



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Monadnock Education Association,
NEA-New Hampshire

Complainant

v.

Monadnock Regional School District

Respondent

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Case No. E-0028-1

Decision No. 2006-145

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Monadnock Education Association, NEA-NH (hereinafter "the Association") filed an improper practice charge on July 21, 2006 alleging that the Monadnock Regional School District (hereinafter "the District")(an SB2 District) violated RSA 273-A:5, I (a), (e), (g), (h) and (i) as a result of its refusal to implement step pay increases following the end of the parties most recent collective bargaining agreement ("CBA"), notwithstanding the language in Article 16 (the duration clause) of the CBA. It is undisputed that Article 16 provides: "[t]his Agreement shall continue in full force and effect until such time as the parties have negotiated and passed a successor agreement."

As remedies, the Association requests that the PELRB order the District to: 1) follow the clear terms of the Agreement; 2) pay step increases to any employees who are eligible to receive them; 3) make the employees whole for any and all losses suffered as a result of their actions; and 4) bargain in good faith.

The District filed its Answer on August 3, 2006. Although the District essentially admits to the chronology of events as described by the Association in its charge, it denies any violation of the parties' contract or the law. Accordingly, the District requests that the Association's unfair labor practice charge be dismissed.

A pre-hearing conference was conducted at PELRB offices on September 8, 2006 at which representatives of both parties were present. The parties are in agreement that the issue is whether Article 16 sets forth an enforceable automatic renewal clause within the meaning of Appeal of Alton School District, 140 N.H. 303 (1995). "A school board is not obligated to pay

step increases during the status quo period in the absence of an enforceable automatic renewal clause." Appeal of Alton School District, 140 N.H. at 312 (1995). The parties agree that to be enforceable, the renewal clause must be ratified by the legislative body. The parties disagree as to what evidence is required and relevant to prove ratification under Alton. The Association takes the view that the Board should consider evidence beyond the contents of the warrant article (or similar document) presented to voters, and in particular the Board should consider evidence from the deliberative session which preceded the actual vote by approximately 30 days. The District maintains that evidence from the deliberative session is irrelevant and that only the specific information presented to voters at the time they voted (in the form of a warrant article or similar document) is relevant on this question.

PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: Paul L. Apple, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Did the voters of this SB2 District ratify the automatic renewal clause consistent with the requirements of Appeal of Alton School District, 140 N.H. 303 (1995)?
- (2) If the automatic renewal clause is enforceable, has the District violated RSA 273-A:5, I (a), (e), (g), (h) and (i) by failing to pay step pay increases under the parties July 1, 2003-June 30, 2006 CBA?

WITNESSES

For the Association:

1. Marie Szymcick, Bargainer, present at negotiations when Article 16 language formulated.
2. Diana Elkavich, Same as Ms. Szymcick.
3. Cheryl Kahn, Same as Ms. Szymcick.
4. Curt Cardine, former school superintendent.

For the District:

1. Colline Dreyfuss, rebuttal witness.
2. Kenneth Dassau, Ed.D, Current school superintendent, rebuttal witness.

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party.

EXHIBITS

For the Association:

1. Collective Bargaining Agreement's, 2000-2006
2. Board Bargaining Proposals
3. Correspondence between S. Minickiello and C. Cardine
4. Excerpts of Deliberative session minutes from March 12, 2002
5. District Budgets

For the District:

1. Collective Bargaining Agreement, 2003-2006
2. Draft Collective Bargaining Agreement 2007

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is three (3) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives, shall meet, or otherwise confer, on or before **September 22, 2006** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts, including exhibits, upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

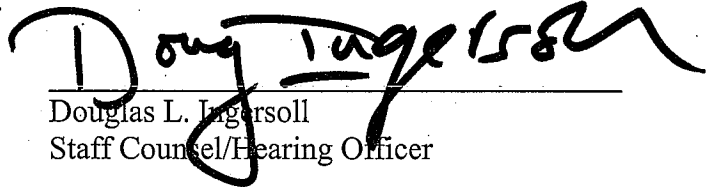
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. Any request to change the currently schedule hearing date of October 3, 2006 on account of the substitution of attorney Allmendinger or attorney Sachs for Mary Gaul shall be made on or before September 22, 2006.
5. Unless otherwise ordered as a result of the filing of any subsequent motion, or for other good cause shown, an evidentiary hearing between the parties will be held on:

October 3, 2006 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 12th day of September, 2006.



Douglas L. Ingersoll
Staff Counsel/Hearing Officer

Distribution:

Mary E. Gaul, UniServ Director, NEA-NH
Paul L. Apple, Esq.