



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Bow Education Association/NEA-New Hampshire

v.

Bow School District

Case No. E-0119-1

Decision No. 2011-307

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: December 9, 2011

Appearances:

James F. Allmendinger, Esq. for the Complainant

Michael Elwell, Esq. for the Respondent

Background:

The Association filed a complaint on October 13, 2011 charging that the District improperly failed to provide step increases for the 2011-2012 school year. The parties' most recent collective bargaining agreement is dated July 1, 2010 to June 30, 2011 (2010-11 CBA), and the parties are still attempting to reach agreement on a successor contract. The 2010-11 CBA was negotiated subject to the provisions of RSA 273-A:12, VII (the "evergreen law") which in general provided for the continuation of employee pay plans set forth in expired collective bargaining agreements during intervals between contracts. The 2010-11 CBA does not include what is commonly known as an "evergreen clause," although the costs of steps for the 2011-2012 school year were included in warrant articles approved at the 2011 town meeting. In these circumstances, the Association claims the District is obligated to provide the disputed

step increases even though the legislature repealed the evergreen law effective March 1, 2011, a date subsequent to the bargaining and approval of the 2010-11 CBA. According to the Association the District's conduct constitutes an unfair labor practice in violation of RSA 273-A:5, I (a),(e),(h), and (i). The Association requests that the PELRB order the District to pay the disputed step increases and provide other relief as appropriate.

The District denies the charge and has raised a number of defenses. The District contends that employees are not entitled to step increases given the repeal of the evergreen law and the District's obligations under the status quo law. According to the District legislative proposals to phase in the repeal of the evergreen law were considered but rejected. The District also notes that once the legislature repealed the evergreen law warrant articles for the 2011 town meeting were already finalized and posted and so the costs of the disputed step increases were presented to voters and approved in that context. The District also argues the Association's complaint is barred because this dispute has been effectively resolved through the grievance process and the complaint is untimely.

ISSUE FOR DETERMINATION

Whether the District's failure to provide the disputed step increases constitutes an unfair labor practice in violation of RSA 273-A:5, I (a), (e), (h), and/or (i).

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing. Copies of all exhibits are to be submitted to the presiding officer in

accordance with Pub 203.03. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

DECISION

1. "Parties" means the Association, the District, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference I granted the parties' request to continue the hearing currently scheduled for December 20, 2011 in order to provide the parties with additional time to attempt to resolve this complaint in ongoing negotiations. The case is rescheduled to January 30, 2012, a date acceptable to both parties.
3. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than January 20, 2012.
4. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.
5. As discussed at the pre-hearing, it is possible this case can be submitted for decision on a stipulated record and briefs. Accordingly, on or before January 20, 2012 the parties shall notify the PELRB whether this matter can be submitted on stipulations and briefs and if so submit a proposed schedule for submission of stipulated facts, stipulated exhibits, opening briefs, and reply briefs. It should be noted that both parties' opening briefs will be due on the same date, and likewise with respect to reply briefs.

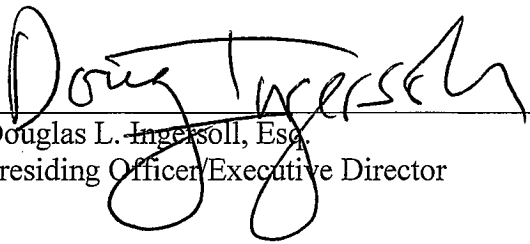
HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or determination that the case can be submitted on stipulations and briefs, or for other good cause shown, the adjudicatory hearing between the parties will be held on **January 30, 2012 at 9:00**

a.m. at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 hours.

So ordered.

December 9, 2011



Douglas L. Ingersoll, Esq.
Presiding Officer/Executive Director

Distribution:
James F. Allmendinger, Esq.
Michael Elwell, Esq.