State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WEARE SCHOOL BOARD Complainant v. WEARE TEACHERS ASSOCIATION/NEA-NEW HAMPSHIRE Respondent	CASE NO'S. T-0278:9 T-0278:10 DECISION NO. 92-116
WEARE TEACHERS ASSOCIATION/NEA-NEW HAMPSHIRE Complainant v. WEARE SCHOOL BOARD Respondent	

APPEARANCES

Representing Weare School Board:

Bradley F. Kidder, Esq., Counsel

Representing Weare Teachers Association/NEA-NH:

James Allmendinger, Esq., Counsel

Also appearing:

Frank Bolton, Jr., School Board
Suzanne Bryant Armstrong, School Board
James Bucknam, W.T.A.
Ted Comstock, N.H.S.B.A.
Susan Chagnon, N.H.S.B.A.

BACKGROUND

On November 13, 1991, the Weare School Board (employer) filed unfair labor practice (ULP) charges against the Weare Teachers Association (Association) seeking to vacate an arbitration award because the arbitrator allegedly erred when he failed to apply certain contract language (referred to as an "escape clause", Article XI) and certain case decisions of both the PELRB and the New Hampshire Supreme Court. On November 25, 1991 the Association filed an answer denying the commission of any unfair labor practices and a Motion to Dismiss because the complaint filed to allege a violation of RSA 273-A:5 II and failed to set forth, "a clear and concise statement of the facts giving rise to the complaint...characterizing each particular act in terms of the specific provisions of RSA 273-A:5 alleged to have been violated." On December 11, 1991, the Weare Teachers' Association filed a ULP against the Weare School Board alleging it violated RSA 273-A:5 I (g) and (h) by failing to abide by an arbitrator's award (Case No. 1139-1073-91) issued October 15, 1991, and sought a Motion for Specific Performance to enforce that award. The School Board filed an answer on December 26, 1991, further requesting that the PELRB "abate further proceedings in this case" pending exercise of the employer's right under Article II of the contract "to submit questions of law...to the appropriate court of law having jurisdiction." Both sets of complaints and answers were consolidated, set for hearing, and heard by the PELRB on April 9, 1992.

FINDINGS OF FACT

1. The Weare School Board is a "public employer" of teachers and other employees as defined in RSA 273-A:1 X.

2. The Weare Teachers Association NEA/NH is the duly certified bargaining agent for teachers employed by the Weare School Board.

3. At all times pertinent to these proceedings, the parties were operating under a collective bargaining agreement (CBA) for the period July 1, 1988 through June 30, 1991. It contained no "evergreen" clause. The arbitration provisions of that contract, found at Step 4 of Article II, state, in pertinent part:

> The arbitrator selected will give his or her decision citing findings of fact, reasoning, and conclusions on the issue submitted to both

> parties within twenty (20) days from the date the arbitrator first received the grievance. The arbitrator's decision will be binding on all parties concerned, provided that the questions of law may be submitted to the appropriate court of law having jurisdiction, providing further that it is not contrary to any provisions of this contract or the laws of the State of New Hampshire.

4. The aforesaid CBA has wage scales, the most recent of which was reflective of the 1990-91 school year, consisting of five (5) columns or tracks (BA, BA+15, BA+30, MA, MA+30) and a maximum of fourteen (14) steps or with a minimum of eleven (11) steps.

5. Article VII of the CBA provided that "all teachers will be placed on the step as specified in the attached salary schedule according to their experience. Teachers should be advanced one step on the pay scale for each year taught...Increments for preparation beyond the Bachelor's degree will be granted in accordance with the attached schedule. The only listed purpose for denying increments is just cause."

6. When it issued individual teaching contracts for School Year 1991-92 sometime prior to June 30, 1991, the School Board and/or its agents did not advance teachers one year for an additional year's experience. This prompted a grievance under the CBA. An arbitration hearing was held on August 26, 1991. The School Board denied any obligation to pay the "steps" for the 1991-92 school year in the absence of a new contract requiring such payment.

7. Article I of the CBA entitled "Recognition" states that the "contract is adopted pursuant to and under the provision of RSA 273-A."

8. Article XI of the CBA contained a financial contingency clause providing "any agreement reached herein which requires the expenditures of public funds for its implementation shall not be binding on the Board, unless, and until, the necessary appropriations have been made by the voters."

9. Relying on rulings of the PELRB in general and Sugar River Education Association v. Claremont School Board (Case No. 86-25, March 31, 1985) in particular, the arbitrator concluded "that the intent and effect of the PELRB ruling is to extend the term of the expired contract during the term of negotiations" when he issued his award on October 15, 1991. He ruled that "the Board violated Article VII of the 1988-91 contract when it failed to pay longevity step increments for the 1991-92 school year." The Board was directed to "retroactively adjust the pay of all teachers affected by this decision to reflect appropriate step increments for all eligible teachers and to continue to pay teachers at those levels until a new agreement is reached."

10. At no time pertinent to these proceedings has the School Board abided by the foregoing arbitration decision.

11. The determination not to pay "steps" for an additional year of experience (Finding No. 6) was made by the employer. Notwithstanding the contract language (Finding No's. 4 and 5), there is no evidence that the employer ever submitted the costs associated with those "steps" or increments to the district voters for approval or rejection at any annual or special district meeting.

12. The arbitrator (Finding No. 9) noted in his award (page 17) that "if the [School] Board had an obligation to pay step increases for 1991-92 under the 1988-91 agreement, it had an obligation to seek the required funds at Town Meeting....The contractual obligation cannot be avoided by the device of not seeking the appropriation."

DECISION AND ORDER

It is axiomatic that the PELRB is reluctant to disturb the carefully reasoned analysis of arbitrators, primarily because that is the settlement device or relief to which the parties have bound themselves by contract. Consistent with that rationale, we again affirm the results of the arbitration process and direct compliance with the award, retroactively for the 1991-92 school year as contemplated by the arbitrator.

The parties' last CBA was for three years, 1988-91. (Finding No. 3). At the time that agreement was negotiated, there was no "Sanborn Doctrine." The Sanborn case was not decided by the New

Hampshire Supreme Court until August 14, 1990. (133 N.H. 513) Therefore, at the time the 1988-91 contract was negotiated, each side had every reasonable expectation to believe that they had a three year agreement, not then subject to Sanborn arguments which have arisen after the fact. Article I of the contract not only recited its duration but also that it was "adopted pursuant to and under the provision[s] of RSA 273-A," thus raising the presumption that the parties would be bound by the PELRB's policy that expiring contract terms (as opposed to new and therefore unfunded benefits) would remain in effect during the course of negotiations for a successor agreement. This policy, when considered in conjunction with the "according to experience" and "just cause" language of Article VII of the CBA (Finding No. 5), causes us to conclude that the parties had an expectation of step progression under the contract until a contrary provision was negotiated or until all eligible employees shall have exhausted their ability to progress any further on those steps. The arbitrator acknowledged this (award, p. 17) when he said, "all terms and conditions of the prior agreement are extended during the period of negotiations." The Article VII language is unequivocal. As the arbitrator noted "Even lacking a pay schedule for 1990-91, this provision may be given effect."

Given the circumstances of the negotiation of the 1988-91 CBA, especially since this predated the advent of Sanborn, we conclude that steps or increments for experience were a maintenance item, not a cost item, at the time the contract language at Article VII and the wage scales were agreed upon. As such, they were as much an on-going entitlement to employees as they were a commitment of the School Board. For us to conclude differently would give an unfair advantage to the employer as well as discourage reaching a settlement.

Beyond this analysis, the employer's petition is unsustainable because it never submitted the cost item of the step increases to the voters. It unilaterally determined to "level fund" the individual teacher contracts. This is equivalent to unilaterally interpreting the terms and conditions of employment recited in the CBA and cannot be permitted. The employer had an obligation for step placement under the contract. Likewise, it had an obligation to seek funds for that step placement. As noted by the arbitrator (Finding No. 12), "This obligation cannot be avoided by the device of not seeking the appropriation."

We find that the employer violated RSA 273-A:5 I (e), (g) and (h) by failing to seek funding for the "steps" and unilaterally imposing a step "freeze," by failing to bargain as required by RSA

273-A:3, and by breaching the CBA and refusing to implement an arbitrator's final and binding award under the CBA, respectively. The employer is directed to CEASE and DESIST from breaching the CBA and from refusing to implement the final and binding arbitration award which it shall implement retroactively forthwith. All other requests for relief, whether in the Board's ULP of November 13, 1991 or the Association's ULP of December 11, 1991 are DENIED.

So ordered.

Signed this 20th day of May, 1993.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan, Esq., present and voting.