State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ASSOCIATION OF PORTSMOUTH TEACHERS, NEA-NEW HAMPSHIRE v. PORTSMOUTH SCHOOL DISTRICT and PORTSMOUTH SCHOOL DISTRICT v. ASSOCIATION OF PORTSMOUTH TEACHERS, NEA-NEW HAMPSHIRE	CASE NO. T-0251:9 and T-0251:11 DECISION NO. 89-57

APPEARANCES

Representing the Association of Portsmouth Teachers, NEA-NH:

James Allmendinger, Esq.
Jo Campbell, UniServ Director

Representing Portsmouth School District:

Thomas E. Cayten, Esq.
Robert Sullivan, Esq.

Also Appearing:

Mary E. Gaul, UniServ Director
Ann E. Walker, Teacher
John Pennington, Teacher

BACKGROUND

The Association of Portsmouth Teachers (Association) and Portsmouth School Board (Board) filed unfair labor practice charges, both claimed the opposing party committed unfair labor practice by failing to proceed in the interest arbitration as negotiated in the existing contract covering the period of July 1, 1986 through June 30, 1989. The existing contract provides for binding arbitration. Articles 13-5 and 13-6 in part reads: "The findings of the arbitrator shall be binding on the Board and the Association."

The Association filed unfair labor charges against the Board, January 24, 1989 for claiming the current contract language calling for binding interest arbitration is void because of City Charter actions taken by the voters. The Board counter-charged the Association on March 3, 1989, alleging the Association refused to negotiate in good faith with respect to participating in mediation.

Hearing in this matter was held on March 23, 1989. The parties agreed to consolidate the two cases for the purpose of hearing, as the same facts, witnesses and testimony would apply to both.

The issue before this Board is quite simple: (1) do the parties have a right to negotiate contract language that permits binding arbitration as a resolution of dispute and (2) did the enactment of a City Charter change on November 31, 1987, after the bargaining agreement was signed and in force, nullifying that portion of the contract dealing with resolutions of disputes (contract 13.5 and 13.6). The action with respect to the City Charter change taken by the voters on November 3, 1987 is quoted:

> "No board, commission, or legislative body, whether elected or appointed, shall delegate its authority to anyone not a member of its body, through the inclusion of binding interest arbitration in collective bargaining agreements, such delegation abrogating the right of the people to control their taxes through their elected officials."

Witnesses presented much testimony regarding the history of bargaining between the parties and the language of the contract; the intent of the parties; past decisions of this Board dealing with similar issues; the pursuance of this matter before the Superior Court; the desirability of this Board deciding the matter; and the Board's jurisdiction. Summerizing the testimony presented, the Association contended that the agreement containing the Section 13.5 and 13.6, dealing with final and binding arbitration was negotiated in good faith between the parties and could not be abrogated by voter action during the life of the contract.

PELRB takes the position that voter action in amending the City Charter subsequent to the signing of the agreement, while a valid action, it did negate that portion of the contract dealing with binding arbitration. Legislative bodies have final authority over economics.(cost items) RSA 273-A:3 (b).

FINDINGS OF FACT

After reviewing briefs, memoranda of law and testimony offered at the hearing, the PELRB makes the following finding and substitutes them for finding requests of the parties:

1. The parties in this case entered into a negotiated agreement between the Portsmouth Board of Education and the Association of Portsmouth Teachers dated February 20, 1987.

2. The agreement contained in Sections 13.5 and 13.6 which deals specifically with the finality of settlement of issues when the parties reach impasse: "13.6, the findings of the arbitrator shall be binding on the Board and the Association. But any of the parties may appeal to the courts the decision of the arbitrator....."

3. RSA 273-A:4 requires "every agreement negotiated under this chapter shall be reduced to writing and shall contain workable grievance procedures."

4. We find the negotiated agreement before us, meets the above requirements by the parties agreeing to binding arbitration (Paragraph 13.5 and 13.6) and constitutes a workable grievance procedure.

5. PELRB is responsible for deciding and has primary jurisdiction over conflicts involving interpretations of bargaining agreements as they apply to unfair labor charges.

6. The change in the City Charter on November 3, 1987, cannot supercede nor invalidate an agreement entered into and in force by the parties. RSA 273-A:5 (1): "It shall be a prohibited practice for any public employer to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment entered into by the public employer making or adopting such law, regulation or rule."

7. A request for declaratory judgment regarding the amendment to the City Charter is presently before the Superior Court.

8. RSA 273-A grants to public employees the right to organize and negotiate with the public employer. It is the opinion of this Board, that action by a public employer cannot negate any rights granted under Chapter RSA 273-A during the life of the agreement.

9. The Board has dealt with the issue in a case with basic similarity (see case 86-65, Portsmouth Teachers).

10. The agreement, Paragraphs 13-5 and 13-6, having been negotiated in good faith by the parties under authority granted by RSA 273-A, calling for binding interest arbitration is valid during the life of the agreement.

ORDER

a. The Board finds the Portsmouth School District guilty of unfair labor practice in failing to comply with the negotiated agreement, Paragraphs 13.5 and 13.6 (RSA 273-A:5(h)).

b. The Board dismisses the unfair labor practice charge filed by the Portsmouth School Board

c. The parties are ORDERED to pursue final and binding arbitration as required in Paragraphs 13.5 and 13.6 of the agreement.

Signed this 30th of August, 1989

EDWARD J. HASELTINE, Chairman

By unanimous vote, Edward J. Haseltine presiding, members Seymour Osman, Richard Molan and Richard Roulx. Also present, Evelyn C. LeBrun, Executive Director.