



NH Supreme Court declined appeal of this decision on March 15, 1993, Slip Op. No. 93-121.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 3657/CONWAY	:	
POLICE DEPARTMENT EMPLOYEES	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. A-0511:5
	:	
CONWAY POLICE COMMISSION	:	DECISION NO. 93-15
	:	
Respondent	:	
	:	

APPEARANCES

Representing AFSCME Local 3657:

James C. Anderson, Staff Representative

Representing Conway Police Commission:

Robert Tawney, Chief Negotiator

Also appearing:

- Robert J. Mullen, Police Commission
- Robert R. Porter, Police Commission
- Judith Gordon, Police Department
- Bernadette Greenwood, Police Department
- Richard Rodevik, Police Department
- Brian Collins, Police Department

APPEARANCES

Council 93, AFSCME, Local 3657 (Union) filed unfair labor practice (ULP) charges along with a request for an immediate cease and desist order on November 2, 1992 against the Conway Police Commission (Commission) alleging violations of RSA 273-A:5 I (e) and (g) relative to a failure to bargain in good faith and "punitive and intimidating" bargaining practices. The Commission filed its Answer on November 17, 1992 after which this matter was heard by the PELRB on January 21, 1993.

FINDINGS OF FACT

1. The Conway Police Commission is a "public employer" of police officers and other personnel as defined by RSA 273-A:I X.
2. Council 93, AFSCME, Local 3657 is the duly certified bargaining agent for police officers (non-supervisory) and other personnel employed by the Commission.
3. The parties have a collective bargaining relationship that goes back more than six years and two collective bargaining agreements (CBA's). They are stalled in their negotiations, having been to mediation twice last September and currently awaiting the services of a fact finder who was appointed November 6, 1992.
4. At the 1992 Town Meeting a motion was made and passed to reduce the Town's cost for health care benefits (i.e., premiums) by fifty (50%) percent on an annualized basis. On July 28, 1992, the Town Manager presented a plan to accomplish reductions in health care costs to address the "Town Meeting mandate for 50% cost sharing of insurance benefits." It provided that "the Police Commissioners should be required to provide a plan which provides a combination of reorganization and temporary layoffs. The bottom line must reflect a 50% reduction in Town benefits costs."
5. At the 1992 Town Meeting, Police Commission Chairman Robert Porter said that "the Police budget does not have money in it to find the \$72,000 without reducing personnel."
6. On August 6, 1992 the Commission wrote a letter to all employees of the Police Department updating them on "where we currently stand concerning the Selectmen's recent decision to implement what they interpret as a mandated 50% reduction in actual expenditures for health care benefits provided to the Town of Conway employees."
7. On September 22, 1992, the Commission wrote a letter to Chief William Scaletti directing "that effective January 1, 1993, the junior clerical position and last hired Patrolmen's position will be eliminated....This action is not in any way punitive, but is necessary because of the budget

reduction guidelines imposed at the 1992 Conway Town Meeting.

8. Appearing before the PELRB, Commission Chairman Porter testified that the elimination of the junior clerical position and the last hired patrolmen's position resulted from administrative reorganization within the Police Department, not the result of the vote for a 50% reduction in the cost of health care benefits. He said the reorganization would have resulted in the elimination of the junior clerk's position, even without the 50% reduction in benefits vote, because elimination of that position after restructuring would not impair the level of dispatch service offered by the department.
9. Police Commission Chairman Porter testified that the junior clerk and last hired patrolman were not the only employees impacted by the Town Meeting vote. Subsequently six (6) patrolmen and three (3) dispatchers have been notified of potential layoffs "if an agreement is not reached on this [health insurance] issue by January 15, 1993." This was "due to budgetary restrictions put on this [police] department by the voters of the 1992 Town Meeting regarding a 50% reduction in the health insurance line item of the 1993 budget."

DECISION AND ORDER

The Union would have this Board find that the employers' actions were "punitive and intimidating" and in violation of RSA 273-A:3 which states that "the obligation to bargain in good faith shall not compel either party to agree to a proposal or to make a concession." This particular statutory provision must be contrasted with another statutory provision of equal weight, namely, RSA 273-A:1 XI wherein "managerial policy within the exclusive prerogative of the public employer" is to be "construed to include...the functions, programs and methods of the public employer, including...the public employer's organizational structure and the...number of its personnel." It is this language, guaranteed by statute, which allows the Town to determine the levels of police and dispatch service it intends to provide and to organize or reorganize to most effectively address that level of service.

In the case before us, the Chairman of the Police Commission testified, as the Union's witness, that the junior clerk and last hired patrolman were laid off as the result of reorganization within the department, not as the result of a town mandate to

reduce the cost of health care benefits by 50%. Likewise, the studies leading to reorganization were prompted by an earlier effort by the Selectmen, as distinguished from the Town Meeting vote, to "hold the line" on expenses and, resultingly taxes. Given these facts coupled with the lack of a threat or coercive behavior ("You take X or we will do Y), we find no violation of RSA 273-A:3, as it might be applied through RSA 273-A:5 I (e) or (g), relative to the two layoffs under discussion.

Notwithstanding this finding, we are unanimously concerned with testimony presented before us relative to conduct which occurred after the ULP was filed, namely, the notice that some six patrolmen and three dispatchers (Finding No. 9, above) have been identified for layoff "if an agreement is not reached" on the health insurance issue. Our calculations clearly indicate that far fewer layoffs would more than amply fund the health insurance benefits in question. While we recognize that there is a position being advocated that it takes a 50% reduction in personnel to create a 50% reduction in the health insurance line item of the town budget, we disagree. The Town has the prerogative and obligation to balance and approve its budget. Collective negotiations should work to that end. In the particular circumstances of this case, the Town's demands step over the line. They transgress on the parties' rights which compel neither of them "to agree to a proposal or to make a concession." RSA 273-A:3 I. Consistent with our authority under RSA 273-A:6 III, we will direct the parties to cease and desist the layoffs contemplated under our Finding No. 9, above, since it falls within the "public interest" to maintain the integrity of both the bargaining unit and the bargaining process until this additional layoff issue may be plead and heard on the merits.

Accordingly, the charge of ULP found in the Union's complaint of November 2, 1992 is DISMISSED. The Town is directed to CEASE and DESIST in implementing layoffs of six patrolmen and three dispatchers pending hearing on the merits of the case involving those layoffs.

So ordered.

Signed this 11th day of February, 1993.



JACK BUCKLEY
ALTERNATE CHAIRMAN

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Seymour Osman and Arthur Blanchette present and voting.