



THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

In Case No. 2013-0499, Appeal of Monadnock District Education Association, the court on October 9, 2013, 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 Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

**Eileen Fox,  
Clerk**

✓ Distribution:  
NH Public Employee Labor Relations Board, E-0028-6  
James F. Allmendinger, Esq.  
James A. O'Shaughnessy, Esq.  
Attorney General  
File

NH Supreme Court declined  
appeal of this decision on  
10-10-2013.  
(NH Supreme Court Case No.  
2013-0499)



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Monadnock District Education Association/NEA-NH**

v.

**Monadnock Regional School District**

**Case No. E-0028-6**  
**Decision No. 2013-026**

Appearances: James F. Allmendinger, Esq. for the Complainant  
James A. O'Shaughnessy, Esq. for the Respondent

**Background:**

The Association filed an unfair labor practice complaint on June 7, 2012 claiming that the District violated RSA 273-A:5, I (a), (e), (h), and (i) when it unilaterally changed the salary schedule after both parties ratified a four-year successor collective bargaining agreement (CBA). The Association alleges, among other things, that the parties agreed to a \$500 increase for "off step" employees ("off step" increase) and that the Association would have the authority to decide how to distribute the agreed upon amount of \$650,000 salary increase; that at the final bargaining session the District accepted the 2012-2013 salary schedule, which was prepared by the Association and contained a \$500 "off step" increase and new steps; and that the District refused to abide by this salary schedule after the parties ratified the agreement. The Association requests that the PELRB, among other things, order the District (1) to cease and desist from unilaterally changing terms and conditions of employment; (2) to accept the Association's post-ratification salary proposal or return to the status quo and to negotiations on a successor CBA; (3) to post the PELRB decision; and (4) to make any employee who has suffered any loss of wages or benefits whole.

The District denies the charges and asserts that it did not agree to a \$500 "off step" increase or to allow the Association to decide how to distribute the salary increase; that it did not receive the salary schedule prepared by the Association until after the agreement was ratified by both parties and approved by voters; and that the parties agreed that the employees would only move up one step in a salary schedule in the first two years of the agreement. The District also argues, among other things, that the Association failed to state a claim for which relief can be granted and that the claims are barred in whole or in part by the doctrine of estoppel.

The undersigned hearing officer conducted a hearing on August 7, 2012 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties' stipulations are incorporated in the Findings of Fact below.

#### **Findings of Fact**

1. The District is a public employer within the meaning of RSA 273-A:1, IX. It includes the Towns of Fitzwilliam, Gilsum, Richmond, Roxbury, Sullivan, Swanzey, and Troy. See Exhibit 9.

2. The Association is the exclusive bargaining representative of District employees in the following positions: All Classroom Teachers, Librarians, Guidance Counselors, and Nurses. Nurses were added to the bargaining unit on September 29, 2010 pursuant to a PELRB order granting an agreed upon modification petition. See PELRB Decision Nos. 2010-174 & 2010-175 (Amended Certification).

3. The District and the Association were parties to a CBA that expired on June 30, 2012.

4. Negotiations on a successor agreement began in the fall of 2011 and included at least ten bargaining sessions. The last bargaining session took place on December 21, 2011.

5. On December 21, 2011 the Association's negotiating team consisted of eight members and included Chief Negotiator UniServe Director Michelle Couture, Association President Dr. Elliot Kaplan, former Association President Cheryl Kahn, Association's Secretary Treasurer Marie Szymcik, and Deborah Snyder. Ms. Couture, Ms. Kahn, Ms. Szymcik, and Ms. Snyder have experience in negotiating collective bargaining agreements.

6. The District's negotiating team had six members, including Chief Negotiator Attorney James O'Shaughnessy, School Board Member Patricia Bauries, Business Manager Jane Fortson, and School Board Member Edward Jacod. Ms. Bauries, Ms. Fortson, and Mr. Jacod have experience in negotiating collective bargaining agreements.

7. In past negotiations, the District gave the Association the proposed amount of a salary increase and the Association then prepared a salary schedule based on this amount or on a counter-proposal amount and presented the proposed schedule to the District. The District either accepted the Association's schedule or rejected it and made another proposal. This process typically continued until a schedule was agreed upon, in which case the District kept the proposed schedule. Tentative agreements were usually signed by both parties when reached and a copy of an agreement was provided to Ms. Bauries because she was responsible for presenting it to the full School Board at the ratification meeting.

8. On December 21, 2011 the parties negotiated from around 5:00 p.m. until 11:00 p.m. At first, all participants worked together at the same table. If the parties could not agree on a particular article or proposal, they then moved to separate rooms to caucus. Attorney O'Shaughnessy and Ms. Couture periodically met outside "caucus" rooms to communicate their respective negotiating teams' positions. The negotiating teams went back to the common table to discuss counter-offers or new proposals. Ms. Fortson created spreadsheets for the District's negotiating team to determine the costs of a particular proposal based on the number of employees in each step of the salary schedule. Ms. Kahn created "scattergrams" for the

Association. A “scattergram” is a graphic representation of a salary schedule that shows how many people are in each step of the schedule. Ms. Kahn also took minutes of the bargaining session.

9. On December 21, 2011 the parties went over the CBA article by article to incorporate nurses into it where necessary and possible. Major bargaining issues included health insurance, longevity pay<sup>1</sup>, and salary increases. The District offered \$550,000 in salary increases. This offer was for “steps only” for 4 years and would just move employees up one step. The Association’s counter-offer was for a \$700,000 increase in salary. This offer was rejected by the District.

10. The parties eventually settled on most issues, including a \$650,000 in salary increases over four years and health insurance terms. The last outstanding issue was the longevity program. Some of the District’s representatives strongly opposed longevity increases and longevity related negotiations were lengthy. The District proposed a \$50,000 decrease in funding for the longevity program. The Association’s counter-offer on longevity was for \$250,000 per year. The Association also proposed to freeze the placement of new employees on longevity and/or increase the length of service required for placement on the longevity program. The District’s representatives believed it was unfair to the new employees. The parties eventually agreed to reduce funding for the longevity program by \$30,000 per year and to increase the number of years in service for placement on the longevity program from 10 to 15 years.

11. The parties reached a tentative agreement by the end of the bargaining session on December 21, 2011. See Parties’ Joint Statement of Stipulated Facts. This agreement was not reduced to a signed writing. The tentative agreement was for the time period from July 1, 2012 through June 30, 2016 and included the following terms, among others: (1) \$220,000 per year in

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<sup>1</sup> Longevity pay is additional compensation given on the basis of length of service.

longevity program funding with a maximum point value capped at \$945<sup>2</sup>; (2) an increase in a number of years in service required to be placed on the longevity program from 10 to 15 years; (3) a 5% health insurance cost sharing increase in years two, three, and four; (4) salary increases in the amount of \$650,000 for four years; and (5) employees on a step would move up one step in years one and two and a percentage increase would be added to all employees' salaries in years three and four.

12. During the December 21, 2011 bargaining session, the Association's negotiating team members (Ms. Couture and Ms. Kahn) prepared a salary schedule (Exhibit 4) containing a \$500 "off step" increase in year one, a \$485 increase in year two, and a new step in each educational track, such as BA, BA+15, or MA. For example, in the schedule, the salary for "off step" employees in the BA track was increased from \$51,000 (year 2011-2012) to \$51,500 in year one and to \$51,985 in year two of the agreement and a number of steps in the BA track was increased from 11 to 12. See Exhibit 4.

13. A particular step on a salary schedule equals years of experience. So called "off step" employees are employees at the top of the salary scale in a particular track. For example, a first year teacher with a BA degree is placed on step 0 of the BA track. The BA track had 11 steps in the school year 2011-2012. Employees who have surpassed step 11 are no longer "on a step" and are placed on the level titled "OFF" in the salary schedule. The salary for "off step" employees is higher than the salary for employees at the highest step in the salary schedule for each track. For example, in the 2011-2012 salary schedule, the salary for the highest step in the BA track, i.e. step 11, was \$47,600 and the salary for the BA track "OFF" level was \$51,000.

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<sup>2</sup> The points are earned upon completion of a certain number of years in service. For example, employees who worked for the District for 15-19 years would earn 2 points and employees who worked for 20-24 years would earn 3 points. The number of employees in each category is multiplied by the number of points applicable to that category and the number of points for all categories is "totaled and divided into the amount of money available for that contract year" to determine a per point value. This per point value is then used to determine the annual award for each eligible employee. See Exhibit 15.

Approximately 55% of employees in the subject bargaining unit are “off step” employees. See Exhibits 13 & 15.

14. According to the Association’s witnesses, the tentative agreement the parties reached included a \$500 “off step” increase and allowed the Association to decide how to distribute \$650,000. These witnesses maintain that, had the District not agreed to \$500 for “off step” employees, there would be no agreement because the changes in longevity and health insurance would cause “off step” employees to suffer financial hardship; and that the Association agreed to the District’s proposal to lower the longevity pay amount based on the understanding that \$500 would be added to the top of the salary scale to offset the health care contribution increases. The Association’s witnesses also testified that the December 21, 2011 salary schedule, which contains a \$500 “off step” increase and new steps, was a part of the parties’ tentative agreement.

15. According to Ms. Kahn, during the December 21, 2011 bargaining session, Ms. Couture came back to the Association’s “caucus” room and informed the team that the District agreed to the Association’s \$500 “off step” increase proposal.

16. According to the District’s witnesses, the tentative agreement the parties reached on December 21, 2011 was for “steps only” in years one and two with a percentage increase added to the whole salary matrix/schedule in years three and four. These witnesses maintain that a \$500 “off step” increase was not even discussed, much less agreed upon, during negotiations and that the District would never have agreed to the increases for “off step” employees in addition to the longevity pay because the District’s intent and objective was to bring newer employees’ salaries up to the market level.

17. “Steps only”<sup>3</sup> means that all employees on a particular step would move up one

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<sup>3</sup> Also referred to in the record as “step raises only” and “step increases only.”

step without any percentage increase added to the salary associated with that step. For example, if an employee was on Step 3, the employee would move to Step 4 in the salary schedule without any additional salary increases. A “steps only” agreement would not change the number of steps or the salary amounts associated with each step set forth in the 2011-2012 salary schedule.

18. According to Dr. Kaplan, the Association prepared the salary schedule (Exhibit 4) as an appendix to the tentative agreement and it was handed to Attorney O’Shaughnessy at the end of the bargaining session on December 21, 2011. Dr. Kaplan does not remember who handed the schedule to Attorney O’Shaughnessy.

19. According to Ms. Snyder, at the end of the bargaining session, after the parties reached an agreement and only the closing statement was left on the agenda, Ms. Couture handed the salary schedule to Attorney O’Shaughnessy, who put the schedule in a folder.

20. According to Ms. Kahn, she printed the schedule from a flash drive and gave it to Ms. Couture who handed it to Attorney O’Shaughnessy.

21. Ms. Szymcik did not personally see the schedule being handed to the District.

22. Ms. Couture does not remember whether she handed the salary schedule to Attorney O’Shaughnessy and admits that it is possible that the Association did not provide the District with the salary schedule on December 21, 2011.

23. Attorney O’Shaughnessy does not recall discussing salary increases for “off step” employees or receiving the salary schedule from the Association on December 21, 2011.

24. The Association’s representatives did not give Ms. Bauries a copy of a salary schedule on December 21, 2011 and Ms. Bauries was not aware that the salary schedule was presented to the District at the December 21, 2011 session, as claimed by the Association. The Association did not give the schedule to either Ms. Fortson or Mr. Jacod, neither of whom saw the subject salary schedule on December 21, 2011.



25. Ms. Kahn prepared the Association's minutes (Exhibit 1) for the December 21, 2011 bargaining session. There is no reference in these minutes to a \$500 "off step" increase or to the addition of new steps to the salary schedule. The minutes show, among other things, that the District's original offer was for \$550,000 "steps only" for four years of the agreement; that the District believed that the Association's proposal to raise from 10 to 15 years the time required to be placed on the longevity program was unfair but eventually agreed to it; and that the parties agreed to "650,000 on wages and [the Association] can add difference to steps in last 2 years." The minutes end as follows:

Need warrant article by January 10. Board will meet around then to ratify. Union ratification date is Jan. 5. Pat [Bauries] wants count on vote. Elliot [Kaplan] said we don't have to share it, but he will let her know the results. *We will get the salary schedule to Jane [Fortson].*

See Exhibit 1 (emphasis added).

26. Ms. Fortson did not receive any salary schedule from the Association until March 20, 2011. According to Ms. Kahn, she did not send the salary schedule (Exhibit 4) to Ms. Fortson after December 21, 2011 meeting because she has retired and did not do anything she was not asked to do and she was not asked to send the schedule to Ms. Fortson or the School Board. Ms. Kahn sent a copy of the salary schedule to Ms. Couture and Dr. Kaplan. According to Ms. Kahn, it was up to them to send a copy to the District.

27. Ms. Bauries took notes of the bargaining session on December 21, 2011. Ms. Bauries' notes do not contain any mention of a \$500 "off step" increase or of the addition of new steps to the salary schedule. The notes lay out the parties' interim proposals with respect to percentage increases and the figures corresponding to each percentage increase per year (e.g. the Association - 2% for each year of the CBA; the District - 1.17%, 1.11%, 1.01%, 1.05%). Under one of these calculations, the notes provide as follows: "Nurses 2% increase each yr - add .75% over 4 years - *Union decides how* - would factor out to 5 ½% over 4 years." (Emphasis added.)

It is unclear from the notes whether the notation "Union decides how" refers to a proposal for salary increases for nurses only or for all employees and whether this proposal was accepted. At the end of her notes, Ms. Bauries wrote:

1	step	1		
2	step	1		
3	step	1 + 1.53	157,561	year 3+4
4	step	1 + 1.53	1.53%	
			6.33%	
			\$650,000	

See Exhibit 2.

28. Ms. Couture kept notes of the December 21, 2011 bargaining session. A notation "year 1 - step \$500 top \$155" appears in Ms. Couture's notes along with many other numbers and offers, including the phrase "Salary – steps only." A \$500 figure appears in the notes without any comment. The notes do not indicate whether the Association's representatives discussed it among themselves or proposed it to the District or whether the District accepted this proposal. A \$500 increase is not listed at the end of the notes in what appears to be a summary of agreed upon terms, titled "Agree w/Board," which provides in part as follows:

13.3 add to longevity  
\$945 cap points  
5% on H/C  
final \$650,000  
Cap longevity @ 200,000

See Exhibit 2. At the end of the notes, Ms. Couture wrote: "*Salary to Jane [Fortson], language to Jim [Attorney O'Shaughnessy].*" See Exhibit 2 (emphasis added).

29. Ms. Fortson prepared a summary of the tentative agreement, dated January 3, 2012, for the School Board's consideration at the ratification meeting and the Budget Committee public hearing. The summary provides in part as follows:

Article #13.3, page 27 Longevity  
Longevity is funded at \$220,000 for each year of the four year contract.  
The maximum point value is capped at this year's amount of \$945

All participants currently in the program are grandfathered and frozen at the amount they are receiving as of now.

No new employees are eligible to participate during the four year contract.

Article Appendix A. Page 35-38 Salary compensation with a four year contract

The School Board agreed to a cost over the four years of \$650,000 for salary compensation. This is about a 5.6% increase over the four years

Year one	Step raises only	1.19% (app. \$117,840)
Year two	Step raises only	1.13% (app. \$112,765)
Year three	Step raises and ½ %	1.52% (app. \$153,200) for all teachers
Year four	Step raises and 1.75%	2.58% (app. \$266,440) for all teachers

See Exhibit 5. The \$117,840 increase for year one would move employees who were on a step up one step. There is no mention of a \$500 “off step” increase in the summary. The sum of the estimated costs of annual salary increases, set forth above, is \$650,245. See Exhibit 5.

30. There were 103 “off step” employees and 88 “on step” employees in year 2011-2012. A \$500 increase for 103 “off step” employees would result in additional \$51,500 (\$500 multiplied by 103) in salary increases per year.

31. The Association’s ratification meeting took place on January 5, 2012. Ms. Couture prepared a tentative agreement draft for ratification by the Association. See Exhibit 6. This draft did not contain any mention of a \$500 “off step” increase and did not have a salary schedule attached. Mr. Kaplan reviewed it in preparation for the ratification meeting to refresh his memory in order to explain the main points of the agreement to the Association’s membership. He did not read the text in full to members. The draft itself was not provided to the Association’s members at the ratification meeting. The Association’s representatives explained the language and salary changes to the membership. According to the Association’s witnesses, the salary schedule was not yet printed out and was not presented to the membership at the ratification meeting. Ms. Szymcik told the Association’s members that “off step” employees will receive a \$500 increase. Neither Ms. Couture nor Ms. Kahn attended the Association’s ratification meeting. The Association ratified the tentative agreement on January 5, 2012.

32. On January 8, 2012 Ms. Bauries sent the following email message to Ms.

Couture:

We are pleased to learn that the Teachers have ratified the proposed contract.

I would appreciate you sending a signed fax on the last three articles that we [a]greed on the evening of Tuesday, Jan. 3, 2012.<sup>4</sup>

Article 13.3 Longevity  
*Appendix A. Salary compensation*  
Article IX Insurance.

I would need to have the signed agreement to present to the School Board on Tuesday, Jan. 10, 2012 for their approval.

See Exhibit 6 (emphasis added).

33. On January 10, 2012 Ms. Couture sent a copy of the agreement (Exhibit 6) to Ms. Bauries and Ms. Fortson. The agreement was signed by Ms. Couture and did not contain any mention of a \$500 “off step” increase. No salary schedule or Appendix A was attached to or otherwise included in that communication. The salary was addressed in this document as follows: “\$650,000 on wages over four years and MDEA can add difference to steps in last 2 years.” See Exhibit 6.

34. On January 10, 2012 the School Board voted to ratify the tentative agreement in a non-public session. The minutes, prepared by Ms. Fortson, provide as follows:

**9:00 PM RSA 91-A:3 II (a): Compensation of a Public Employee: Teacher’s contract:** The Board received information on the teacher’s contract at the last Board Meeting. **Motion:** P. Bauries **Moved** to ratify the teacher’s contract as submitted which is a four year contract including \$220,000.00 for longevity, \$650,000 for salaries which include the steps and \$2,320,000.00, the first year’s distribution of the District’s contribution to the health care. **Second:** P. Peterson. **Discussion:** J. Carnie asked how Article Nine would read on the ballot. J. Fortson explained. **Vote:.. Motion passes.**

See Exhibit 7 (emphasis in original). No document containing a \$500 “off step” increase or

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<sup>4</sup> There is no further evidence in the record regarding any bargaining session being held on January 3, 2012.

a salary schedule was before the School Board.

35. On January 12, 2012 the District Budget Committee held a public hearing for the purpose of allowing the public to ask question and express concerns about the warrant articles. The warrant articles, including Warrant Article Seven covering the parties' CBA and containing phrase "steps only," were read and the public was invited to comment. Neither a \$500 "off step" increase or a salary schedule was presented or discussed. Ms. Bauries and Association President Dr. Kaplan presented the agreement. Ms. Bauries spoke in favor of the agreement stating the following:

Teachers and the Negotiating Team worked long and hard for months to come up with this ratified contract that they believe is fair to the employees and the taxpayers. It is a four year contract, the salary increase over the 4 years is \$650,000.00. It is an agreed [sic] on health care benefit and the teachers have reduced the longevity.

See Exhibit 8. Dr. Kaplan agreed that the teachers, the School Board, and the Negotiation Committee have worked hard to reach this agreement. He stated that it was a good agreement and that he hoped the Budget Committee agreed. See Exhibit 8.

36. Ms. Fortson prepared the District Warrant 2012-2013 for the deliberative session. The Warrant Article Seven contained the cost items for the CBA between the Association and the District, including the following "estimated increase in the costs for wages and benefits":

2012-13	\$117,840	Salaries (steps only)
	\$22,330	Wage-driven benefits (Social Security, NHRS, etc.)
	(\$30,000)	Reduction in the Annual Longevity contribution
	(\$51,900)	Insurance cost sharing decrease
	\$58,270	Total
2013-14	\$112,765	Salaries (steps only)
	\$21,370	Wage-driven benefits (Social Security, NHRS, etc.)
	\$115,000	5% Insurance cost sharing increase (presented at maximum increase)
	\$249,135	Total
2014-15	\$153,200	Salaries (steps plus .5% increase)
	\$29,030	Wage-driven benefits (Social Security, NHRS, etc.)

	\$120,750	5% Insurance cost sharing increase (presented at maximum increase)
	\$302,980	Total
2015-16	\$266,440	Salaries (steps plus 1.75% increase)
	\$50,490	Wage-driven benefits (Social Security, NHRS, etc.)
	\$126,790	5% Insurance cost sharing increase (presented at maximum increase)
	\$443,720	Total

And further to raise and appropriate the sum of \$58,270 for the 2012-13 fiscal year, such sum representing the additional cost attributable to the increase in wages and benefits over those of the appropriation at current staffing levels paid in the 2011-12 year. The School Board supports this appropriation. The Budget Committee supports this appropriation.

The Warrant Article Seven did not reference a \$500 "off step" increases or a particular salary schedule. See Exhibit 9.

37. The District's deliberative session on the Warrant took place on February 11, 2012. The Warrant Article Seven was presented and a motion to place it on the ballot as presented was passed. Dr. Kaplan supported the Warrant Article Seven and moved to restrict reconsideration of it. This motion was passed. See Exhibit 10.

38. Warrant Article Seven was approved by voters on March 13, 2012.

39. On March 20, 2012 Ms. Kahn sent the following message to Ms. Fortson:

I am forwarding the final payscale to you just in case you don't have it. Before contracts are issued to the nurses, Elliot and Lynne would like to meet/talk with you to make sure that the nurses are placed correctly on the scale and given longevity if appropriate.

Before the new contract is published, please send a copy to Elliot, Michelle, and myself so that the negotiation team can review it before Elliot signs it...

See Exhibit 11. The salary schedule which included a \$500 "off step" increase in year one, a \$485 "off step" increase in year two and new steps was attached to the message. See Exhibits 11.

40. Ms. Fortson responded to Ms. Kahn's communication as follows:

I'm confused this doesn't jive with what I was told, there were to be no raises in the first two years of the contract, moving up steps only, I've copied Pat [Bauries] and Ed [Jacod] for their take on this.

See Exhibit 12.

41. In her response to Ms. Fortson, Ms. Kahn stated:

This is what we came up with that night; unfortunately, you left early and weren't there for the discussion and final approval...

*We were told to stay within certain dollar increases, and we did, and it was agreed to. We added modest increases to the top for off step since no more steps [sic] and actually added a few steps just before off step so that people got smaller increases when they made the jump. Keep in mind that we cut longevity and I'm sure insurance will go up, so an increase in base pay for the top of \$500 or less (less than 1 percent) seems pretty modest and fair. Many people are actually expecting a cut in take home depending on insurance costs...*

See Exhibit 12 (emphasis added).

42. Ms. Fortson responded as follows:

... I didn't leave early I was in the other room running numbers and had run the wage sheets by the board. I chose to stay out of the discussion as it was the board's decision not mine to make. I will be checking with the board as this is not what was presented to the voters. I'm curious that this is the first time you brought this wage sheet forward. Please see the attached document, this was what was presented at deliberative session and at the public hearing by the board and what was presented on the warrant. As you can see there were NO raises in years 1 and 2 only step raises...

See Exhibit 12 (emphasis in original). The summary of the tentative agreement prepared by Ms. Fortson (Exhibit 5) was attached to this communication. See Exhibit 12.

43. The parties attempted to resolve the dispute but their initial efforts were unsuccessful. In May, 2012 the parties renewed their efforts to resolve the dispute. The Association attempted to address the District's concerns by turning a \$500 "off step" increase into a "step." The Association prepared the following proposal for the May 30, 2012 School Board meeting:

The salary schedule has been redesigned (see accompanying sheets) placing all employees covered by the MDEA collective bargaining agreement back on a step so nobody is off step thus allowing slight increases in salary at the upper level. In doing this several new steps have been placed resulting in smaller dollar jumps between steps which could benefit the MRSD [District] in the long run. Additionally, at current staffing levels, the increase in salaries each year of the

contract is less (albeit by a very small amount) is less [sic] than that allowed by Warrant Article 7.

The salary schedule for year 2011-2012 and proposed salary schedules for years 2012-2013, 2013-2014, 2014-2015, and 2015-2016 were attached to this proposal. See Exhibit 13.

44. This proposal added new steps to all tracks. For example, six more steps were added to the BA track, including steps 12 through 15 and two steps in the BA "off step" level creating "OFF 1," "OFF 2," and "OFF 3." This adjustment would change the total amount of money allocated for the salary although it might not cost the District more money. See Exhibit 13.

45. The proposal was formally presented to the District's Negotiating Committee and was rejected by the District. The parties were unsuccessful in their attempts to resolve the dispute.

**Decision Summary:**

The Association failed to prove, by a preponderance of the evidence, that the District committed an unfair labor practice in violation of RSA 273-A:5, I (a), (e), (h), and/or (i). The evidence is insufficient to establish that, during the negotiations on a successor CBA, the District agreed to add a \$500 "off step" increase and/or new steps to the salary schedule. The relief requested by the Association is denied and the claims are dismissed.

**Jurisdiction:**

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

**Discussion:**

The Association claims that the District violated RSA 273-A:5, I (a), (e), (h), and/or (i) when, among other things, it unilaterally changed the terms of the parties' agreement by refusing to add an agreed upon \$500 "off step" increase to the salary schedule and/or by refusing to



accept the salary schedule prepared by the Association and containing a \$500 “off step” increase and new steps. The District counters that it did not agree to a \$500 “off step” increase and that the parties’ CBA, ratified by the parties and approved by voters, provides for “steps raises only” in the first two years of the agreement.<sup>5</sup> The Association has “the burden of proof with respect to the allegations and claims made in the complaint” and must prove by a preponderance of the evidence that the parties agreed to a \$500 “off step” increase and new steps in order to prove that the District committed an unfair labor practice. See Pub 201.06 (b) and (c).

“One of the main goals of collective bargaining is avoiding strife among employers and employees by establishing terms and conditions governing the employment relationship.” *Appeal of the State of New Hampshire*, 147 N.H. 106, 109 (2001) (citation omitted). “A CBA is a contract between a public employer and a union over the terms and conditions of employment. When parties enter into a CBA, they are obligated to adhere to its terms, which are the product of their collective bargaining.” *Appeal of the City of Manchester*, 153 N.H. 289, 293 (2006) (citations and quotation marks omitted). “In order for a contract to be formed there must be a meeting of the minds. Mere mental assent is not sufficient; a meeting of the minds requires that the agreement be manifest.” *Cambridge Mut. Fire Ins. Co. v. Peerless Ins. Co.*, 152 N.H. 498, 501 (2005) (citations omitted). RSA 273-A:4 requires that every CBA be reduced to writing. In addition, cost items<sup>6</sup> contained in a CBA must be approved by the legislative body of the public employer to be enforceable. See RSA 273-A:3, I (b).

In interpreting a CBA, a court begins “by focusing upon the language of the CBA, as it reflects the parties’ intent. This intent is determined from the agreement taken as a whole, and by construing its terms according to the common meaning of their words and phrases.” See *Appeal*

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<sup>5</sup>The dispute in this case results from the parties’ failure to follow their own practices of reducing a tentative agreement to writing, signing it, and exchanging the copies of the signed agreement. In the future, the parties are advised to sign, or at least initial, documents setting forth agreed upon terms.

<sup>6</sup> Cost item is defined as “any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer ...” See RSA 273-A:1, IV.

of *Nashua Police Commission*, 149 N.H. 688, 690 (2003) (citations and quotation marks omitted).” Absent fraud, duress, mutual mistake, or ambiguity, the search for the parties’ intent must be restricted to the words of the contract. See *Appeal of Town of Durham*, 149 N.H. 486, 487 (2003). Past practice and other extrinsic evidence may be examined to discern the intent of the parties where the language of a CBA is ambiguous<sup>7</sup> or “the contract is entirely silent.” See *AFSCME Local 3657, Hillsborough County Sheriff’s Office v. Hillsborough County*, PELRB Decision No. 2012-117.

In this case, the evidence is insufficient to prove that the District agreed to include a \$500 “off step” increase and new steps in the successor CBA. Neither the Association’s December 21, 2011 bargaining session minutes nor the notes prepared by Ms. Bauries contain any mention of a \$500 “off step” increase. Further, when Ms. Bauries requested from the Association a signed copy of the essential articles of the agreement, including Appendix A (salary schedule), for presentation to the full School Board, the Association’s Chief Negotiator sent Ms. Bauries a signed copy of a tentative agreement that contained neither any mention of a \$500 increase nor a salary schedule (Appendix A). This conflicts with the Association’s assertion that, but for the agreement on a \$500 “off step” increase, there would no agreement between the parties at all. Some of the exhibits submitted in this case do contain references to the disputed \$500, but not in a way that sheds light on whether an Association’s proposal, including the disputed \$500 “off step” increase, was presented to and accepted by the District. For example, Association’s Chief Negotiator Couture’s notes contain a notation “year 1 – step \$500 top.” However, this notation is not particularly probative because the notes contain other numbers and offers, including the phrase “Salary – steps only”; the notation appears without any comment; and the notes do not

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<sup>7</sup> A contractual clause is ambiguous “when the contracting parties reasonably differ as to its meaning.” *Appeal of Nashua Police Commission*, supra, 149 N.H. at 690.

indicate that the Association proposed it to the District or that the District accepted the proposal. Also, a \$500 increase is not included in what appears to be a summary of agreed upon terms at the end of the notes titled "Agree w/Board." See Exhibit 2.

The \$500 "off step" increase is included in the salary schedule prepared by the Association on December 21, 2011, the schedule that the Association claims to have handed to the District's Chief Negotiator Attorney O'Shaughnessy at the end of the bargaining session. Although three of the Association's witnesses testified that they saw Ms. Couture hand this schedule to Attorney O'Shaughnessy at the end of the bargaining session on December 21, 2011, Ms. Couture herself does not remember doing so and Attorney O'Shaughnessy does not remember receiving it or having it in his possession. Furthermore, the District's witnesses testified that the disputed "\$500 increase" proposal was never raised or discussed at the bargaining session and none of the District's witnesses saw the disputed salary schedule on December 21, 2011. In fact, it appears that the District's representatives did not see the disputed salary schedule until March 20, 2012, three months after negotiations had concluded and after the agreement was ratified and its costs were approved by voters. This salary schedule was not presented to either the Association's membership or the School Board at the respective ratification meetings.

Moreover, the disputed salary schedule also contains new steps as well as an additional \$485 "off step" increase in year two of the agreement.<sup>8</sup> A salary schedule determines employees' wages and any change to a salary schedule, including a change in the number of steps, must be negotiated by the parties, even if it does not alter the overall cost of the contract and does not have to be approved by voters. The Association cannot unilaterally add new steps to a salary

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<sup>8</sup> In the disputed salary schedule, a \$485 "off step" increase in year two appears to be in addition to a \$500 increase in year one. For example, a \$51,000 salary for a BA track "off step" employee, would go up to \$51,500 in year one and to \$51,985 in year two of the agreement. See Exhibit 4.

schedule, just as it cannot unilaterally add a salary increase. There is insufficient evidence that the parties either discussed or agreed upon new steps and/or a \$485 “off step” increase in year two of the agreement. The Association’s claim that the District agreed to allow the Association to decide how to distribute \$650,000 over four years of the agreement is not supported by the record. Similarly, the Association’s claim that the disputed salary schedule was handed to the District as a proposal and that the District accepted this proposal by not returning the schedule to the Association is contrary to the evidence, including Ms. Snyder’s testimony that, by the time the Association allegedly handed the schedule to the District, the negotiations were over and the parties had already reached an agreement on salary increases.

Furthermore, the evidence in this case, including the CBA Warrant Article presented to voters, contains the phrase “steps only” or “step raises only” in years one and two of the agreement. The phrase “steps only” means that “on step” employees would advance one step on the salary schedule without an additional across-the-board percentage increase. The employees who are already on the highest salary level (titled “OFF” in the salary schedule) cannot advance any further and, therefore, are ineligible for a “step raise.”<sup>9</sup> The Association’s President attended the Budget Committee meeting and spoke in favor of the agreement which contained the words “steps only” and no mention of a \$500 “off step” increase. See Exhibit 8. He also urged the Committee to approve the warrant article which set forth the figure of the total amount of four year salary increases (\$650,000) and broke it down per year with “steps only” notations next to years one and two. See Exhibit 9 (Warrant Article). The \$650,000 figure was arrived at by adding estimated salary increases for each year of the contract: year one - \$117,840 (“steps only”); year two - \$112,765 (“steps only”); year three - \$153,200 (step plus .5% increase for all

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<sup>9</sup> An agreement for “steps only” in year 2012-2013 would not require a substantive change to the 2011-2012 salary schedule because the salary amounts and the number of steps would remain the same.

teachers); and year four - \$266,440 (step plus 1.75% increase for all teachers).<sup>10</sup> See Exhibits 8, 9, & 10. There were 103 “off step” employees in year 2011-2012. A \$500 annual increase per employee for 103 employees would result in additional \$51,500 to be appropriated for year 2012-2013. The amount of \$51,500 in salary increases is a cost item and would require an appropriation. The evidence here is insufficient to prove that \$51,500 were included in the dollar figures agreed upon by the parties, ratified by the District, and presented to voters on the warrant (either \$650,000 covering four year salary increases or \$117,840 covering the year 2012-2013 salary increases). The Association’s President supported the Warrant Article that did not contain additional \$51,500 in salary increases for the year 2012-2013 at the February 11, 2012 deliberative session. This evidence indicates that a \$500 “off step” increase was not a part of the agreement the parties reached on December 21, 2011.

For the foregoing reasons, the Association failed to prove, by a preponderance of the evidence, that a \$500 “off step” increase and/or new steps were agreed upon by the parties during negotiations on a successor CBA. Therefore, the District did not commit an unfair labor practice in violation of RSA 273-A:5, I (a), (e), (h), and/or (i) when it refused to apply the Association’s salary schedule containing a \$500 “off step” increase in year one and new steps. Accordingly, the Association’s request for relief is denied and the case is dismissed.<sup>11</sup>

So ordered.

February 7, 2013

  
Karina A. Mozgovaya, Esq.  
Staff Counsel/Hearing Officer

Distribution:

James F. Allmendinger, Esq.  
James A. O’Shaughnessy, Esq.

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<sup>10</sup> These figures add up to \$650,245.

<sup>11</sup> Because this case is dismissed on the grounds set forth above, it is unnecessary to address other objections and defenses raised by the District.

NH Supreme Court declined  
appeal of this decision on  
10-10-2013.  
(NH Supreme Court Case No.  
2013-0499)



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Monadnock District Education Association/NEA-NH**

v.

**Monadnock Regional School District**

**Case No. E-0028-6**

**Decision No. 2013-067**

Order on Motion for Review of Hearing Officer Decision

The Association filed a Motion for Review of Hearing Officer Decision 2013-026 pursuant to Pub 205:01, which provides in part as follows:

(a) Any party to a hearing or intervenor with an interest affected by the hearing officer's decision may file with the board a request for review of the decision of the hearing officer within 30 days of the issuance of that decision and review shall be granted. The request shall set out a clear and concise statement of the grounds for review and shall include citation to the specific statutory provision, rule, or other authority allegedly misapplied by the hearing officer or specific findings of fact allegedly unsupported by the record.

(b) The board shall review whether the hearing officer has misapplied the applicable law or rule or made findings of material fact that are unsupported by the record and the board's review shall result in approval, denial, or modification of the decision of the hearing officer. The board's review shall be made administratively based upon the hearing officer's findings of fact and decision and the filings in the case and without a hearing or a hearing de novo unless the board finds that the party requesting review has demonstrated a substantial likelihood that the hearing officer decision is based upon erroneous findings of material fact or error of law or rule and a hearing is necessary in order for the board to determine whether it shall approve, deny, or modify the hearing officer decision or a de novo hearing is necessary because the board concludes that it cannot adequately address the request for review with an order of approval, denial, or modification of the hearing officer decision. All findings of fact contained in hearing officer decisions shall be presumptively reasonable and lawful, and the board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.

We have reviewed the hearing officer decision in accordance with the provisions of Pub 205.01 and unanimously approve the hearing officer's decision and deny the Association's motion.

So ordered.

Date: May 13, 2013

  
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Charles S. Temple, Esq., Chair

By vote of Chair Charles S. Temple, Esq., Board Member Kevin C. Cash, and Board Member Carol Granfield.

**Distribution:**

James F. Allmendinger, Esq.  
James A. O'Shaughnessy, Esq.

NH Supreme Court declined  
appeal of this decision on  
10-10-2013.  
(NH Supreme Court Case No.  
2013-0499)



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Monadnock District Education Association/NEA-NH**

v.

**Monadnock Regional School District**

**Case No. E-0028-6**  
**Decision No. 2013-108**

Order on Motion for Rehearing

The Association filed a motion for rehearing of PELRB Decision No. 2013-067. Motions for rehearing are governed by RSA 541:3 and Pub. 205.02<sup>1</sup>, 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: July 3, 2013

Charles S. Temple, Esq., Chair

By vote of Chair Charles S. Temple, Esq., Board Member Kevin C. Cash, and Board Member Carol Granfield.

**Distribution:**

James F. Allmendinger, Esq.  
James A. O'Shaughnessy, Esq.

<sup>1</sup> The parties are advised that action on the Association's motion has been delayed given scheduling constraints.