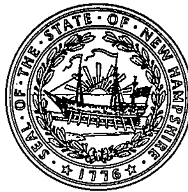


State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WENDY WALKER AND WAKEFIELD EDUCATION ASSOCIATION, NEA-NH

Complainant

v.

WAKEFIELD SCHOOL DISTRICT

Respondent

CASE NO. T-0356:4

DECISION NO. 1998-080

MOTION TO ENFORCE

The parties, each represented by counsel, appeared before the PELRB on September 1, 1998, as the result of a Motion to Enforce filed by the Association on June 29, 1998 and objections thereto filed by the District on July 13, 1998. Item 3 of the District's objections suggested that this Board should take no action on the Motion to Enforce "while the appeal is pending at the New Hampshire Supreme Court." We take administrative notice of our own records, namely, that the Supreme Court did not accept this matter until its Order of Notice dated September 18, 1998, and, to avoid confusion, interpret the District's language in Item 3 to mean "while the appeal is awaiting a decision on whether it will be accepted or declined by the New Hampshire Supreme Court."

BACKGROUND

Procedurally, the chronology of this case is as follows. The Wakefield Education Association, NEA-New Hampshire, filed unfair labor practice (ULP) charges against the Wakefield School District on August 18, 1997 alleging a violation of RSA 273-A:5 I (h) for breach of contract for failure to provide and pay benefits under a long-term disability insurance plan as set out

in Article 14.3 of the parties' 1994-96 collective bargaining agreement (CBA). The District filed its answer and exceptions on September 5, 1997 after which the Association filed supplemental pleadings on October 9, and 24, 1997. This matter was then heard by a PELRB hearing officer on October 28, 1997 with post-hearing briefs being filed on November 13, 1997.

The hearing officer's decision (Decision No. 1997-114) was issued on December 16, 1997 and contained both a finding of a breach of contract in violation of RSA 273-A:5 I (h) and a remedy requiring the District to comply with negotiated contract provisions as they applied to disability insurance. On January 13, 1998, the District moved to review and reverse the hearing officer's decision under RSA 273-A:6 VIII. The Association filed objections thereto on January 28, 1998 after which the PELRB unanimously denied the Motion to Review and Reverse on March 20, 1998 (Decision No. 1998-022). The District then filed a Motion for Rehearing on April 8, 1998. The Association filed objections thereto on April 21, 1998 after which the PELRB denied the District's Motion for Rehearing on May 8, 1998 (Decision No. 1998-042).

On June 8, 1998, the District filed an appeal in this matter with the New Hampshire Supreme Court. According to the Association's Motion to Enforce, filed June 29, 1998, as of that date, the District had not complied with the order in Decision No. 1997-114 nor had there been any filing seeking a suspension of the PELRB decision as is contemplated by RSA 541:18. Subsequent to the parties appearance before the PELRB on September 1, 1998, the appeal was accepted by the Court on September 18, 1998.

<u>DECISION</u>

We have reviewed this case in the context of a contractual dispute inasmuch as the ULP alleges a violation of RSA 273-A:5 I (h). Article 14.3 of the 1994-96 CBA (Association Exhibit No. 7) provided:

> 14.3 The School Board agrees to provide at no cost to the teachers a long-term disability insurance plan which provides benefits for long or extended illness or disability as defined by the plan. Such a plan will be provided for by an insurance carrier chosen by the employer. The plan will provide for pay for 60% of

> the teacher's annual salary determined and paid over a 12 month period up to a maximum of $5,000.00 per month and may continue up to age 65.

Similarly, the follow-on contract for SY 1996-98 contains the same language (District Exhibit No. 2).

Walker was employed as a special education teacher from 1989 until the 1995 school year ended in June of that year when she was non-renewed for cause. Thereafter Walker applied for long term disability insurance on August 28, 1995. After the claim was assessed by the insurer, she was assigned an incurrence date of December 20, 1994 and a disability date of June 23, 1995 (Decision No. 1997-114, Finding No. 5). Walker received benefits of $870 per month for two years until September of 1997 when she received notification that the monthly disability benefits under the contract would cease. Accordingly, the filing of the ULP and the supplemental pleadings were timely under RSA 273-A:6 VII. The aforesaid benefits were paid under American Bankers Life Assurance Company of Florida, policy number NH-012586, which became effective on December 1, 1994 and was effective when Walker filed her claim for benefits. Notwithstanding the language of Article 14.3 of the CBA, cited above, the American Bankers policy had a 24 month maximum option for disability due to mental illness, the provision under which Walker was receiving benefits. (District Exhibit No. 3, page 11). On the final page of the policy, more particularly described as the second and final page of the application form, the superintendent signed the application under the space where the mental illness limitation was selected, i.e., these benefits were thereby limited to 24 months rather than the age 65 coverage mandated by the language found at Article 14.3 of the CBA. Since the superintendent was both signatory to the insurance application and chief administrator of the CBA, notwithstanding the variance in disability benefits levels, the District cannot absolve itself from compliance with the CBA.

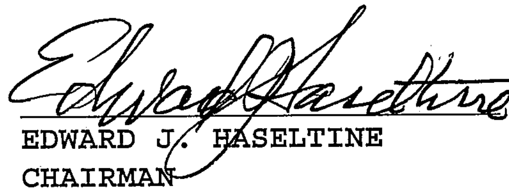
The hearing officer's findings and rationale are set forth in more detail in Decision No. 1997-114, the contents of which are incorporated by reference. Article 14 of the CBA speaks to "illness or disability pay," clearly indicating that the negotiated benefit did not intend to discriminate as to the type or source of disability or illness when determining eligibility for benefits, 60% of pay "to continue for as long as they are disabled, up to the age of 65...." (CBA, Article 14.) Likewise,

the election of the 24 months option by the District and/or its agent does not negate or change the meaning of the words negotiated in the CBA. The District's election of the 24 months limitation on the type of benefits paid to Walker does not invalidate Article 14.3 of the CBA; it merely means that the District has chosen to be a self-insurer for any benefits due her after the expiration of 24 months of benefits under the insurance policy.

The remedy provided by this Board is no more and no less than that which was negotiated between the parties. Notwithstanding the most recent arguments of the District in this matter, our function here is as it was in Appeal of Timberlane Regional School Board, 142 N.H.______(slip. op., May 29, 1998), namely, to order the enforcement of a valid CBA. Until such time as a suspension of this Board's order has been sought from and granted by the New Hampshire Supreme Court, in accordance with RSA 541:18, that order is valid and the District is directed to comply with it forthwith.

So ordered.

Signed this 24th day of SEPTEMBER, 1998.



EDWARD J. HASELTINE
CHAIRMAN

By unanimous decision. Chairman Edward J. Haseltine presiding. Members William Kidder and Richard Molan present and voting.