



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONTOOCCOOK VALLEY EDUCATION ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

CONTOOCCOOK VALLEY SCHOOL DISTRICT

Respondent

CASE NO. T-0275:5

DECISION NO. 88-48

Representing the Con-Val Education Association:

James Allmendinger, Esq., Counsel
Joyce Foster, Con-Val Education Association

Representing Con-Val School District:

Bradley F. Kidder, Esq., Counsel
Larry Bramblett, Supt. of Schools

BACKGROUND

Negotiations between parties began in October 1986. Several negotiation sessions were conducted without resolution of the issues or agreement on a contract. This failure resulted in the case finally ending in Factfinding in accordance with RSA 271-A:12, 1 with Roberta L. Golick, Esq., appointed as factfinder by PELRB. The factfinding report was issued on May 11, 1987 and both the Con-Val Education Association (Association) and the Con-Val School District (District) accepted and endorsed the recommendations of the report. The annual school district meeting held May 20, 1987 funded the factfinder's recommendations.

A hearing was held in the Board's (PELRB) offices in Concord on April 19, 1988 with all parties represented.

The Association presented several witnesses who testified as to the progress of negotiations from inceptions thru the annual school meeting. (To date no official contract has been signed). The Association also testified that a tentative agreement or memorandum of understanding, signed by Thomas Brennan the Chairman of the School Board and co-chief of the negotiating team for the District, was a valid and enforceable agreement and further that Mr. Brennan never told the Association there were any limitations on his authority to sign.

Joyce Foster on behalf of the Association testified she had questioned whether Mr. Brennan had authority to sign a tentative agreement and his answer was "yes". She further testified that a contract was prepared by the Association based on the tentative agreement and contained the salary schedules for the school years '87-'88, '88-'89 and '89-'90. Copies of the document were poor reproduction and some sections were not legible.

Jonathan Manley, a science teacher at Con-Val, testified he discussed the '87-'88 salary schedules with Principal Breiner in an effort to determine proper salaries for vacant positions in the science department. His impression was that the T/A'd 3-year salary schedule would apply.

Charles Breiner, Con-Val principal, testified that he was not a part of the bargaining committee but told school administrators not to publish the salary schedule.

Mary Gaul, Uniserv Director, testified she was advisor to the Association's negotiating team and the the School Board had some concerns regarding the contract, specifically with the BA-45 lane and the lower and upper ends of the salary scale. Gaul further testified that both parties adopted the factfinder's report prior to the District meeting on May 20, 1985. In July she was called by Joyce Foster to assist in drafting the agreement based on the "Memorandum of Agreement" (T/A'd). She first learned that more had to be done on the agreement in September, specifically that Attorney Kidder for the Board said they did not have a copy of the "Memorandum of Agreement" and requested further negotiations. Gaul testified that she talked to Kidder on September 9, again in October and November of 1987 about the Board's failure to ratify the contract. Also, that while she understood that the agreement based on the T/A'd had not been ratified by the Board, that the contracts for the '87-'88 school year would be issued in accordance with the salary schedule contained in the T/A'd and that was evidence of acceptance by the Board.

Tom Brennan principal at Conant School in Jaffrey, a member of the Con-Val School Board and Co-Chief negotiator of the five (5) man team representing the District, testified that the factfinder's report was introduced at an emergency meeting of the Board on May 18, 1987 and accepted as written; further, that Dr. Reidy, Superintendent of Schools, was a member of the negotiation committee who attended all meetings and that at a Board meeting on June 16, 1987 he (Brennan) discussed with him the need to get next year's contracts out. Superintendent Reidy gave out the salary schedules that appear in Association Exhibit #1a, b & c and contracts were issued for the school year '87-'88 based on this schedule. The Association's testimony and witnesses concluded that through a signed memo of agreement and the Board's actions in issuing contracts based on the salary schedule contained therein did bind the Board as much as any signed agreement would or could.

The District admits that it adopted the factfinder's report as written but that it has no signed agreement and alleges that the T.A. was signed by Mr. Brennan without the concurrence of the Board, and that he did not have final and binding authority to sign for the Board. The District thru witnesses Dr. Homicz, Tom Brennan, John Pierce, Gordon Allan and Louise Green testified relative to their participation in negotiation meetings and stated that there had been no meeting of the parties to resolve certain issues recommended by the factfinder. Because of unsettled conditions, (certain members of negotiation team in the process of leaving for new positions), communication between the parties were sadly lacking and that Mr. Brennan who signed the T.A. never met with the negotiation team or School Board

members to discuss the T.A.'s which he had signed. Testimony revealed Brennan had about 9 or 10 meetings in 1987 with Foster and others during which he raised several questions then subsequently signed documents marked Teachers Exhibit #2 and the salary schedule page, Association Exhibit 1-A. At the June 9th meeting, Brennan told Foster he had authority to sign as Chief Negotiator and Foster assumed that Brennan was signing as Chairman of the School Board.

The School Board thru witnesses indicated that Mr. Brennan had on frequent occasions signed the tentative agreements for the Board. It is the District's position that Mr. Brennan was not signing on behalf of the entire School Board but had been signing in his capacity as Chief Negotiator and that any documents signed by him therefore, were tentative in nature. Mr. Brennan admitted on cross-examination that he never brought a proposed tentative agreement to the school board and he never brought the agreement to the negotiating team. He testified that prior to his proposing it or delivering it to the School Board negotiating team, he needed a clean copy of the proposed contract so that it could be reviewed in its entirety with the School Board.

During the summer months, the parties in this case were scattered because of vacations and assignments, new teaching positions. Confusion appears to exist as to the actual knowledge of all parties in the case as to what was transpiring. Several prior cases before this Board were cited by the Association; the Derry decision #83-47 propoiting to support their position, that an agent can bind the group if he is so authorized with final authority; and the Supreme Court case of Demetracopoulos v. The Strafford Guidance Center, decided 31 December 1987 dealing with the authority of agents to bind a school board to an agreement concluded by the agent. The District's contention is that Brennan was not specifically authorized to sign on behalf of the School Board.

The issue of Brennan's authority, specifically authorized or implied, is clouded by lack of definitive statements or written documentation.

Once again in this case confusion seems to exist energized by the changing of the superintendent and certain principals. Testimony indicated that in early June Mr. Brennan brought the proposed salary schedules to Superintendent Reidy. Larry Bramblett who is the current superintendent and was succeeding Reidy was anxious to get the '87-'88 contracts out, as they were somewhat late in being distributed to the teaching staff, agreed and the contracts were signed and dated June 9 and sent out in early July with a return date of August 12th.

The School Board in its testimony agreed that the teachers contracts for the first year contained the salary schedule in the tentative agreement in an attempt to abide by a legislative mandate for harmonious and cooperative relations with their employees. These contracts were in fact issued to the teachers without a signed agreement being finalized. Evidence revealed that there was a substantial delay between the signing of the tentative agreement and that the presentation of the actual negotiated agreement to the parties was unclear and illegible and had to be returned for preparation of a legible copy and that the School Board has formally rejected any tentative agreement on December 1. Dr. Homicz, a member of the School Board and at one time chairman, testified that he first became aware of the legible copy on August 25th at a School Board meeting and stated he would contact counsel regarding the proposed agreement. He stated that the board had never ratified the suggested agreement and that it was the Board's desire to sit down with representatives of the Association to comply with the recommendations contained

in the factfinder's report, however, the Association had refused to sit down to negotiate with them in accordance with the recommendations of the factfinder's report.

After the many witnesses and the testimony, some of which was contradictory and confusing with lines of authority specifically lacking and no signed agreement at present between the parties, the Association would lead PELRB to believe that the signing of a tentative agreement is sufficient in and of itself to signify an acceptance of the total agreement and consequently the School Board should be bound by the salary schedules and the written agreement which is yet unsigned. The District's position is that they are willing and eager to sit down for negotiations with the Association in compliance with the recommendations of the factfinder's report.

Much testimony was heard regarding the interpretation and conclusion of the factfinder's recommendations. PELRB has before it the findings and recommendations of factfinder Roberta L. Golick, Esq., dated April 30, 1987. Quoted below are the findings and recommendations as introduced in evidence in this hearing. In the interest of brevity excerpts of the findings follow;

"The parties are still fine-tuning a new salary structure created for the current contract term. As the parties recognize during their last set of negotiations, it will take some years to achieve a comfortable balance of the equities for all teachers involved. I recommend that the parties continue to work together to construct a new three-year schedule incorporating to the extent possible the following principles;

- A) Compression with a view towards minimizing windfalls while assuring realistic wage increases for senior teachers.
- B) Preservation of current methods of indexing.
- C) Grandfathering teachers currently on BA-45 lane as proposed by the Association.
- D) Retaining M-45 track.
- E) Overall percentage increase. Year One (1) 13.0%. Year Two (2) 12.5%. Year Three (3) 12.0%."

FINDINGS OF FACT AND RULINGS OF LAW

ASSOCIATION'S REQUESTS:

- #1-3 Granted.
- #4 Granted, in part, denied in part.
- #5-7 Granted.
- #8 Denied, Only one member, Homicz, refused to meet with the Association.
- #9 Denied.
- #10 Granted.

- #11 Denied.
- #12-17 Granted.
- #18 Denied, no evidence presented.
- #19 Granted.
- #20 Denied.
- #21 Granted.
- #22 Denied.
- #23 Denied in part, Granted in part.
- #24 Denied.
- #25 Denied, agents with specific authority can bind parties to an agreement. Testimony in this case does not support the above position.

SCHOOL BOARD'S REQUESTS:

- #1-6 Granted.
- #7 Granted.
- #8-9 Granted.
- #10 Denied, not at all meetings.
- #11-16 Granted.
- #17-18 Granted in part, Denied in part. Testimony indicated some informal conversations with various individuals.
- #19-20 Granted.
- #21 Denied, not proven.
- #22-26 Granted.
- #27 Denied, not proven.
- #28-30 Granted.
- #31 Denied. Testimony revealed that representatives of the School Board did authorize the preparation and dispatch of the contracts containing the '87-'88 salary schedule contained in the T/A.
- #32-33 Granted.
- #34-35 Denied.
- #36-45 Granted.
- #46 No findings.
- #47 Granted.


PELRB finds that;

- (1) During negotiations between the District and the Association certain interpretations were ascribed to certain actions differing by the parties varied interests. Confusion as to authorities and lines of authorization existed because of the transient situation of certain participants to the negotiations.
- (2) A factfinder was appointed by the PELRB and duly performed the functions prescribed by 273-A and made certain recommendations in the findings. Both parties adopted the recommendations of the factfinder and enthusiastically supported it before the school district meeting on May 20, 1987 at which time the factfinder's report was adopted as presented by the voters.
- (3) In view of the recommendations of the factfinder that the parties continue to fine-tune this proposed contract, PELRB declines to find an unfair labor practice as petitioned by the Association and urges strongly continued review of all proposals. It is the opinion of this board in its findings that the salary schedule presented in Exhibits 1-a, b & c, specifically outlined a percentage increase for each year of the proposed three (3) year agreement. The first year that of '87-'88 having been complied with, appears to be a fait accompli, however, the allocation of the percentages for year two (2) and three (3) of the contract should be the subject of negotiations.

ORDER

This Board orders the parties back to the negotiating table for the conduct of negotiations in accordance with the recommendations of the factfinder's report.

Dated this 1st day of July, 1988.


EDWARD J. HASELTINE
Chairman

By unanimous vote: Chairman Edward J. Haseltine presiding. Members James C. Anderson, Richard E. Molan, Esq., and Seymour Osman present and voting. Also present Executive Director, Evelyn C. LeBrun.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONTOOCOOK VALLEY EDUCATION ASSOCIATION :
/NEA-NEW HAMPSHIRE :

Complainant :

v. :

CONTOOCOOK VALLEY SCHOOL DISTRICT :

Respondent :

CASE NO. T-0275:5

DECISION NO. 88-48

CORRECTION

Richard E. Molan, Esq. was incorrectly listed as being present and voting in the above case. Member Molan was not present for the hearing, was not involved in deliberations or vote in this matter.


EDWARD J. HASELTINE
Chairman

Signed this 6th day of July, 1988.