State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD SCHOOL DISTRICT Complainant v. CONCORD EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE Respondent	CASE NO. T-0220:24 DECISION NO. 93-115

APPEARANCES

Representing Concord School District:

Edward Kaplan, Esq., Counsel

Representing Concord Education Association/NEA-NH:

Wally Cumings, UniServ Director, NEA-NH

Also appearing:

Bob Silva, Concord School District

BACKGROUND

The Concord School District (District) filed unfair labor practice (ULP) charges against the Concord Education Association (Association) on April 23, 1993 alleging violations of RSA 273-A:5 II (b), (d), (f) and (g) relative to the Association's demanding arbitration over step increases, refusing to bargain and breaching their agreement as it pertains to the grievance process. The Association filed its answer and counter-charges on May 7, 1993. The Association's cross complaint alleged violations of RSA 273-A:5 I (a), (b), (e), (g), (h) and (i) due to the District's failing to follow the negotiated grievance procedure, contractually guaranteed reasons for granting or withholding compensation, and established past practice. The District filed an answer to these counter-charges on May 25, 1993 after which this case was heard by the PELRB on August 5, 1993.

FINDINGS OF FACT

1. The Concord School District is a "public employer" of teachers and other employees as contemplated by RSA 273-A:1 X.

2. The Concord Education Association is the duly certified bargaining agent for teachers and other personnel employed by the District.

3. The District and the Association are parties to a collective bargaining agreement (CBA) which will expire on August 31, 1993. Article I of that agreement provides that "it will be renewed annually from the termination date unless one of the parties has notified the other, on or prior to, December 1, preceding the expiration date that it will not accept renewal." By letter of November 30, 1992 from Douglas Hicks, Negotiations Committee Chair for the District, to David Royle, President of the Association, the District notified the Association that it "will not accept renewal of the current Master Agreement."

4. The parties have not settled the terms of their successor CBA for the 1993-94 school year. On March 30, 1993, the District issued individual teacher contracts for the 1993-94 school year which contained no yearly step, track or longevity increases. Conversely, step progressions on the co-curricular schedule (Appendix D to the CBA) have been recognized for the 1993-94 school year.

5. The compensation schedule for teachers and degree nurses is found at Appendix C of the parties' CBA and provides 14 steps (longevity) and three tracks (academic attainment). Movements on steps, tracks and longevity (Article V, Sec. D.) were not recognized in teachers' individual contracts for the 1993-94 school year. (Finding No. 4) Movement on the salary schedule is controlled by Article V G of the CBA which provides that "certified personnel will be placed on the proper step of the salary schedule according to their teaching experience and education.... Credit will be given for previous experience teaching outside as well as within the District." Longevity is controlled by Article V D of the CBA which provides that certified employees will receive extra compensation for 16 to 20 years of service ($500) and for 21 or more years of service ($1,000).

6. Article IV A of the CBA defines "grievance" as "a claim based on the interpretation, meaning or application of any of the provisions of this Agreement. Only claims based upon the interpretation, meaning or application of any of the provisions of this Agreement shall constitute grievances under this Article."

7. When individual teachers' contracts for the 1993-94 school year did not contain step, track or longevity increases, this action was grieved by unit member K. L. Clock on April 1, 1993 under Article IV of the CBA.

8. Concord School Board Policy No. 423.2, as last revised in February, 1984, provides, "One year of credit will be given for each year's experience that exceeds one-half of a school year. This experience must have been full-day and under contract...." This policy was adopted in 1975 and has been in effect since then.

9. This District is fiscally autonomous with authority to appropriate funds and raise revenues by adjustments to the tax rate without concurrence by the City Council or voters.

10. After K. L. Clock grieved District actions on April 1, 1993, the District timely filed a ULP on April 23, 193, seeking, among other requested relief, a cease and desist order to stop the processing of the pending grievance by the American Arbitration Association which has accepted the Association's demand for arbitration.

DECISION AND ORDER

The issue of step increases has caused considerable litigation these past three years, since the decision in Appeal of Sanborn Regional School Board, 133 N.H. 513 (1990). Sanborn dealt with the issue of cost items, required voters or the legislative body to have notice and specific knowledge that they were approving contract provisions having cost implications as well as the magnitude of those implications, and said that if the evidence presented "does not establish such knowledge, it will not be presumed." 133 N.H. 513 at 520. Notwithstanding the fact that Sanborn involved a regional school board while this case involves a city school board with fiscal autonomy to fund its programs, we see this as a distinction without a difference for purposes of applying the knowledge and notice requirements of that decision. As we noted in Rochester Federation of Teachers, Decision No. 93-111 (August 25, 1993) quoting from Appeal of Milton School District, 137 N.H. _____ (1993), "It would elevate from over

substance to make a distinction between the [District's] specifically rejecting a cost item and . . . simply never approving the item. Either way, the [District] has not approved the cost "item" to fund the step increases after the expiration of the CBA.

Unlike Rochester, this case does not have an automatic renewed clause. Our conclusion, below, is further supported by the District's having given notice to the Association in November of 1992 of its intent not to accept renewal of the CBA.

Finally, lest there should be any ambiguity, the New Hampshire Supreme Court decided Milton earlier this year. It left no question that steps were "cost items" requiring specific approval for expenditures and implementation. In Milton, the court said, "[W]e address whether, in the absence of an enforceable automatic renewal clause, the district was required to pay step increases during collective bargaining after the previous CBA had expired. We hold that it was not." Such a holding in Milton is dispositive of this case, too. We DISMISS all charges in the Association's cross complaint and direct it to CEASE AND DESIST from pursuing this case to arbitration, consistent with relief sought by the District.

So ordered.

Signed the 13th day of October, 1993.

EDWARD J. HASELTINE
Chairman

By majority vote. Chairman Edward J. Haseltine and Member Seymour Osman voting in the affirmative; Member E. Vincent Hall in the negative and dissenting.

DISSENT

Member Hall's Dissent: I dissent from the majority's holding in this case for two reasons. First, the District voluntarily accorded the benefit of the equivalent of step increases when it honored longevity progressions on the co-curricular scale but declined them on the academic pay scale. This is both illogical and discriminatory. It should be a basis to deny the District's "picking and choosing" which benefits to continue and which to curtail under its obligation to maintain the status quo. Second,

the issue in this case squarely falls under the definition of a "grievance" as negotiated by the parties. They should be compelled to resolve their differences on this issue by arbitration, the very process they have agreed to utilize to resolve such disputes under Article IV of their contract.