



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

<hr/>		:
PROFILE FEDERATION OF TEACHERS/	:	:
NEA-NEW HAMPSHIRE	:	:
	:	:
Complainant	:	CASE NO: T-0373:4
	:	:
v.	:	DECISION NO. 92-06
	:	:
PROFILE SCHOOL DISTRICT	:	:
	:	:
Respondent	:	:
<hr/>		:

APPEARANCES

Representing Profile Federation of Teachers:

James Allmendinger, Esq., Counsel

Representing Profile School District:

Jay C. Boynton, Esq., Counsel

Also appearing:

- John Staff, Profile School District
- Amy Bahr, Profile School District
- John S. Perio, Profile School District
- Bruce S. Perio, Profile School District
- David E. Bishop, Profile School District
- Alistair D. MacBain, Profile School District
- Ted Comstock, Esq., N.H.S.B.A.
- Philip R. Fujawa, Sr., Profile School District
- Brian Sullivan, NEA-NH
- James F. Snyder, Profile School District
- John Fessenden, UniServ Director NEA-NH

BACKGROUND

On September 3, 1991, the Profile Federation of Teachers, NEA-New Hampshire, filed improper practice charges (ULP) against the Profile School District alleging violations of RSA 273-A:5, I (a), (g), (h) and (i). The Profile School District (employer) responded on September 17, 1991, which included matters of an affirmative defense and a counter claim. The case was set for hearing and heard by the Board at its offices in Concord, New Hampshire on December 17, 1991.

The Complainant alleged that the parties have a collective bargaining agreement effective for the period of September 1, 1989 to August 31, 1992, and that the "voters of the District approved the cost items of

the agreement at a special meeting...on June 21, 1989." The complaint continued, "at a District meeting, held on March 7, 1991, the voters voted against the already agreed to a raise" for the 1991-1992 school year.

The Federation claims that the voters were sufficiently informed about and approved a three year contract when they granted their first approval of the contract package on or about June 21, 1989. Federation President Fujawa testified, without rebuttal, that it was the District which proposed the multi-year (three year) contract. Testimony before this Board indicated that copies of the fact finder's report dated April 6, 1989 were available at the Village Store, Town Office and Town Library and that it contained a recommendation for a three year package. Conversely, there was no evidence that a copy or copies of the fact finding report were available at the meeting of June 21, 1989 or that the warrant for that meeting called for or identified the need to "raise and appropriate" sums for other than the 1989-1990 school year for which the sum of \$159,116.00 was specifically mentioned. (We note that this action occurred before the Appeal of Sanborn Regional School Board, decision 133 N.H. 513, (1990), was announced).

The Federation asserted that the fact finder's report of April 6, 1989, contained specific reference to wages for the third year (1991-1992 school year) of the contract and reiterated the ten (10%) percent increase recommendation in several places. Federation witness James Schneider, a special Education Coordinator, testified that the local newspaper mentioned that the contract package called for a three year settlement on at least four occasions, three of which were before the meeting of June 21, 1989, to wit: April 26, 1989, May 10, 1989, June 1, 1989, and June 28, 1989. Moreover, the minutes of the Profile School District Special Meeting of June 21, 1989, taken by Trina Luce and submitted in the proceedings, provided, inter alia, "This would put Profile salaries slightly ahead of the other two districts in the first year, about even in the second, and even or slightly behind in the third year, in which there would be a 10% cost-of-living adjustment." The collective bargaining agreement, signed by the parties on May 9, 1989, contained a "Duration" clause from September 1, 1989 to August 31, 1992 and contains a fixed (constant) wage scale for school years 1989-1991 and a similar scale reflecting a ten (10%) percent increase for the 1991-92 school year.

The District's answer states that the voters at the June 21, 1989 special meeting "were neither appraised of any specific sums required to be raised, except for the first year of the contract, nor of any legal connection between the vote on the first year of the contract with approval or disapproval of the entire package." James Schneider's testimony confirmed that there was no specific reference to the sums to be raised for the second or third year of the contract discussed at the June 21, 1989 meeting. He recalled no discussion at that meeting about a requirement to raise additional funds for the 1991-1992 school year.

Article 8 of the warrant for the District's annual meeting set for March 6, 1991 called for the raising and appropriating of \$138,024.00 for salaries and benefits for the 1991-1992 school year. During the meeting, inquiry was made of District negotiator David Bishop as to whether the teachers had any input into the budget process. He responded by saying that a letter had been written to the teachers on December 9, 1990, asking them to participate in "reviewing financial preparations for the coming year." He also reported that he received an answer on January 22, 1991, indicating that the teachers had unanimously voted down any request to renegotiate their contract. Article 8 was defeated by a ballot vote of 152 to 75. After this vote, Bishop sent a note to Messrs. Fujawa and Bonnevie

on March 24, 1991, offering to "discuss contractual issues." The Federation responded by letter of April 1, 1991, rejecting that overture, saying "given the fact that it is our belief that a valid contract exists, negotiations would not be proper at this time." This precipitated the counterclaim contained in the District's answer.

FINDINGS OF FACT

1. The Profile Federation of Teachers, NEA-New Hampshire (Federation) is the duly recognized bargaining agent for teachers and other professional employees of the District.
2. The Profile School District (District) is a public employer within the meaning of RSA 273-A:1, X.
3. The parties reached impasse on a contract to commence on or after September 1, 1989, and consequently, engaged in fact finding on January 4, 1989. The fact finding report was issued on April 6, 1989, and recommended a three year package from September 1, 1989 to August 31, 1992, the provisions of which recommended a general wage increase for the 1989-91 school years (i.e., one increase for both years) and second, ten (10%) percent increase for the third year, the 1991-1992 school year.
4. The concept of a multi-year agreement was advanced by the District.
5. On May 9, 1989, the parties executed a collective bargaining agreement for the period of September 1, 1989 to August 31, 1992 which contained the wage schedules referenced above, including a schedule for a ten (10%) percent increase in the 1991-1992 school year.
6. On May 16, 1989, the District petitioned the Superior Court for permission to hold a Special School District Meeting "to raise and appropriate the sum of \$159,116 to fund the increased cost items relating to teachers' salaries and fringe benefits for the 1989-90 school year."
7. On June 21, 1989, there was a Special School District Meeting for the above stated purposes set forth in Finding No. 6 above.
8. Discussion at and before the Special School District Meeting of June 21, 1989 as well as certain newspaper articles occurring on the dates referenced above conspicuously and repeatedly mentioned that the agreement called for a multi-year (three year) agreement. At least two of the newspaper articles reference a ten (10%) percent raise in the third year of the contract, i.e., those appearing on May 10, 1989 and June 1, 1989.
9. The warrant for the June 21, 1989 Special Meeting contained only one article, spoke only to "teachers' salaries and fringe benefits for the 1989-1990 school year," and set forth

10. Copies of the April 6, 1989 fact finding report were available prior to the June 21, 1989 Special Meeting at the Village Store, Town Office and Town Library; however, there is no evidence that a copy was available at the Special Meeting.
11. The June 12, 1989 Special Meeting approved the 1989-90 school year funding in the amount of \$159,116 by voice vote.
12. On February 15, 1991, the District posted the School warrant to be considered at its March 6, 1991 annual meeting. It sought an articles, "to raise and appropriate the sum of \$138,024 to fund all cost items relating to teachers salaries and benefits for the 1991-1992 school year which represents the negotiated increase over the 1990-91 school year." This article was defeated by 152 to 75 by vote at the March 6, 1991 annual meeting.
13. On March 24, 1991, District negotiators wrote to the Federation negotiators offering "to meet with you to discuss contractual issues."
14. On April 1, 1991 UniServ Director John Fessenden responded on behalf of the teachers saying, "It is their present position that there exists a valid contract for 1991-92 school year...Given that fact that it is our belief that a valid contract exists, negotiations would not be proper at this time."

#### DECISION AND ORDER

All appearances of the executed collective bargaining agreement would lead us to conclude that the parties had negotiated a multi year, contract. The complication in this case is the multi-year characteristic of that contract.

Notwithstanding that the parties negotiated and signed their agreement in May of 1989 prior to the Sanborn decision we believe that the provisions of Sanborn apply to all district meetings scheduled to be held in the future. Sanborn clearly upheld the notion that teachers and school boards could negotiate multi-year contracts, such as occurred in this case. "One is hard pressed to believe that the legislature, in adopting RSA Chapter 273-A, contemplated a situation wherein the school teachers union could be called upon to bargain in good faith for a multi-year contract, perhaps as in this case, giving concessions in the first year in exchange for more liberal treatment in later years, only to have the intent of the contracting parties frustrated by a failure of the district to meet its obligations in subsequent years." Sanborn, 133 N.H. 513 at 519.

Given this dictate, we must look to the circumstances when district voters can approve multi-year agreements. Again, Sanborn provides the guidance. "It is axiomatic that the voters attending a school district meeting must be warned or called 'by a warrant. . .stating the. . .subject matter or the business to be acted upon.'" 133 N.H. 513 at 522 (Emphasis added). This did not happen in this case or in the Sanborn case. In Sanborn, both the warrant and the clerk's report failed to mention anything about second or third year salary increases 133

N.H. 513 at 522. Likewise, the Profile School Warrant for the March 2, 1989 meeting (Article 9) spoke only to the 1989-90 school year, the warrant for the June 21, 1989 Special Meeting spoke only to the 1989-90 school year and a specific sum (\$159,116.00) of money, and the clerk's minutes of that meeting also spoke only to the 1989-90 school year and a sum of \$159,116. [It should be noted that the clerk's minutes did reflect discussion about the percentage increase (10%) for the third year but reflected neither a dollar amount associated with or a vote on this increase.] We cannot discern how these facts should cause us to conclude differently that the Court's resolution in Sanborn.

There are some different facts in this case from what occurred in Sanborn, namely, the availability of the fact finding report at three locations (Village Store, Town Office and Town Library) and the various newspaper articles. We do not find these persuasive to the extent our decision should vary from Sanborn. Regardless of the publicity surrounding a contract package to be voted at a District Meeting, it is the warrant which must control and which must be the vehicle by which notice or "warning" to the voters might properly be presumed. Sanborn is dispositive. "Submission to a school district meeting....of a proposal to provide salary increases must be warned by a warrant article sufficient to indicate plainly that action may be taken on such matters at the place and time stated." 133 N.H. 513 at 522. That did not occur. "Inclusion in the warrant of language apprising the voters of the financial consequences of their actions [for the second and third years of the contract] would seem to be sufficient." 113 N.H. 513 at 522. That, too, did not occur.

The complaint of unfair labor practice is DISMISSED. Requests for additional relief, whether by claim or counter claim are DENIED.

So Ordered.

Signed this 22nd day of January, 1992.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Richard E. Molan, Esq., present and voting.