State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HENNIKER SCHOOL DISTRICT Complainant v. HENNIKER TEACHERS ASSOCIATION, NEA-NEW HAMPSHIRE Respondent	CASE NO. T-0331:8 DECISION NO. 93-24

APPEARANCES

Representing Henniker School District:

Thomas Flygare, Esq., Counsel

Representing Henniker Teachers Association/NEA-New Hampshire:

Steven Sacks, Esq., Counsel

Also appearing:

Debra Nitschke-Shaw, Henniker School Board
Lori Krueger, Henniker Teachers Association
Bruce R. Brown, Henniker Teachers Association
W. B. Cumings, NEA-New Hampshire
Don Jones, Henniker School District

BACKGROUND

Henniker School District (District) filed unfair labor practice (ULP) charges against the Henniker Teachers Association (Association) on September 11, 1992 alleging violations of RSA 273-A:5 II (b), (d), (f) and (g) relating to the Association's allegedly improperly attempting to arbitrate step increases. The Association filed its answer and cross complaint on September 21, 1992. The District responded on October 10, 1992. This matter was then heard by the PELRB on December 1, 1992. The parties were given until December 18, 1992 to file post hearing briefs.

FINDINGS OF FACT

1. The Henniker School District is a "public employer" of Teachers and other personnel as defined by RSA 273-A:1 X.

2. The Henniker Teachers Association is the duly certified bargaining agent of teachers and other personnel employed by the District.

3. During the 1991-92 school year, the parties operated under a one year collective bargaining agreement (CBA) which, by its terms (Article XII), remained, "in full force from July 1, 1991 through June 30, 1992," That CBA contained a wage scale consisting of 17 steps and five tracks, namely, BA, BA+15, BA+30, MA and "Effective 6/30/92, MA+30." This CBA contains no "evergreen clause," per se. Article VII, Section A of that document provides, "All staff members will be placed on the proper step of the salary schedule, according to their experience and education."

4. The parties began negotiating for a 1992-93 CBA in October of 1991. Those efforts failed to produce an agreement before the regular (annual) District meeting in March of 1992.

5. On March 5, 1992, one day after the Annual School District meeting, the Association filed two grievances. The first claimed a violation of Article III "for non-payment of step [increases]. It is our understanding that the school district has not budgeted for and has no intention of paying step compensation." The second claimed a violation of Article IV, Section A saying, "It is our understanding that the school district has not budgeted for the projected cost increase of Blue Cross/Blue Shield..."

6. The parties subsequently reached agreement on the terms for a 1992-93 CBA in April or May of 1992. A special school district meeting was set for and held on August 18, 1992. At that meeting, voters first rejected a $65,945 Article to fund step increases, benefits (both health and retirement) and a one percent raise. Thereafter voters approved a $54,128 warrant article to fund the foregoing package (steps, tracks and benefits) less the one percent general wage increase. This was consistent with Article 10 voted at the March 4, 1992 Annual School District Meeting. In the meantime, on June 3, 1992, the parties had agreed to hold the grievances referenced in Finding No. 5 in abeyance

until the results of the August 18, 1992 special meeting were known, according to the testimony of the Association Co-President, Bruce Brown.

7. On August 25, 1992, W.B. Cumings, on behalf of the Association, wrote to Debra Nitschke-Shaw, Chair of the Henniker School Board, informing her that the Association was proceeding to arbitration. A demand for arbitration of that same date was sent to the American Arbitration Association, as contemplated under Article VIII Section B (4) of the CBA.

8. As of the date of hearing the parties had not reached agreement on the terms for their 1992-93 CBA. Bargaining unit members, as of that date, were receiving increased compensation for track changes (as per testimony of Lori Krueger) and increased dollar amounts towards health insurance premiums but not step (longevity) increases.

9. Negotiations conducted as recently as November 22, 1992 involving these parties have dealt with the topic of how to structure the salary settlement. Association Co-President Bruce Brown testified that an Association strategy was to fashion a settlement within the dollar amounts already appropriated at the August 18, 1992 special district meeting even though the manner in which the funds would be expended may differ from the schedule of wages and benefits found in the 1991-92 CBA.

DECISION AND ORDER

The Association's decision to proceed to arbitration on August 25, 1992 was prompted by the District's refusing "to release the money approved by the voters to fund step increases." (Brief, p.2). Although those funds have been approved by the voters, step increases have not yet been paid. The Association would have the PELRB direct the parties to proceed to grievance arbitration so that an arbitrator might determine if the step increases are due to unit members under the residual provisions of their 1991-92 CBA, whatever they may be. Although the Association's position is strengthened by the fact that tracks (an entitlement based on achievement over and above longevity of employment) and increased costs of health insurance benefits are being paid by the District, we cannot agree that grievance arbitration is the proper method to address the issue of funded (appropriated) but unpaid step increases.

Obviously, if the parties had reached an agreement on a successor CBA, there would be an obligation to place employees

properly on the wage scale and pay them accordingly. Failure to do so would be a grievance. This might also be the case if the parties had tentatively agreed to (TA'ed) their salary package but had not yet concluded negotiations on a total contract package. While the outcome in this second scenario is more speculative, it does, at least, possess the thread of an argument of entitlement under the placement (Article VII) and compensation (Article III) portions of the contract.

Neither of the foregoing scenarios is appropriate here. The parties clearly had not agreed either to an entire contract package or to a compensation scheme. To the contrary, an Association witness testified that it was a strategy to attempt to settle within the dollar amounts already voted. This suggests to us that the parties (or at least one of them) wanted to continue to negotiate and that at least one of them did not believe they had reached closure on the issue of salaried compensation. Thus, if the parties have not reached an agreement on salaries and if that agreement has not been incorporated into the new CBA or by an interim side letter, there would appear to be nothing to grieve. The parties' last CBA for 1991-92 defines a grievance as a "violation, misinterpretation or misapplication of any provision of this agreement." While that definition may survive the expiration date of the CBA (Article XII), there is, under the facts of this case, no new contract, represented by consensus on salary issues, the terms of which are enforceable by the grievance procedure.

From a practical standpoint, too, there is no purpose in referring this case to grievance arbitration. The Association has professed a desire to attempt further changes in the compensation scheme through further negotiations, although those changes supposedly would be within the funding already authorized. If this be the case, it would be illogical for this Board (or an arbitrator, for that matter) to direct expenditure of salary step funds, thus further limiting the scope within which the parties might negotiate and frustrating the collective bargaining process. Stated another way, it makes no sense for the Association to have the benefit of funds voted August 18, 1992 in contemplation of closure on a contract package and then be able to negotiate additional salary concessions. The "level playing field" would be lost.

When and if the Association is satisfied with its contract package negotiated with the District, the details of that settlement should be formalized as contemplated by RSA 273-A:4. To be sure, Henniker voters could override their negotiators; such a possibility is contemplated by RSA 273-A:5 I (e) and 273-A:12 III. This did not occur here. The Association has not said it is satisfied with the package voted on August 18, 1992; it has demonstrated its desire to continue to negotiate. To the extent that step increases require an increased appropriation from year to year, that entitlement does not vest with the Association until its

members or ratifying authorities say that they accept the settlement in an action equivalent to what District voters did when they approved the funding for steps, tracks and benefits. Both sides must agree before the offer and acceptance process is consummated. That has yet to occur in this case.

We direct that the Association not proceed to grievance arbitration over the salary step issue raised herein and that the charges of ULP raised by the District and the counter-charges of ULP raised by the Association be DISMISSED.

So ordered.

Signed this 4th day of March, 1993.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Richard W. Roulx and Arthur Blanchette present and voting.