



NH Supreme Court affirmed this decision on May 29, 1998, Slip Opinion No. 95-821, 142 NH 830 (1998).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TIMBERLANE TEACHERS' ASSOCIATION
AFT, AFL-CIO

Complainant

v.

TIMBERLANE REGIONAL SCHOOL BOARD

Respondent

CASE NO. T-0285:8
T-0285:9

Decision No. 95-67

TIMBERLANE REGIONAL SCHOOL BOARD

Complainant

v.

TIMBERLANE TEACHERS' ASSOCIATION
AFT, AFL-CIO

Respondent

APPEARANCES

Representing Timberlane Teachers' Association:

Edward Phaneuf, Executive Director

Representing Timberlane Regional School Board:

Theodore Comstock, Esq.

Also appearing:

Heather Vette, Timberlane Teachers Assoc.
Dan Toomey, American Federation of Teachers

Kathleen Dayotis, Timberlane Teachers Assoc.
 Tom Leveille, Timberlane Teachers Assoc.
 Sharon L. Joyce, Timberlane Teachers Assoc.
 Maureen F. White, Timberlane Teachers Assoc.
 Carolyn McAlpine, Timberlane Teachers Assoc.
 Kathleen Busick, Timberlane Teachers Assoc.
 Mark Masterson, Assistant Superintendent
 Phil Pappas, Timberlane School Board
 William Verge, Timberlane Teachers Assoc.
 Carol Verge, Observer
 Tom McDonald, Timberlane School Board
 Fokion Lafionatis, Timberlane School Board

BACKGROUND

The Timberlane Teachers' Association, Local 4796, AFT, AFL-CIO (Association) filed unfair labor practice (ULP) charges against the Timberlane Regional School Board (Board) on August 25, 1994 alleging violations of RSA 273-A:5 I (c), (e), (g), (h), and (i) for unilateral changes in working conditions, breach of contract and failing to bargain in good faith. The Timberlane Regional School board filed its answer on September 9, 1994 along with its own ULP complaint which alleged violations of RSA 273-A:5 II (d), (e) and (f) against the Association for its behavior during the collective bargaining process. The Association filed its answer to the Board's cross-complaint on September 22, 1994. Thereafter, this matter was heard by the PELRB on four hearing dates: November 3, 1994, December 8, 1994, March 16, 1995 and April 18, 1995. Offered hearing dates in October, January and February were not utilized because of the unavailability of one or both of the parties. In accordance with our interim order in this matter issued April 21, 1995 (Decision NO. 95-32), briefs were due to and received by the PELRB on June 15, 1995.

FINDINGS OF FACT

1. The Timberlane Regional School Board is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Timberlane Teachers' Association, Local 4796 AFT, AFL-CIO, is the duly certified bargaining agent for teachers employed by the Board.
3. The Board and the Association were parties to a collective bargaining agreement (CBA) (Assn. Exhibit No. 19) for the period September 1, 1992 through August 31, 1993.

Through their pleadings the parties have agreed that they are parties to a successor CBA for the period September 1, 1993 through June 30, 1996, notwithstanding that it has not been signed and although the Board has denied that it concurs with the Association's interpretation of the salary levels recited in that agreement for school years 1993-94 and 1994-95. The Association has ratified the 1993-96 agreement. The voters at the Timberlane Regional School District meeting held on March 5, 1994 voted to fund the 1993-95 portions of the new CBA.

4. The Association and the Board began negotiations for a successor CBA in October of 1992. Those negotiations proceeded through mediation and factfinding without settlement until the parties reached tentative agreement on December 10, 1993.
5. Following the tentative agreement and budget meetings the Board caused a warrant to be prepared on February 15, 1994 which sought approval of \$727,372 to fund increased costs in school years 1993-94 and 1994-95 of the new CBA and an additional \$572,629 to fund increased costs in School Year 1995-96. These were the amounts which were voted and approved on March 5, 1994, as referenced in Finding No. 3. Association Exhibits Nos. 34 and 39, respectively. The tentative agreement initialed at 3 a.m. on December 10, 1993 showed anticipated new money needs of \$233,533 for School year 1993-94 \$404,985 for School Year 1994-95 and \$520,015 for School Year 1995-96. Association Exhibit Nos. 3 and 28. This was verified by the Board's press release of December 22, 1993 which used the same figures. Assoc. Exhibit No. 32. The tentative agreement also "gave back" \$24,000 by reducing the merit pool to \$250,000 and included an agreement to drop all pending unfair labor practices and grievances.
6. The contract settlement for School Year 1993-94 called for all bargaining unit members who were employed by the Timberline School District in School year 1992-93 to receive their 1992-93 salaries plus 65.75% of the difference between their 1992-93 and 1993-94 annual schedule

salaries. Unit members at maximum and not eligible for a step or track increase in 1993-94 were to receive at least \$400 more than they received for School Year 1992-93. These increases were in lieu of step increases between School Year 1992-93 and School Year 1993-94. By agreement of the parties they were to be and were paid after the start of the new fiscal year on July 1, 1994. District documents admitted as Association Exhibit Nos. 10 and 12 show the 65.75% payments to have cost in the vicinity of \$187,304 to \$193,763. In addition to the 65.75% payment, the District also paid School Year 1993-94 longevity bonuses (as provided by Appendix A-1, Item 4 of the 1993-96 "agreement") costing between \$23,000 (Association Exhibit No. 11) and \$26,000 (Association Exhibit No. 40), depending on the exhibit used, FICA estimated to be \$16,459 and contributions to the retirement system of \$4,217. This brings monies expended in Fiscal Year 95 for or recognizing service in School Year 1993-94 to an estimated \$230,980 to \$240,440.

7. When teachers received their individual annual teacher contracts for School Year 1994-95 in June of 1994, the annual amount due thereunder reflected a deduction for the 65.75% amount paid as a lump sum after the commencement of Fiscal Year 95. By way of example, teacher and negotiating team member Sharon Joyce explained that her salary at BA+14 under the 1992-93 CBA was \$36,630. Association Exhibit No. 19. For School Year 1993-94 she received the same \$36,630 plus her 65.75% payment of \$650 for a total of \$37,280. When she received her School Year 1994-95 individual contract, it was for \$37,841, as provided in Appendix A-2 of Association Exhibit No. 1, less the \$650 she was paid in July of 1994 under the 65.75% formula. Association Exhibit No. 29. Payment of the balance was to be in 26 equal installments. This resulted in her School Year 1994-95 compensation (\$37,814 minus \$650) being less than her School Year 1993-94 compensation, if that compensation is considered to be the sum of \$36,630 on the schedule

and the \$650 stipend. Similar treatment happened to Maureen White whereby her School Year 1994-95 compensation was reduced by the 65.75% amount of \$650 on her individual contract. Association Exhibit No. 36. Kathleen Dayotis had a \$1411 reduction from her annual salary amount of \$40,520, as reflected on her School Year 1994-95 individual teacher contract. Association Exhibit No. 41.

8. Sharon Joyce testified that, as of July 1, 1993, the Board had proposed maintaining the current salary and increment and to increase teacher participation in health insurance costs. Association Exhibit No. 20. She identified the Board's proposal of October 18, 1993 (Association Exhibit No. 23) which was the last time new monies were contemplated for School Year 1993-94 for payment within that school year. By November 23, 1993, the Board had proposed given amounts of money for each of the three years of the 1993-96 CBA and had inserted the proviso that funds for School Year 1993-94 would be paid on or before July 15, 1994, pending voter approval. This intention was confirmed in testimony from Board Chair Phillip Pappas who said that the Board's proposal of October 18, 1993 was the last opportunity to address the payment of School Year 93-94 wage increases during that school year because any later settlement would not be voted until the district meeting in March of 1994. Pappas said of the settlement reached on December 10, 1993, that "the best we could do was a lump sum payment" recognizing that School Year 1993-94 had been level funded except for the 65.75% payments in July of 1994. Pappas said that he did not figure the amount of the 65.75% payments into the base for School Year 1994-95, notwithstanding the TA in Association Exhibit No. 28. He considered it was a one-time lump sum payment but did not explain that it would not be part of the School Year 1994-95 salary base until this dispute occurred.
9. Maureen White, who was on the negotiating team and president of the association for three years, testified that the Board never took

the position that the \$233,533 designated for School Year 1993-94 was a one-time bonus or non-recurring cost. She said that on May 3, 1994 the Board proposed changing the date for the 65.75% payment referenced in Item 6 of Appendix A-1 from "no later than July 15, 1994" to "mid-July" and, at that time, voiced no objection to the salary schedules contained in Appendices A-1, A-2 and A-3 of Association Exhibit No. 33.

10. Assistant Superintendent Mark Masterson testified that the Board proposal of October 18, 1993 (Association Exhibit No. 23) was the last Board proposal which intended to compound monies for School Year 1993-94 and 1994-95. He said the Board's proposal of November 23, 1993 (Association Exhibit No. 25) was for three years, all to be warranted and voted in the March 1994 district meeting. Therefore, amounts designated for School Year 1993-94 in that document were not intended to be paid before the commencement of Fiscal Year 1995. He described the funds payable in July of 1994 as being a "lump sum" notwithstanding that they appeared opposite "1993-94" and were designated to be paid after the close of that school year. Board Exhibit No. 4, page 3, also identified as Association Exhibit No. 25. He acknowledged that the TA of December 10, 1993 made no reference to the concept of "lump sum." Association Exhibit No. 28, page 5. Likewise, the manner in which the administration has interpreted the financial aspects of the 1993-95 portion of the settlement has treated continuing teachers differently than new hires. For example, continuing teachers, such as Joyce, White and Dayaotis, received individual contracts for School Year 1994-95 with a stated deduction for the lump sum paid in July of 1994 while new hires received no such deduction from their annualized salary amounts. Giving credit for the lump sum payment against the 1994-95 school year rather than against the 1993-94 school year, Masterson said both new and continuing teachers ended up with the same amount of compensation at the conclusion of School Year 1994-95. Conversely, teachers who taught in School Year 1993

-94 but not in School Year 1994-95 were credited with and paid the lump sum in July of 1994. On cross examination, Masterson identified Rebecca Franks as one such individual. Association Exhibit No. 10, page 5.

11. William Verge was a school board member from 1991 to 1994. Testifying for the Association, he said he understood the 1993-96 settlement to involve a one time payment on July 1, 1994 with School Year 1994-95 and School Year 1995-96 raises "built on top of that," namely, in addition to any payment made for School Year 1993-94. He understood what he described as the July 1, 1994 payment, referred to elsewhere as the 65.75% payment, to be for services rendered during the 1993-94 school year. He observed that the parties had familiarity with how to handle non-recurring costs in their collective bargaining agreements because Appendix A to the 1992-93 CBA (Association Exhibit No. 19) specifically set forth when a longevity bonus was to be effective and that it was non-recurring cost. The purpose for the part-year or 65.75% increases for School Year 1993-94 was intended to recognize that the CBA was not settled until what Verge called "late into the [1993-94] school year" and to encourage speedier settlements in future negotiations.

12. At the conclusion of the final day of hearing in this matter on April 18, 1995, the PELRB gave the parties until June 15, 1995 to meet and negotiate in order to resolve any outstanding differences or to submit their post-hearing briefs. [See Decision No. 95-32] By letter of June 6, 1995, the Boards' attorney notified the PELRB that these post-hearing negotiations had failed. Thereafter both parties filed post-hearing briefs on June 15, 1995.

DECISION AND ORDER

We have examined the evidence and the testimony in this case, both of which were voluminous, and are convinced they are overwhelmingly in favor of the teachers' association. We start by looking at the 3 a.m. tentative agreement (TA) of December 10,

1993. It was initialed by both sides and specifically set forth \$233,533 for the 1993-94 school year; separate amounts were shown for school years (SY) 1994-95 and 1995-96. Additionally, this TA was "paid for" by quid pro quos shown on its face and in testimony, namely, changes in insurance contribution rates and a \$24,000 reduction in the merit pool. (Association Exhibit No. 28). These figures were further confirmed by the District's press release on December 22, 1993 (Association Exhibit No. 32) showing the same amount (\$233,533) dedicated to the SY 1993-94 package with an 8 to 0 approval vote by the Board and a 160 to 9 approval vote by the Association.

After the TA was approved and announced, the Board suggested language (Association Exhibit Nos. 25 and 33 at Appendix A-1) to delay the payment of the SY 93-94 monies until "on or before July 15, 1994." This provision found its way into the 1993-1996 agreement as "mid July, 1994" and the payments were made (Association Exhibit No. 10) notwithstanding the District's reserving the right to disagree with the Association's interpretation of salary levels for SY 93-94 and SY 94-95. No reservations appeared in the applicable contract language to suggest that the "salary...increases for the 1993-94 work year" which were to be paid "in mid-July of 1994" would be limited or credited against 1994-95 compensation, even though the parties had a clear history of knowing how to make such restrictions, e.g., the non-recurring cost language pertaining to longevity bonuses in the 1992-93 CBA. (Association Exhibit No. 19)

There is further evidence that the lump sum, although paid in July of 1994, was for services rendered in SY 1993-94. This was evident when teachers who worked in SY 93-94 but not in SY 94-95 were paid lump sum payments in July of 1994, e.g., R. Francks, Association Exhibit No. 10, p. 5. Likewise, the District's position creates even more incongruity on the pay scales when teachers new to the district in SY 94-95 received full value individual contracts without deductions for SY 93-94 entitlements paid in July of 1994. To be an agreed to and accepted practice, this would mean that continuing contract teachers, not "new" to the district, had an expectation that their SY 94-95 contract salary would be reduced by, or paid in part by, the SY 93-94 entitlement which they did not receive until July of 1994.


We can find no evidence that this was ever the expectation, the intent of the TA, or the agreement, albeit unsigned, of the parties. Quite to the contrary, teachers Joyce, White and Dayotis "lost" between \$650 and \$1411 apiece against their SY 94-95 compensation when the SY 93-94 entitlement was subtracted from

the amounts set forth on Appendix A-2 for professional salaries. (Association Exhibit Nos. 29, 36 and 41.) This left them, and others so situated, with a lower annual compensation rate, against the respective salary schedules, than they had received the previous school year. The history of these negotiations convinces us that this was never intended to be the case. For that matter, Board member William Verge testified that SY 94-95 and SY 95-96 wages or wage rates were to be "built on top" of the SY 93-94 base.

The Board's reading the contract, as developed from the TA of December 10, 1993, to permit the deduction of the July, 1994 lump sum payment for services rendered in SY 93-94 as a credit against the payable compensation for SY 94-95 was, under the circumstances of this case, an unfair labor practice in violation of RSA 273-A:5 I (e), (g) and (h) as to the requirements of good faith, the obligation to bargain and breach of contract, respectively. It shall be remedied forthwith by repaying all SY 94-95 teachers an amount equal to the amount previously subtracted from their SY 94-95 individual contracts as the result of the one time payments made in July of 1994. All other complaints of ULP, whether by claim or counter-claim, are DISMISSED.

So ordered.

Signed this 22nd day of September, 1995.


EDWARD J. HASELTINE
Chairman

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