



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME, LOCAL 3657	:	
	:	
Complainant	:	CASE NO. A-0428:54
	:	
v.	:	DECISION NO. 93-87
	:	
HILLSBOROUGH COUNTY	:	
	:	
Respondent	:	

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#### APPEARANCES

##### Representing AFSCME:

James C. Anderson, Staff Representative

##### Representing Hillsborough County:

David Horan, Esq.

##### Also appearing:

Carolyn Kirby, Hillsborough County  
Richard Roulx, Hillsborough County  
Steven Powers, AFSCME Local 3657  
James Vacca, AFSCME Local 3657

#### BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 3657 (Union) filed unfair labor practice (ULP) charges against Hillsborough County (County) on January 11, 1993 alleging violations of RSA 273-A:5 I (a), (c), (d) and (g) related to the County's failing to pay step increases on an expired contract after July 1, 1992, notwithstanding prior recognition and payment of those steps. The County filed an answer on January 26, 1993 after which this matter was heard by the PELRB on April 15, 1993. The post-hearing briefing process was completed by the Union's filing of May 4, 1993.

FINDINGS OF FACT

1. Hillsborough County is a "public employer" of personnel assigned to work in its Department of Corrections, as contemplated by RSA 273-A:1 X.
2. Council 93, AFSCME is the duly certified bargaining agent for employees employed by the County at and for its Department of Corrections.
3. The Union and the County are parties to a collective bargaining agreement (CBA) which expired on June 30, 1990. Article 20 of that agreement provided that it "shall continue from year to year thereafter unless written notice of desire to modify, cancel or terminate...is served by either party on the other at least...120 days prior to the date of expiration, in which case this Agreement shall terminate on June 30, 1990." Article 18 of the CBA contained a wage scale with steps for progression after 1, 2, 3, 4, 5, 6, 9, 12 and 15 years of service.
4. The County, on or about January 8, 1992, informed the Union by letter that it was terminating the "current collective bargaining agreement and any past practices which arose thereunder" effective June 30, 1992.
5. Prior to July 1, 1992 the County had paid and continued to pay step increases under the contract even though it had expired. After July 1, 1992, the County ceased paying longevity steps after the completion of 1, 2, 3, 4, 5, 6, 9, 12 and 15 years of service. Notwithstanding the County's failing to pay these steps after July 1, 1992, other portions of the expired CBA have continued in effect, e.g., shifts, hours, seniority and grievance procedures.
6. Union witnesses Steven Powers and James Vacca testified that an explanation of wage benefits and the step progression was part of the orientation program they received from management and served as an incentive to accept employment with the County.
7. County Business Manager Richard Roulx testified that the County Commissioners continued the practice of paying steps in 1991 and 1992 (until July 1st) after the expiration of the CBA in an attempt to keep negotiations going and to settle the contract, notwithstanding

the fact that the costs associated therewith were not noticed and voted under Appeal of Sanborn Regional School Board, 133 N.H. 513 (1990), after initial contract approval by the commissioners on October 26, 1988.

8. The County delegation specifically disapproved the paying of steps for FY 93 by failing to include funding therefor when it met on June 25, 1992.

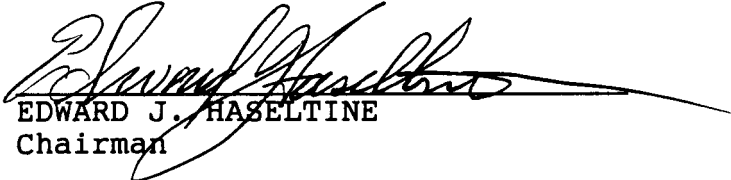
DECISION AND ORDER

Since both the commencement of this litigation and the PELRB hearing in this matter, the New Hampshire Supreme Court issued its decision in Appeal of Milton School District, 137 N.H. \_\_\_\_, on May 20, 1993. A considerable portion of that opinion and the subject over which the members of the court disagreed was the issue of step increases. A majority of the court held that the maintenance of the status quo after the expiration of a CBA did not include the requirement that the employer continue to pay step increases. Moreover, that same majority held that step increases are "cost items" which, in turn, require approval by the "legislative body." RSA 273-A:1 IV. Such approval was not forthcoming in this case.

We believe that the Milton decision is dispositive of the case before us. The ULP is DISMISSED

So ordered.

Signed this 7th day of July, 1993.

  
EDWARD J. HASELTINE  
Chairman

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