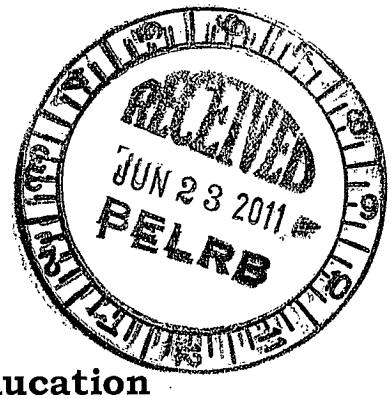
Declines appeal of PELRB Decision No. 2011-059.



THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0305, Appeal of Bedford Education Association/NEA-NH, the court on June 22, 2011, issued the following order:

Appeal from administrative agency is declined. See Rule 10(1).

Under Supreme Court Rule 10, the supreme court has discretion to decline an appeal from an administrative agency. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

This matter was considered by each justice whose name appears below. If any justice who reviewed this case believed the appeal should have been accepted, this case would have been accepted and scheduled for briefing.

Declined.

Dalianis, C.J., and Duggan, Hicks, Conboy and Lynn, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
NH Public Employee Labor Relations Board, E-0099-1
James F. Allmendinger, Esquire
Kathleen C. Peahl, Esquire
Attorney General
File

NH Supreme Court declined appeal of this decision on 06-22-2011.
(NH Supreme Court Case No. 2011-0305)

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Bedford Education Association/NEA-NH

v.

Bedford School District

Case No. E-0099-1
Decision No. 2011-059

Appearances: James F. Allmendinger, Esq., NEA-NH, Concord, New Hampshire for the Bedford Education Association/NEA-NH

Kathleen C. Peahl, Esq., Wadleigh, Starr & Peters, PLLC, Manchester, New Hampshire for the Bedford School District

Background:

The Bedford Education Association/NEA-NH (Association) filed an unfair labor practice complaint against the Bedford School District (District) on August 11, 2010. The Association claims that the District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (e), (g), and (h) and violated RSA 273-A:3, I when it failed to fund the step increases for teachers for the 2010-2011 school year. The Association asserts that the District is obligated to pay step increases under RSA 273-A:12, VII (evergreen law) because the parties "entered into" a collective bargaining agreement after the July 15, 2008 effective date of the evergreen law.

The District denies the charges and claims the parties entered into the disputed collective bargaining agreement prior to July 15, 2008 and the Association's request for pay increases scheduled in the pay plan contained in the now expired collective bargaining agreement fails on

that basis. The District also claims the complaint should be dismissed because it was not filed within six months of the alleged violation as required by RSA 273-A:6, VII.

This Board held a hearing on the complaint on November 9, 2010 at the offices of the PELRB in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties filed post-hearing briefs and the Board's decision is as follows.[1]

Findings of Fact

1. The Bedford Education Association/NEA-NH is the certified exclusive representative of certain bargaining unit employees who work in the District.

2. The Bedford School District is a public employer within the meaning of RSA 273-A:1, IX.

3. During the summer and fall of 2007 the parties negotiated the collective bargaining agreement at issue in this case. *See* Joint Exhibit A. "Master Agreement By and Between The Bedford School Board and the Bedford Education Association For the Period July 1, 2008 through June 30, 2011" (2008 to 2011 CBA). *See* Joint Exhibit A. The 2008-2011 CBA was reduced to writing and signed by the parties on April 15, 2008.

4. The 2008-2011 CBA states, at page 3, "This Agreement made and entered into on this 15th day of April, 2008, by and between the Bedford School Board, hereinafter referred to as "Board", and the Bedford Education Association, hereinafter referred to as "Association.""

5. Article 18 provides "The provisions of this Addendum will become effective on July 1, 2008 and will remain in full force and effect through June 30, 2011."

6. Appendix C to the 2008-2011 CBA contains three separate salary schedules for the 2008-2009, 2009-2010, and 2010-2011 school years.

7. Although the 2008-2011 CBA covers a three year period, and contains a different salary schedule for each year of the agreement, the District did not present the entire cost of the 2008-2011 CBA in the warrant article presented to voters at town meeting in March, 2008.

[1] On December 2, 2010 the District submitted a request for findings of fact. Rulings on such requests are only required under RSA 541-A:35 when they are submitted in accordance with this Board's rules, set forth in Pub 100-300. The District's requests will not be acted upon since they are not authorized under Board's rules, the Board did not request them in this case, and this decision includes separately stated findings of fact which are the basis for this decision.

Instead, only the costs for the first year of the 2008-2011 CBA were included, and the warrant article was approved.

8. The costs for the second year of the 2008-2011 CBA were presented to voters in a 2009 warrant article, which was approved at the March 2009 town meeting, but by a relatively narrow margin of approximately 25 votes.

9. The costs for the third year of the 2008-2011 CBA were presented to voters in a 2010 warrant article, which was defeated at the March, 2010 town meeting.

10. The District has presented the costs of multi-year collective bargaining agreements to voters on a year by year basis for a number of prior collective bargaining agreements without any objection by the Association, and the Association viewed this practice as an acceptable arrangement. The Association was aware that the action of the voters was uncertain, as in March of 1993, when the costs for the third year of a multi-year collective bargaining agreement were voted down, a special meeting was held in September, at which time a warrant article containing a reduced contract cost was approved.

11. By the end of 2009, District representatives had contacted Association representatives seeking to renegotiate the costs of the third year of the 2008-2011 CBA because of the voter's narrow approval of the costs of the second year of the CBA. District representatives believed a renegotiated agreement might have a better chance of approval at the March, 2010 town meeting. Ultimately, however, the Association declined to renegotiate as requested, and voters defeated the relevant warrant article at town meeting in March, 2010, as noted.

12. District representatives made statements to some bargaining unit employees and representatives in late 2009 suggesting that step pay increases would not be provided in the event the warrant article containing the costs of the third year of the 2008-2010 was defeated.

13. The evidence submitted does not reflect that the District anticipated or understood that voter approval of the warrant article in March, 2009 would mean the parties had entered into their first collective bargaining agreement after the July 15, 2008 effective date of RSA 273-A:12, VII.

Decision and Order

Decision Summary:

The District's motion to dismiss on the basis of the six month limitation period set forth in RSA 273-A:6, VII is denied. The unfair labor practice charge is denied and the complaint is

dismissed because the parties entered into the 2008-2011 CBA prior to the July 15, 2008 effective date of RSA 273-A:12, VII.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

This case requires the Board to determine whether the Association's complaint is untimely and, if not, whether the parties entered into a collective bargaining agreement after the July 15, 2008 effective date of RSA 273-A:12, VII, thereby entitling bargaining unit employees to step increases for the 2010-2011 school year. As to the District's motion to dismiss, the complaint was filed within six months of the date bargaining unit employees received employment contracts without step increases. The complaint was filed more than six months after the District first suggested that such step increases would not be provided in the event the relevant warrant article was defeated at town meeting in March, 2010. The District's motion to dismiss is denied because it would have been premature for the Association to file the complaint before the March, 2010 town meeting was held and before the District actually tendered to bargaining unit employees the now disputed contracts for the 2010-2011 school year.

This leaves the question of whether the parties entered into a collective bargaining agreement after the effective date of RSA 273-A:12, VII (eff. July 15, 2008). This provision of RSA 273-A:12 provides as follows:

> For collective bargaining agreements entered into after the effective date of this section, if the impasse is not resolved at the time of the expiration of the parties' agreement, the terms of the collective bargaining agreement shall continue in force and effect, including but not limited to the continuation of any pay plan included in the agreement, until a new agreement shall be executed. Provided, however, that for the purposes of this paragraph,

the terms shall not include cost of living increases and nothing in this paragraph shall require payments of cost of living increases during the time period between contracts.

The Association argues the parties did enter into a collective bargaining agreement after July 15, 2008 on account of voter approval, in March of 2009, of the warrant article reflecting the costs of the second year of the agreement.

The Association has made valid points to support its position that the 2008-2011 CBA should now be treated as three separate and divisible collective bargaining agreements because of the manner in which costs were submitted to the voters at town meeting, and we find this case presents a somewhat close and difficult question. Ordinarily, after collective bargaining has been completed a written contract is drafted, the costs of the agreement are submitted without delay to the next regular meeting of the local legislative body for approval pursuant to RSA 273-A: 3, II (b), and a final written agreement is prepared and signed by the parties after the costs have been approved. The parties in this case followed a slightly different procedure, apparently by agreement and without objection by the Association, because the costs of the 2008-2011 CBA were presented to the voters in installments and over a multi-year period. This was done even though negotiations for the entire agreement were completed in 2007 and all the costs of the entire agreement could have been presented to the voters at the March, 2008 town meeting.

We conclude that a finding that the parties entered into three separate collective bargaining agreements, at least for the purposes of RSA 273-A:12, VII, is not supported by the weight of the evidence. Such evidence includes, for example, the written 2008-2011 CBA (Joint Exhibit A) itself, which is plainly a single and unified agreement, and the parties' own understanding during the time period prior to July 15, 2008. During that interval we believe both

parties considered the 2008-2011 CBA to be a single collective bargaining agreement, and not a series of three separate and independent agreements.

The fact that portions of the 2008-2011 CBA were ultimately subjected to voter approval after July 15, 2008 does not mean the parties had not entered into the 2008-2011 CBA prior to that date for purposes of RSA 273-A:12, VII. Further, given its character as a single collective bargaining agreement covering a multi-year period, the 2008-2011 CBA must have been entered into either before or after July 15, 2008. Facts which demonstrate the 2008-2011 CBA was entered into prior to July 15, 2008 include the occurrence and completion of negotiations in 2007, voter approval of costs in March, 2008, and the preparation of a single and final written collective bargaining agreement duly signed by the parties in April, 2008. We also observe that it does not appear that the parties in general, or the District in particular, intended to "enter into a collective bargaining agreement" for the purposes of RSA 273-A:12, VII in the event of voter approval of the relevant warrant article at the March 2009 town meeting.

Accordingly, based on the record submitted for decision we conclude that, for the purposes of RSA 273-A:12, VII, the 2008-2011 CBA constitutes a collective bargaining agreement which was entered into prior to July 15, 2008. Therefore, the Association is not entitled to take advantage of the provisions of RSA 273-A:12, VII given the circumstances of this case. The Association's charge that the District has committed an unfair labor practice is denied and the complaint is dismissed.

So ordered.

Date: February 23, 2011

Jack Buckley
Chairman

By unanimous vote of Chair Jack Buckley presiding. Board Member Richard J. Laughton, Jr. and Board Member Carol M. Granfield

Distribution: James Allmendinger, Esq.
Kathleen Peahl, Esq.

NH Supreme Court declined appeal of Decision No.2011-059 on 06-22-2011.
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STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Bedford Education Association/NEA-NH

v.

Bedford School District

Case No. E-0099-1
Decision No. 2011-091

Order on Motion for Rehearing

On March 25, 2011 the Bedford Education Association/NEA-NH (Association) filed a motion for rehearing of PELRB Decision No. 2011-059. Motions for rehearing are governed by RSA 541:3 and Pub 205.02, which provides in part as follows:

> **Pub 205.02 Motion for Rehearing.**
>
> (a) Any party to a proceeding before the board may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order within 30 days after the board has rendered its decision and order by filing a motion for rehearing under RSA 541:3. The motion for rehearing shall set out a clear and concise statement of the grounds for the motion. Any other party to the proceeding may file a response or objection to the motion for rehearing provided that within 10 days of the date the motion was filed, the board shall grant or deny a motion for rehearing, or suspend the order or decision complained of pending further consideration, in accordance with RSA 541:5.

Upon review the Association's Motion for Rehearing is denied.

So ordered.

Date: MARCH 31, 2011

Jack Buckley
Chairman

By unanimous vote of Chair Jack Buckley presiding, Board Member Richard J. Laughton, Jr. and Board Member Carol M. Granfield.

Distribution: James Allmendinger, Esq.
Kathleen Peahl, Esq.