# State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| WHITE MOUNTAIN EDUCATION ASSOCIATION, NEA-NEW HAMPSHIRE<br><br>Complainant<br><br>v.<br><br>WHITE MOUNTAIN REGIONAL SCHOOL DISTRICT<br><br>Respondent | : | CASE NO. T-0210:11<br><br>DECISION NO. 93-153 |

## APPEARANCES

Representing White Mountain Education Association:

James Allmendinger, Esq.

Representing White Mountain Regional School District:

Bradley F. Kidder, Esq.

Also appearing:

Dick Hoke, White Mountain Regional School District
Brian Sullivan, NEA-New Hampshire
Robert Bergin, White Mountain Regional School District
Ervin Connary, White Mountain Regional School District

## BACKGROUND

The White Mountain Education Association filed unfair labor practice (ULP) charges against the White Mountain Regional School District on February 23, 1993, alleging violations of RSA 273-A:5 I (a), (e) and (g) charging that the employer's interpretation of the negotiated grievance procedure renders its procedures unworkable.

The White Mountain Regional School District filed its answer on March 4, 1993. Continuances were sought and obtained on three occasions. The matter was heard by the PELRB on November 2, 1993 on the issue of the availability of a workable grievance procedure within the meaning of RSA 273-A:4.

## FINDINGS OF FACT

1. The White Mountain School District (District) is a public employer within the meaning of RSA 273-A:1 X.

2. The White Mountain Education Association (Association) is the duly certified bargaining agent for the teachers and certain other employees of the District.

3. The District and Association were parties to a collective bargaining agreement (CBA) for the period July 1, 1989 through June 30, 1992 and, since the expiration date, have been unable to reach a successor agreement. They have operated under the previous agreement maintaining the status quo.

4. The last contract and three previous contracts contained a multi-stage grievance procedure which specified that, following appeal to the School Board, the grieving party might "take whatever action they [sic] may deem appropriate." This language has been understood by the Association to include the choice of resolution through binding arbitration, Superior Court decision or Public Employee Labor Relation Board (PELRB) decision.

5. A dispute arose between the parties over the granting of step increases to teachers for the school year which followed the lapse of the last contract. The foregoing grievance procedure was followed. The Association sought binding arbitration as the final step. The District objected to binding arbitration. The Association filed a demand for arbitration with the American Arbitration Association (AAA) which appointed an arbitrator who then ruled that the language of the grievance procedure did not mandate arbitration.

6. Robert Bergin, a teacher who had negotiated for the Association, and Brian Sullivan, UniServ Director, NEA-New Hampshire, both testified that it had been their understandings that the language of the grievance procedure allowed the Association the choice of mandatory binding arbitration. The District takes the contrary position that the District is not obligated to submit to binding arbitration. The Association contends that, without choice of mandatory binding arbitration for resolution of grievances, the grievance procedure is unworkable and, therefore, does not meet the requirements of RSA 273-A:4.

7. The language in question has been contained in at least four successive CBAs governing the parties since 1981. During negotiations for the most recent contract, the Association put mandatory binding arbitration language on the table but it was not adopted. In the process of negotiations, the issue of binding arbitration was bargained away.

## DECISION AND ORDER

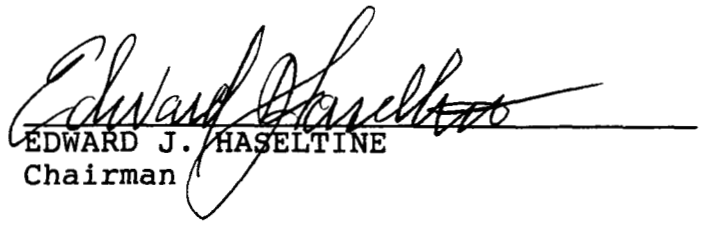
This CBA and the three contracts before it have contained the same provisions relating to a grievance procedure (Finding No. 4, above). Under these circumstances it is difficult for this Board to accept that either of the parties does not understand what that language means and how it has been interpreted over the years.

More compelling than this is the fact that the issue of binding arbitration was put on the table during negotiations for the current CBA and bargained away as part of the accommodations resulting in settlement of that agreement. Since the parties agreed on that "bargaining away" in favor of the then current language, the Association cannot now assert that it obtained a benefit which was traded as part of the negotiations process.

The Unfair Labor Practice is DISMISSED.

So ordered.

Signed this 29th day of December, 1993.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.