State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL NO. 633 OF NEW HAMPSHIRE ON BEHALF OF MANCHESTER AIRPORT EMPLOYEES	:	
Complainant	:	CASE NO. M-0641:1
v.	:	DECISION NO. 97-057
CITY OF MANCHESTER (AVIATION DEPARTMENT)	:	
Respondent	:	

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

Gabriel Dumont, Esq.

Representing City of Manchester:

Kevin M. St. Onge, Esq.
David Hodgen, Chief Negotiator

Also appearing:

Bruce Gagnon, Teamsters Local No. 633
Mike Bryant, Airport Maintenance Worker II

BACKGROUND

Teamsters Local 633 of New Hampshire (Union) filed unfair labor practice (ULP) charges against the City of Manchester Aviation Department (City) on January 17, 1995 alleging violations of RSA 273-A:5 I (a), (e), (g), (h) and (i) relating to a breach of contract from a failure to pay step and longevity increases and to the City's failure to arbitrate this issue. The City filed its answer and a motion for summary judgment on February 1, 1995 after which this case was heard by the PELRB on March 14, 1995. The PELRB issued Decision No. 95-25 in this matter on March 16, 1995 and dismissed the ULP. Rehearing was denied on May 4, 1995 by Decision No. 95-35. The Union thereafter appealed to the New Hampshire Supreme Court. The court accepted this matter for appeal and assigned it Docket No. 95-373.

On February 24, 1997, the Supreme Court issued a memorandum decision vacating the PELRB's decision (Decision NO. 95-25) of March 16, 1995 and remanding the PELRB to assess the meaning and effect of the second sentence of Article XXXX of the CBA and whether it was properly ratified as a cost item. The parties then appeared before the PELRB on May 6, 1997, to address the issues raised on the remand. The parties agreed to file post-hearing memoranda on or before June 2, 1997.

FINDINGS OF FACT

1. The City of Manchester is a "public employer" of personnel employed by its Aviation Department within the meaning of RSA 273-A:I X.

2. Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for personnel employed by the City of Manchester at its Aviation Department.

3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period May 1, 1992 through June 30, 1993. Under the provisions of Article XXXX of that contract, it automatically renewed itself "from year to year thereafter unless, prior to April 1, 1993, or any succeeding anniversary of such date, either party serves written notice on the other party that changes are desired therein or that it desires to terminate the agreement." In the event of such a termination, the CBA provides that "all of the provisions of the terminated agreement shall remain status quo." City Exhibit A, below. Notice of such termination was given by the City to the Union by letter of David Hodgen to Bruce Gagnon, President of Teamsters Local 633, dated March 30, 1993. City Exhibit B, below. A similar notice was provided by the Union to the City by letter dated March 29, 1993 from Bruce Gagnon to David Hodgen.

4. The CBA referenced above (Finding No. 3) was the first contract between these parties. Because the parties used the same wage scale and amounts for the wage article (Article XI) of the new agreement and because negotiations resulted in no new or increased costs, Hodgen certified to the Board of Mayor and Aldermen (BMA) on June 19, 1992 that the new CBA "will not add any new dollars to the Airport budget. There is a provision for uniforms, but they were already budgeted..." City Remand Exhibit No. 7. Wages were disclosed as no change for 1991-1992 with a reopener to be negotiated for 1993. Those reopener negotiations

were never completed during time periods pertinent to these proceedings.

5. The wage article of the contract contains twelve (12) steps: an entry level, four (4) "merit" steps at 12, 18, 30, and 42 months, and seven (7) longevity steps at 5, 10, 16, 23, 26 30 and 34 years. According to testimony offered by Hodgen on remand, the difference between "merit" and "longevity" steps is that the recipient must be recommended for a merit increase by his/her supervisor whereas longevity increases do not require the prerequisite recommendation.

6. During the course of negotiations and prior to the time it became apparent that the City would be changing from a calendar year to a fiscal year which would run from July 1st to June 30th, Hodgen proposed the following "Duration" article in the form of City Remand Exhibit No. 1:

> The provisions of this Agreement shall be effective as of January 1, 1991 and will continue and remain in full force and effect until December 31, 1992 (except as specified in individual articles) and thereafter will automatically renew itself each year unless by September 1, 1992 or September 1 of any succeeding year thereafter either party gives written notice to the other of its desire to modify or terminate this Agreement for 1993 or thereafter.

According to testimony from Gagnon and Hodgen on remand, this proposal caused Gagnon to inquire of Hodgen what would happen if either side were to give notice of its desire to modify or terminate. Hodgen responded by saying, in effect, that items such as benefits, wages, insurance and work rules could not be taken away if the contract expired or was terminated. Gagnon responded by asking Hodgen if he would put that in writing. Hodgen then proposed what is now found as Article XXXX and recognizes the change to a July 1st fiscal year, to wit:

> This agreement shall be in full force and effect from May 1, 1992 to and including June 30, 1993 and shall automatically renewal itself from year to year thereafter unless, prior to April 1, 1993, or any succeeding anniversary of such

> date, either party serves written notice on the other party that changes are desired therein or that it desires to terminate the agreement. In the event that either party terminates the agreement, all of the provisions of the terminated agreement shall remain status quo.

This contract language was agreed to by the parties on May 27, 1992. On remand, Gagnon testified that he understood the word "all" in the second sentence, above, to refer to all portions of the CBA. There were no discussions or negotiations about any contract provisions which were exempt from that language.

7. The new CBA, for the period May 1, 1992 to June 30, 1993 was signed July 15, 1992, almost a month after Hodgen's memo to the BMA on June 19, 1992. (City Remand Exhibit No. 7). Meanwhile, the BMA first considered the CBA on June 23, 1992 (City Remand Exhibit Nos. 6, 7 and 9) without taking action. The BMA meeting on July 7, 1992 (City Remand Exhibit Nos. 8 and 10) met with Hodgen in executive session and then proceeded to approve the contract by a vote of 7 to 2. Minutes of the public session indicate:

> Mr. Hodgen stated that in Non-public Session they have discussed the ratification of the agreement between the City and the Teamsters and it would be appropriate at this time for the Board to vote on whether it will ratify the contract or not. Mayor Wieczorek reiterated that the contract states that there will be no wage increase for two years and a wage reopener for the third year. Mr. Hodgen stated that these employees forwent a raise for 1991 because technically they started negotiations too late so that was established from the start, they have agreed that there is no raise in 1992 and there is a wage reopener in 1993 which means that it is still subject to negotiations but there is not [sic] commitment on the part of the City except that it will negotiate over that issue.

8. The budget for airport operations traditionally

has not drawn much attention because those expenditures are funded by airport fees rather than by an impact on the tax rate. In approving this CBA, the BMA was required to raise no new monies.

9. On June 7, 1994, the BMA passed "A Resolution Abolishing Step/Longevity Increases for all City Employees in the Fiscal Year 1995 Budget." Notwithstanding this, Hodgen testified on remand that longevity raises had been included as part of the FY 95 airport budget. See also March 14, 1995 hearing transcript, p. 28 relating to the testimony of Alfred Testa, Airport Manager, to the inclusion of these longevity funds in the FY 95 budget. Likewise, prior to passing the freeze on step and longevity increases on June 7, 1994, the BMA had passed a FY 95 airport budget inclusive of the costs for those increases.

10. On July 13, 1994, the Union filed a grievance claiming the CBA had been violated because the City failed to pay negotiated step and longevity increases under the contract.

11. On July 28, 1994, Hodgen wrote Gagnon (Union Remand Exhibit No. 1), saying, in part, "It is the City's position that, in accordance with the Milton decision, once a collective bargaining agreement has expired, the City is not obligated to continue to pay step and longevity increases and by the June 7, 1994 action of the BMA, we have no authority to do so [and] ... that this matter is not arbitrable in light of the Milton decision." Appeal of Milton School District, 137 NH 240, was issued May 20, 1993, after the parties negotiated the language of the CBA in question but before the grievance referenced in Finding No. 10.

12. By October 28, 1994, the parties had completed initial grievance processing procedures and the Union requested a meeting to select arbitrators and/or a dispute resolution agency. By November 18, 1994, Hodgen sent Gagnon a letter saying he would file unfair labor practice charges against the Union if it insisted on proceeding to arbitration based on a wrongful demand to arbitrate. The Union then filed its ULP on January 17, 1995.

DECISION AND ORDER

Our task under this remand is to determine if the BMA acted with the requisite "informed legislative ratification" to bind themselves to a continuing contract and, if so, if they are bound by the terms of a negotiated status quo clause in their contract with the Union versus a "judicially imposed status quo" clause such has been referenced in Milton, supra, Appeal of Alton School District, 140 NH 303 (1995), Appeal of City of Franklin, 137 NH 723 (1993) and now Appeal of City of Nashua Board of Education (slip. op., April 24, 1997)

The chronology in this case is clear and undisputed. The parties had a CBA from May 1, 1992 through June 30, 1993. It contained a year-to-year or "evergreen" clause which set forth its own *status quo* provisions and permitted it to continue or "remain *status quo*," thus distinguishing it from *status quo* as has been judicially defined. (Finding No. 3). This language was proposed and crafted by Hodgen (Finding No. 6) after which he and Gagnon agreed on its content, according to Hodgen's testimony, on May 27, 1992. It was approved by the BMA on July 7, 1992 (Finding No. 7). Notices of intent to terminate that 1992-93 CBA were sent by each side to the other on March 29 and 30, 1993, respectively. (Finding No. 3). Thereafter, during the post-termination *status quo* which began July 1, 1993, the City continued to fund and to pay step increases under the CBA for and during FY 1994. The funding for similar merit and longevity increases for FY 1995 was in and approved as a part of the airport budget for that fiscal year and would have been paid but for the resolution passed by the BMA on June 7, 1994 (Finding No. 9). This is insightful as to the parties' perception of the language in Article XXXX and their intent to continue to pay their negotiated merit and longevity increases during the *status quo* period which followed the termination of the CBA on June 30, 1993. (See also Union brief p 4.) This part of the City's conduct was consistent with the Union's expectations, per Gagnon's testimony (Finding No. 6).

With this in mind, we look to the role of the BMA, both as a "public employer" under RSA 273-A:I X and as the "legislative body" under RSA 273-A:1 II and 273-A:12 III. In the spring of 1994, the funding process was concluded; the BMA had passed the airport's "status quo" budget, inclusive of the FY 1995 merit and longevity increases. At this point, the obligation to pay those merit and longevity increases was complete and would be subject to modification during the next FY only if the parties negotiated and funded a different compensation package to become effective before FY 1996. To hold otherwise would suggest that a public employer could unilaterally interpret or unilaterally alter the compensation terms of a CBA while it was in effect. This, in turn, would make the negotiating process meaningless, unending and contrary to the obligation to bargain in good faith found in RSA 273-A:3. Neither party sought to reopen negotiations after the funding action by the BMA in the spring of 1994 consistent with RSA 273-A:3; thus, "the deal" was struck at that time for the duration of the funding approval, in this case for FY 1995.

Our assessment of the case, at this juncture and in light of the remand, is that the parties, by the words of Article XXXX and by the

City's actions of approving and paying merit and longevity raises after June 30, 1993, have demonstrated their perceptions of the meaning of that article and of its specificity such as to avoid a "judicially imposed" *status quo* by crafting their own contractual language and expectations. We turn, then, to the issue of "informed legislative ratification" and whether the BMA recognized that their actions in approving the airport budget in the spring of 1994, for FY 1995, had "cost item" implications.

While we have specific testimony and evidence on the details for the ratification and funding of the 1992-93 CBA (Finding Nos. 6, 7 and 8), we also know that, prior to passing the freeze on step and longevity increases, the BMA passed a FY 95 airport budget inclusive of the costs for those increases. (Finding No. 9). As the Union observes in its brief (p. 9), in the circumstances of a city, as an entity, the "city" is a public employer under RSA 273-A:1 X. The executive body, in this case responsible for the conduct of negotiations with the certified bargaining agent, is the BMA under RSA 273-A:1 II. But then, the BMA is also the legislative body of the public employer. It is difficult, if not impossible, for us to contemplate circumstances under which they would not be knowledgeable of instructions and limits given to their negotiator in their role as the executive body of the city and then be unmindful, unknowing or uncaring about the cost of the package they were called on to approve, in this case, the airport budget for FY 1995. Since the BMA is responsible both for directing the negotiations of the CBA and for the funding of its provisions, we cannot accept that they would be knowledgeable about one function and not the other. If that were the case, in the Union's words, it would produce "the absurd result of allowing the City to avoid its contracts on the ground that it failed to adequately apprise itself of the existence and financial impact of an applicable evergreen clause." (Brief, p. 10.)

Based on the foregoing and consistent with the remand, we find that the parties, by their conduct and agreement, concluded a contractual *status quo* and, consistent with Appeal of Alton School District, *supra*, by so doing, defined their post-term relationship in such a way as to avoid judicially imposed *status quo*. We also find that the impact or "cost item" associated with "step and longevity" increases was duly approved by the BMA when it approved the airport budget for FY 1995 and before it rescinded step and longevity increases generally on June 7, 1994. In making these findings, we reverse our results in Decision No. 95-025, below, and find that the June 7, 1994 resolution was null and void since, although the BMA had the right to review the financial terms of a CBA -- the FY 1995 CBA in this case, there is no need to approve a cost item more than once. "If the [BMA] approves a CBA, it has no choice but to fund ...benefits...pursuant to its terms." Appeal of Franklin, 137 NH 723, 730 (1993). Thus, the City is obligated to pay, and shall pay, bargaining unit employees step and longevity raises previously approved as described herein for FY 1995. This shall apply to all bargaining unit employees employed all or part of FY 1995 but shall not include interest or penalties. Any impact attributed to the payment of these step and longevity increases for FY 1995 shall be handled and treated by the City in the same manner that it treated

similar increases paid in FY 1994 with respect to any adjustments to base compensation caused thereby.

So ordered.

Signed this 24th day of July, 1997.

EDWARD J. HASELTINE
Chairman

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