



Appeal to NH Supreme Court withdrawn on 12-6-1995, NH Supreme Court No. 94-575.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ALTON TEACHERS ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

v.

ALTON SCHOOL DISTRICT

Respondent

CASE NO. T-0315:15

DECISION NO. 94-62

APPEARANCES

Representing Alton Teachers Association, NEA-NH:

Jan Paddleford, UniServ Director

Representing Alton School District:

Bradley F. Kidder, Esq.

Also appearing:

- Richard J. Kirby, Alton Teachers Association
Donna Downie, Alton Teachers Association
Michael P. Folan, Alton Teachers Association
Elaine Brigman, Alton Superintendent

BACKGROUND

The Alton Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Alton School District (District) on April 11, 1994 alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i) relating to a breach of contract, improperly level funding individual contracts after being funded by voters on March 5, 1994 and an unworkable grievance procedure. The District filed its answer on April 26, 1994 after which this matter was heard by the PELRB on June 2, 1994.

FINDINGS OF FACT

1. The Alton School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Alton Teachers Association is the duly certified bargaining agent for teachers employed by the District.
3. The District and the Association have been, and continue to be, parties to a collective bargaining agreement (CBA) for the period September 1, 1991 through August 31, 1992 which "thereafter renew[s] itself automatically for successive terms of one year or until a successor agreement has been ratified." (Association Exhibit No. 1)
4. The parties have been in the process of bargaining for a successor (i.e., after school year 1991-92) CBA since the fall of 1991, a more detailed history of which may be found in our Decision No. 93-134, issued November 4, 1993, and Decision No. 92-195 issued December 22, 1992. The parties have yet to come to closure on the terms of a successor CBA to follow the 1991-92 contract and have yet to settle on a set of proposals for ratification by their respective constituencies.
5. The warrant for the 1994 Alton School District annual meeting called for it to be held March 5, 1994 and recommended \$3,888,519 "for the support of schools, for the salaries of school district officers, employees and agents, and for the payment of statutory obligations of the District." (Board Exhibit No. 1)
6. The minutes of the annual meeting of the Alton School District report that a floor amendment to the recommended amount of \$3,888,519 raised that amount to \$4,007,755 "for the support of schools, for the salaries of school district offices, employees and agents, and for the payment of statutory obligations of the district. This amount includes the cost of the duration clause, to cover teacher's experience and education units for the 1994-95 school year." (Emphasis added) The moderator subsequently declared both the amendment and the article to have passed. (Board Exhibit No. 2 and Association Exhibit No. 8)
7. School Board budget documents reflecting the breakdown of the passed budget show \$71,000 for "Duration

Clause Added," with \$68,131 credited to line 1100, \$4,261 credited to line 1200 and \$304 credited to lines 2130 and 2220, respectively. (Board Exhibit No. 3)

8. Notwithstanding the foregoing actions by voters at the 1994 annual meeting of the Alton School District, on or about March 23, 1994, teaching members of the bargaining unit received "level funded" individual contracts for the 1994-95 school year which reflected no cumulative units for education or experience in the district. (Association Exhibit No. 10) As the result of this level funding, teachers returned their contracts as a group, along with a cover letter dated March 24, 1994, to the Chairman of the school board. They complained that level funding violated the CBA and the law and disclaimed that their signing of their individual contracts waived any legal or equitable rights to seek relief. (Association Exhibit No. 12)

DECISION AND ORDER

The facts in this case are not in dispute. There is no evidence or suggestion that the annual school district meeting was not properly called or did not meet the Sanborn notice requirements. 133 N.H. 513 (1990). As evidenced by the motion made and minutes recorded, the legislative body, namely, the voters, knew the cost items inclusive of the "duration clause" which funded the education and experience components of the "unit value" compensation formula. Likewise, the action of the voters recognized that expenditures for experience and education components of the compensation system were "cost items" under the on-going or "evergreen" clause of the contract, thus satisfying Milton, once duly voted and approved. 137 N.H. 240 (1993). As was the case with Decision No. 93-134, Milton is not a bar in this case because the "cost item" nature of expenses associated with compensation for experience and educational attainment was specifically addressed and approved at the district meeting. (Board Exhibit No. 2 and Association Exhibit No. 8)

As was the case in Decision 92-195, the voters attending the 1994 annual meeting specifically addressed funding the "duration clause" which, in turn, meant that experience and educational increments would be recognized and, presumably, paid. They were not, notwithstanding what we find to be clear voter intent, from testimony, from minutes and even from a video tape of the annual meeting, that additional experience and education attainments were to be reorganized for the 1994-95 school year, although the base "unit value" was to remain unchanged. Given this flagrant disregard for voter intent, we find that the District has committed unfair labor practices in violation of RSA 273-A:5 I (h) and (i).

By way of remedy, we direct the District to recalculate, amend and re-offer the teachers' individual contracts for the 1994-95 school year to reflect experience and education attainments, consistent with actions taken at the District's annual meeting on March 5, 1994.

So ordered.

Signed this 7th day of June, 1994.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and E. Vincent Hall present and voting.