



NH Supreme Court affirmed this decision on April 22, 1998, Supreme Court Case No. 96-769.

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CANDIA SCHOOL BOARD :  
: Petitioner :  
v. :  
CANDIA EDUCATION ASSOCIATION: :  
NEA-NEW HAMPSHIRE :  
Respondent :

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CASE NO. T-0384:6  
(Declaratory Judgment)

DECISION NO. 96-079

APPEARANCES

Representing Candia School Board:

Harry S. Gale, Consultant

Representing Candia Education Association:

Gregory Andruschkevich, UniServ Director

Also appearing:

- Paul Fillion, Superintendent, SAU #15
- Ron Chapman, Business Admin, SAU #15
- Val Brujic, Candia School Board
- Maria Gleason, Candia Education Association
- Mary Hogan, Candia Education Association
- Barbara Mullen, Candia Education Association

BACKGROUND

The Candia School Board (Board) filed a petition for declaratory judgment on April 24, 1996 seeking a determination as to whether the provisions of Appeal of Alton School District, 140 N.H. 303 (1995), pertaining to the payment of education increases during a status quo period following the expiration of a collective bargaining agreement (CBA) applied to it. The Candia

Education Association, NEA-New Hampshire (Association) filed a letter objecting to the Board's assertions and rationale on May 7, 1996. After an intervening continuance sought by and granted to the Board, this matter was heard by the PELRB on July 11, 1996. The record was held open until August 13, 1996 for the filing of post-hearing memoranda by both sides.

#### FINDINGS OF FACT

1. The Candia School Board is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Candia Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers and certain other personnel employed by the Board.
3. The Board and the Association are parties to a CBA for the period July 1, 1992 through June 30, 1994, continuing under "status quo" at all times pertinent to these proceedings. (Joint Exhibit No. 1.) That document contains the following clauses relevant to these proceedings:

Memorandum before Preamble containing signatures of the parties:

This Agreement has been ratified by the Board and the Association membership and all cost items are subject to the approval of the voters at the school district meeting in accordance with RSA 273-A:3 II, b."

No reference is made to future agreements or to circumstances beyond the term of this CBA.

Article VI, Compensation, Section A:

The salary guide attached as Appendix A is made a part of this Agreement."

The attached salary schedule for the 1993-94 school year consisted of fifteen (15) vertical steps for years of service and six (6) horizontal tracks depending on credentials of B.A., B.A. +15, B.A. +30, M.A., M.A. +15 and M.A. +30.

Article VI, Compensation, Section E:

The Superintendent of Schools shall make the initial placement of bargaining unit members on the salary guide based on the member's number of years of prior educational employment and level of education .... After initial placement, a member who completes at least ninety (90) school days of service during the school year and whose performance is satisfactory shall be advanced one step on the appropriate salary guide for the following year.

In order to advance from one track to another on the salary guide, a member must earn the necessary credits prior to September 1st of the year in which the advancement is to occur.

The parties have agreed to and signed a CBA for 1994-98; however, this has yet to be approved by the voters. (Joint Exhibit No. 5.) It again contains "all cost items will be subject to approval of the voters" provisions, Article VI, Section E provisions (unchanged) relating to placement on the pay scale, and three pay scales, for various years, each containing 15 steps and six tracks which now are B.A., B.A. +15, B.A. +30, B.A. +60/MA, MA. +15 and MA. +30.

4. According to Superintendent Paul Fillion, in the absence of a new CBA, step and track movements were frozen in school year 1995-96 with the exception of newly hired bargaining unit members who were placed on the salary schedule, by him, at the appropriate step and track to reflect their educational attainments and credentials. (See also Association brief, p. 3.) In furtherance of this policy, Fillion sent letters to teachers in June of 1995 telling them, "I am in receipt of your letter regarding your staff movement. The current contract is frozen due to negotiations. Therefore, we are keeping your letter on file in the personnel office until tracking on the salary scale has been approved." (Joint Exhibit No. 10.) In December of 1995, Fillion wrote one or more teachers, saying "I am in receipt of your letter ...notifying us of your anticipated 96-97 track change from BA to BA +30. As the Candia School

District and the Candia Education Association have yet to reach a contract agreement, we are unable to make changes at this time. Once a contract settlement has been reached, revised contracts will be issued to all teachers. At that time track movements which have been properly requested... will be reviewed and awarded." (Joint Exhibit No. 11.)

#### DECISION AND ORDER

The Candia School Board has brought this petition for a declaratory judgment seeking to have us determine that the "additional training" or track increases of the Appeal of Alton School District case, 140 N.H. 303 at 310 (1995), do not apply to it. In its opening statement, the Board encouraged us to find that the CBA "does not guarantee that teachers will receive horizontal movement if there is no [collective bargaining] agreement in effect." (Board Exhibit No. 1.) Likewise, the Board has encouraged us to find that the unit point system of compensation in Alton is sufficiently different from the more traditional step and track matrix of the Candia CBA so that the principles of the Alton case should not apply. We reject both of these propositions for the reasons set forth below.

First, it is not the CBA which provides for horizontal or track movement once the contract has expired. It is the doctrine of maintaining the status quo which does that. "In the absence of a collective bargaining agreement, the status quo doctrine governs a school board's duty to teachers .... This duty includes payment of education, but not experience, increases." Appeal of Alton School District, 140 NH 303 at 311 (1995). "We conclude that a school board's unilateral refusal to pay education increases during a status quo period violates its duty under RSA 273-A:5 I (e) to negotiate terms and conditions of employment and, therefore, gives the public employer an unfair advantage in the bargaining process." Appeal of Alton School District, 140 NH 303 at 310 (1995).

Second, both the expired contract under which the status quo doctrine applies and the signed but yet-to-be-voter-approved contract for 1994-98 have 15 steps and six tracks. Those tracks conspicuously set forth educational attainment levels while the CBA specifies how the superintendent is to place a newly hired employee on the salary scale, "based on the member's number of years of prior educational employment and level of education." Once on that schedule, a teacher-employee has the right to assume lateral or horizontal movement as a quid pro quo for completing a

condition precedent to making that move, whether by attaining additional credit hours and/or an additional degree. The fact that Alton used a point system to determine total compensation versus the more traditional matrix system in Candia is immaterial to the applicability of payment, in the form of track movement, for completion of additional credit hours or advanced degree requirements. The Board has misplaced its reliance on the June 30, 1994 expiration date of the CBA as a device for terminating any entitlement to track movement. (Board brief, page 8, item 6.) The triggering date of June 30, 1994 ends the term of the CBA but starts the operation of that document under the status quo doctrine, as explained above.

Third, the Board's argument that in Candia, "there is no significant difference between the contract provisions for step movement...and horizontal movement" is without merit. (Board Exhibit No. 1, page 1.)

A raise based on additional training, however, is not an experience increase and cannot be considered its equivalent for purposes of defining and maintaining the status quo. It was a condition of the teachers' employment that time and money invested outside the classroom in course work would be rewarded by a salary increase the following year. Experience raises cannot be equated. (Emphasis added.) Alton, supra, at page 310.

Likewise, the Board's reliance on the voter approval in the Memorandum of Agreement (Finding No. 3, above) is misplaced. Citing to Appeal of Derry Education Assn., 138 NH 69 at 71 (1993) in Alton, supra at page 311, the Supreme Court reiterated, "[S]chool boards, not legislative bodies, have authority to negotiate and enter into collective bargaining agreements." "Were we to interpret RSA 273-A:1, IV otherwise, legislative bodies could determine in the first instance some of the most significant terms of the teachers' employment."

Historically, the parties have bargained and agreed upon contract language setting forth the conditions precedent, namely credit and/or degree attainment, required in order to progress from one track to another. Joint Exhibit No. 1, Article VI, Section E. Once having met those requirements, a teacher should have the benefit of having completed his/her part of the bargain, i.e., an appropriate move from one track to another. The circumstances we noted in Finding No. 4, above, are not to be encouraged. As the Court noted and discouraged, "Denying education raises may result in differently qualified teachers

being paid the same salary." Alton, supra, at page 310. Once teachers have met their part of the bargain in the process of seeking a track change, inclusive of financial commitments, arrangements for time and travel to do course work, and the obligation to study and to pass examinations, the employer must abide by its part of the same bargain by granting the appropriate track movement. To do otherwise would leave the Board with a promise made and not kept while the teacher would not be rewarded for his/her attainments and future teachers would have less incentive to excel in their academic achievements or to remain in the employ of the Board. Successful completion of a course of study must be recognized by the appropriate track movement.

We find no cause to deviate from the principles established in Appeal of Alton School District relating to the obligation to award duly earned track increases to qualifying teachers employed in Candia. Failure to comply with appropriate placement on the salary scales in the future would be a breach of the CBA, either as approved or under the status quo, and is appropriate for resolution under the binding arbitration procedures found in Article VII of Joint Exhibit No. 1.

So ordered.

Signed this 19th day of September, 1996.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Richard Roulx and Richard Molan present and voting.