



Appeal to NH Supreme Court
withdrawn on November 21, 1995,
Supreme Court Case No. 95-165.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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BEDFORD EDUCATION SUPPORT	:	:
STAFF ASSOCIATION,	:	:
NEA-NEW HAMPSHIRE	:	:
	:	:
Complainant	:	CASE NO. M-0671:3
	:	:
v.	:	DECISION NO. 95-01
	:	:
BEDFORD SCHOOL DISTRICT	:	:
	:	:
Respondent	:	:
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APPEARANCES

Representing Bedford Education Support Staff Association, NEA-NH:

Steven Sacks, Esq.
Marc Benson, UniServ Director

Representing Bedford School District:

Kathleen C. Peahl, Esq.

Also appearing:

Dennis Pope, Bedford School District
Richard Perreault, Bedford School District
Frederick W. Davis, NEA-NH
Fred W. High, Sr., NEA-NH

BACKGROUND

The Bedford Education Support Staff Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Bedford School District (District) on July 6, 1994 alleging violations of RSA 273-A:5 I (a), (c), (e) and (g) resulting from a unilateral change in terms and conditions of employment during negotiations for an initial collective bargaining agreement (CBA). The District filed its answer on August 12, 1994 after which this matter was scheduled for September 22, 1994, postponed by the parties, and then heard by the PELRB on October 27, 1994.

FINDINGS OF FACT

1. The Bedford School District (District) is a "public employer" of teachers and other non-certified employees in its school department within the meaning of RSA 273-A:1 X.
2. The Bedford Education Support Staff Association, NEA-New Hampshire (Association) is the duly certified bargaining agent for custodians and maintenance personnel employed by the district.
3. Following its certification as bargaining agent on January 27, 1993, the Association commenced bargaining with the District for an initial CBA. From that date to the date of hearing in this case, the parties have not reached a contract settlement.
4. Between the date of certification of the bargaining agent and July 1, 1994, the district's board voted to eliminate the position of night supervisor, a non-bargaining unit job, effective July 1, 1994. This action displaced Richard Perrault who had been the night supervisor since September of 1992.
5. Perrault testified that he had applied for a head custodian position before he knew that his job was being eliminated because he wanted to transfer to the day shift, even though he knew this would result in a pay cut. When Head Custodian Albert Latulippe retired effective July 1, 1994, Perrault was hired to fill that vacancy at a rate of \$11.60 per hour or \$24,128 per year, some \$1,107 per year less than he made as Night Supervisor. District Exhibit Nos. 1 and 2, Association Exhibit No. 3. By accepting a head custodian position, Perrault became a member of the bargaining unit since he was now working in an included position.
6. When Perrault was hired as a head custodian effective July 1, 1994 at \$11.60 per hour (\$11.35 base and .25 differential) he joined two other head custodians employed by the district, Robert Roberge, hired on February 2, 1987 and currently making \$11.60 per hour (\$11.35 base plus .25 differential), and Bruce Dostie, hired on June 29, 1987 and currently making \$11.25 per hour (\$11.00 base plus .25 differential). The Association claims that paying Perrault, with a 1990 date of hire, \$11.60 per hour while paying Dostie, with a 1987 date of hire, \$11.25 per hour violates the status quo pending negotiations and the

wage scale presented to it at the commencement of negotiations, Association Exhibit No. 2.

7. On June 16, 1994, the District proposed a salary schedule to the Association which recognized a ten-step scale from starting wages to wages for 8 or more years of service. Association Exhibit No. 7. This compensation scale has not been tentatively or finally agreed upon by the parties. If it were in effect, a custodian would not reach an hourly base rate of \$11.35 per hour until six years of service (step 8 on the scale).
8. Superintendent Dennis Pope testified that the elimination of the night supervisor position occurred as the result of the budget process. In placing Perrault in the lower paying head custodian position, Pope attempted to place Perrault at a range with other head custodians, to recognize skills Perrault brought to the job as a prior employee of the District, and to be consistent with a prior, but unnegotiated, practice when Fred High reverted from being a night supervisor to a custodian and lost an hourly stipend of fifty cents per hour by so doing.
9. Pope testified that he felt he had the weight of past practice which authorized him to hire personnel at wage levels he determined based on the needs of the District and the experience of the individual.
10. There is no evidence that Pope or any other representative of the District had concluded negotiations, reached tentative agreement or entered into a side bar agreement about adjusting and assigning salary levels of custodians or head custodians subsequent to the Association's being certified on January 27, 1993.

DECISION AND ORDER

We dismiss the Association's charges with respect to alleged violations of RSA 273-A:5 I, (a), (c) and (g) for lack of sufficient evidence that such violations occurred. We sustain the Association's charges with respect to an alleged violation of RSA 273-A:5 I (e) on technical grounds only. Because this is a technical violation, no remedy will be directed.

Contrary to the testimony from and expectations of Superintendent Pope, once certification has issued, as it did on January 27, 1993, the status quo must be maintained. Unilateral changes thereafter are prohibited, absent some agreement or "side bar" between the parties which permits alteration to the status quo pending conclusion of negotiations, the required ratifications and

the execution and implementation of a CBA. Such an agreement is missing in the case. Thus, the Superintendent's assumptions were erroneous and he specifically, as well as management generally, must not alter the status quo or avoid the statutory responsibility to bargain in good faith. Unilateral changes to the status quo are violative of the obligation to bargain in good faith.

While the Superintendent's assumptions as to his inherent latitude to set placement and salaries during negotiations were erroneous, we find his actions to have been harmless, thus resulting in only a finding of a technical violation. Before Perrault was appointed to the head custodian position on July 1, 1994, there were three head custodians whose base hourly rates were \$11.00, \$11.35 and \$11.70. When Latulippe, who received \$11.70 per hour, retired, this left two base wage rates for head custodians, i.e., \$11.00 and \$11.35. By filling Latulippe's vacancy with Perrault at \$11.35 per hour, we find that Pope effectively set a base rate for head custodians of \$11.00 to \$11.35 per hour, given their additional responsibilities of dealing with students, teachers and parents, as was more specifically enumerated by Pope's testimony. While this was a unilateral change, it was not prejudicial to the Association absent its ability to sustain its allegations of violations of RSA 273-A:5 I (a), (c) and (g).

We believe the foregoing actions require no remedial order from the PELRB. Conversely, we leave the parties with the admonition that they both are under an on-going obligation to bargain in good faith under RSA 273-A:3 and to abide by the new de facto base line salary for head custodians unless and until it shall be changed by the negotiations process.

So ordered.

Signed this 25th day of JANUARY, 1995.


EDWARD J. HASELTINE
Chairman

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