply.

We conclude this analysis by looking at the most recent decision of the New Hampshire Supreme Court on the issue of continuing benefits. A divided court in Appeal of Milton School District, Slip op., May 20, 1993, held that the district should not be required to pay step increases under an "evergreen clause," after a CBA has expired and during the pendency of collective bargaining for a new CBA. On the other hand, both the majority and the minority opinions spoke to the importance of maintaining the status quo. The majority, citing the Appeal of Franklin Association 136 N.H. 332 at 337 (1992), said, "[M]aintaining the status quo during collective bargaining after a previous CBA has expired is essential to preserving the 'balance of power guaranteed by chapter 273-A.'" Noting that this has been a long-standing policy of the PELRB, we agree.

Under these circumstances, our opinion in this Petition for Declaratory Judgment is that the health case benefits must be continued during the course of negotiations and consistent with the need to maintain the status quo.

Signed this 26th day of August, 1993.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard Molan present and voting.