



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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WHITE MOUNTAINS EDUCATION	:	
ASSOCIATION, NEA-NEW HAMPSHIRE:	:	
	:	
Complainant	:	
	:	CASE NO. T-0210:13
v.	:	
	:	DECISION NO. 95-119
WHITE MOUNTAINS REGIONAL	:	
SCHOOL DISTRICT	:	
	:	
Respondent	:	

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### APPEARANCES

#### Representing White Mountains Educ. Assoc.:

James Allmendinger, Esq.

#### Representing White Mountain Reg. School District:

Edward Lawson, Esq.

#### Also appearing:

James Gaylord, SAU #36  
Ernest Angelicola, SAU #36  
Ervin Connary, WMEA  
Dennis Rylands, WMEA

### BACKGROUND

The White Mountains Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the White Mountains Regional School District (District) on August 29, 1995 alleging violations of RSA 273-A:5 I (e), (g) and (h) relating to the District's failure to honor the longevity provisions of the collective bargaining agreement (CBA) or to submit or process this dispute under the grievance arbitration

provisions of the contract. The District filed its answer on September 13, 1995 after which this matter was heard by the PELRB on November 14, 1995.

### FINDINGS OF FACT

1. The White Mountains Regional School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The White Mountains Education Association is the duly certified bargaining agent for teachers employed by the District.
3. The Association and the District are parties to a collective bargaining agreement for the period July 1, 1992 through June 30, 1995. To the extent that certain financial aspects of that CBA were jointly modified by the parties for the 1994-95 school year, there is no dispute that the parties reached tentative agreement (TA) thereon on December 21, 1994. There is, however, a dispute as to what the foregoing tentative agreement intended to include relative to the longevity provisions of Article XXVI of the CBA.
4. Article XXVI, Section K of the 1992-95 CBA provides a "longevity benefit" to wit:

All employees as defined in Article I shall receive an additional sum of \$600.00 per year beginning with the eleventh (11) year of uninterrupted service in the district, \$800.00 beginning with the fifteenth (15) year, \$1,000.00 beginning with the twentieth (20) year, \$1,200.00 beginning with the twenty fifth (25) year, and \$1,400.00 beginning with the thirtieth (30) year.

This is a separate provision of the CBA, not part of the wage schedule contained elsewhere in the CBA.

5. The tentative agreement reached on December 21, 1994 provided that step increases would be awarded only in 1994-95 and only in the following manner:
  1. A non-retroactive single step increase will be provided 50% of the way through the 1994-

95 school year to those who are on the salary schedule and were employed by the school district during the 1992-1993 school year. This will result in a movement to the next higher step in annualized salary, and a net dollar increase equal to 50% of an appropriate step increase for the current year.

2. A non-retroactive single step increase will be provided 69.2% of the way through the 1994-1995 school year to those who are on the salary schedule and were employed by the school district during the 1992-1993 school year. This will result in a movement to the next higher step in annualized salary, and a net dollar increase equal to 30.8% of an appropriate step increase for the current year.
3. Bargaining unit members who were on the top of the schedule in 1992-1993 shall receive a non-retroactive salary increase during the 1994-1995 school year. The annualized amount of this increase shall be equal to \$1600. For the 1994-1995 school year the increase will be provided at the 50% and 60% points in the school calendar, in percentile increments equal to that specified in paragraphs 1 and 2 respectively which will provide a total increase of \$800 for the 1994-1995 school year.

Following this and immediately before where the parties signed the TA there was a sentence which said, "All other articles of the current agreement shall remain unchanged and in full effect."

6. On or about January 9, 1995, the District posted a warrant for a special school district meeting to be held on January 30, 1995. It provided:

To see if the White Mountains Regional School District will vote to approve the cost items included in the Collective Bargaining Agreement reached between the White Mountains Regional School Board and the White Mountains Education Association, which calls for an increase in the salaries and benefits totaling \$75,000.00 for

the 1994-95 school year. This increase in salaries is to be paid from funds available under the existing budget and does not require the raising of additional funds nor an increase in the existing budget for the 1994-1995 school year.

Note: The Collective bargaining Agreement recently agreed upon by the White Mountain Regional School Board and the White Mountain Education Association is for only the 1994-1995 school year. However, the terms of the agreement result in a phased two-step increase on the existing salary schedule during 1994-1995. This in turn means that teachers hired prior to the 1993-1994 school year will be paid two steps higher on the existing salary schedule in the 1995-1996 school year and thereafter until another collective bargaining agreement is approved by the voters of the White Mountains Regional School District. Placing those teachers two steps above their current positions on the current salary schedule will increase the amount needed for salaries and benefits by approximately \$173,000.00 for the 1995-1996 and subsequent school years.

(The School Board recommends the passage of this Warrant Article.)

There is no dispute that the special district meeting passed the foregoing warrant article on January 30, 1995.

7. Several months after covered employees received step increases, as provided in Finding No. 5, and commensurate with the commencement of negotiations for the SY 1995-1996 contract, the Association raised the issue of longevity pay and the District's failure to pay longevity pay under the SY 1994-95 agreement. On May 17, 1995 teacher Kevin Teehan wrote Supt. James Gaylord saying he thought a mistake had been made and seeking his \$600 payment under Article XXVI (k) as the result of his having completed more than eleven (11) years of uninterrupted service in the district. Association Exhibit No. 2. His length of service, commencing in September of 1983, is not in dispute. On June 1, 1995, Teehan submitted his grievance to

- the school board after not having heard from the Superintendent within seven (7) days as provided by Article III, Section D. On the same date, the Association filed a class action grievance on behalf of all employees eligible for but not paid benefits under Article XXVI, Section K. Association Exhibit No. 2 and 3. These two grievances were consolidated for processing on June 7, 1995. On June 19, 1995, the school board held a hearing on the consolidated grievances. On June 23, 1995, William Remick, Vice-chair of the school board wrote UniServ Director Brian Sullivan denying the longevity grievances. No reason was given. Association Exhibit No. 4. On August 8, 1995, school board negotiations committee members Lavelle and Angelicola wrote Sullivan telling him that they had "determined that arbitration is not an appropriate form [sic] for the resolution of the issues presented in the WMEA grievance. We will, therefore, not consent to arbitration in the matter."
8. Teacher negotiator Dennis Rylands testified that teachers approached him after the second phase step increase was due to have been paid 69.2% through the 1994-1995 school year to complain that they had not received longevity payments under Article XXVI. Rylands claims he then made an informal inquiry to the District in April of 1995 and was told any new or increased longevity entitlements were a cost item not covered by the tentative agreement and not included in the \$75,000 appropriation figure approved by the voters on January 30, 1995.
  9. Teacher Irvin Connary, as did Rylands, testified that longevity language under Article XXVI had "always" been treated as a language, not a cost, item in prior negotiations between the parties. The same was true of other benefits such as health insurance and tuition reimbursement. Thus, argued Connary, longevity pay should be maintained in the same manner as health insurance and tuition reimbursement. Connary said the Association sought to raise longevity benefits in 1994 by changing the fixed amounts in the current language to a percentage of salary but it deferred from doing so when the District said this would prompt it to open the issue of health insurance. This resulted in the parties' agreeing to leave both areas untouched. Neither was negotiated; both clauses retained the same wording as had remained in effect

prior to the 1994-95 school year. Connary said the Association felt no need to mention the longevity pay issue in the T.A. (Association Exhibit No. 1) because all items remaining unchanged were not specifically mentioned therein, per the recommendation of board member Lavelle. On cross-examination, he acknowledged that the \$75,000 approved January 30, 1995 was earmarked for salary items and changes to the salary schedule, not for longevity payments.

10. Board negotiator Angelicola testified that the only way the parties could get any monetary increases in the 1994-95 school year was to use money the District already had and did not have to raise by new taxing authority. He examined the books and found \$73,200 in savings and an additional \$1,800 in projected savings. Using this \$75,000 total, a specific amount was broken down and assigned to each teacher. He acknowledged that the Association had previously mentioned longevity but that it was put aside because there were no other funds available. This was the same reason why the parties agreed not to open the area of health insurance. The Association wanted to maintain the language and level of benefits pertaining to health insurance and was not willing to decrease those benefits for enhanced benefits in the area of longevity pay.

#### DECISION AND ORDER

After reviewing the testimony from witnesses from each side, which we believe to be sincere and credible, we find that the parties actually did not have an understanding where they thought they did. Obviously, the changes to the compensation plan were understood by both sides, as evidenced by the 50% and 69.2% payment points, provisions for teachers at the top of the scale and the "hands off" attitude towards opening the issue of health insurance. Conversely, there appears not to have been agreement on the longevity benefits conferred by Article XXVI.

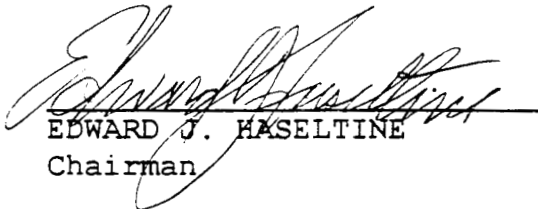
We are confronted by two logical and contrary explanations: the Association's claim that the "all other articles...shall remain unchanged and in full effect" language should be read to confer the benefit versus the District's claim that no new funding for the extension of these benefits was contained in the warrant or approved by the voters. Thus, while the Association may have left the bargaining table thinking that longevity benefits under Article XXVI, Section K would be conferred to

contract language and while the Association may have been lulled into a sense of believing this benefit would be paid by the analogy of the District's continuing to pay the health care benefits as prescribed by the contract, the testimony simply fails to show how the parties had arranged for the payment of any new longevity benefits as the result of their collective bargaining efforts. Without an appropriation of additional funds for the payment of longevity benefits to newly eligible employees, the status quo remains, namely, the teachers must continue to receive benefits in the same amount as had been the practice in school years 1992-93 and 1993-94.

Since we have found what amounts to a mistake of fact concerning longevity benefits and a lacking of any meeting of the minds on that issue, we direct the parties to reopen mid-term negotiations on this issue, and this issue alone, upon demand by one party on the other. In the meantime, lacking a finding of bad faith negotiations or a breach of contract, the pending ULP is hereby DISMISSED.

So ordered.

Signed this 15th day of JANUARY, 1996.

  
EDWARD J. HASELTINE  
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.  
Members E. Vincent Hall and William Kidder present and voting.