



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Monadnock Education Association,		*
NEA-New Hampshire		*
Complainant		*
v.		*
	Case No. E-0028-1	*
Monadnock Regional School District		*
Respondent	Decision No. 2007-034	*
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APPEARANCES

Representing Monadnock Educational Association, NEA-New Hampshire:
James F. Allmendinger, Esq., NEA New Hampshire

Representing Monadnock Regional School District:
Paul L. Apple, Esq., Upton & Hatfield, Hillsboro, New Hampshire

BACKGROUND

The Monadnock Education Association, NEA-NH ("the Association") filed an improper practice charge on July 21, 2006 alleging that the Monadnock Regional School District ("the 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' 2003-2006 collective bargaining agreement (the "2003-2006 CBA"), notwithstanding the language in Article 16, known as a duration clause or a so-called evergreen clause ("evergreen clause"). 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. The District denies any violation of the parties' contract or the law, and specifically contends that the local legislature never approved the cost of the duration clause contained in the 2003-2006 collective bargaining agreement. Accordingly, the District requests that the Association's unfair labor practice charge be dismissed.

The hearing in this matter was delayed a number of times at the request of the parties and a hearing on the merits held at PELRB offices on January 18, 2007. At hearing the Board received evidence in the form of testimony and exhibits. The District filed its Memorandum of Law at the hearing and the Association obtained the Board's permission to file a brief by February 5, 2007. The Association subsequently obtained an extension of time to file its brief on or before February 7, 2007. The Association's brief having been submitted the record is closed and the case submitted for decision.

FINDINGS OF FACT

1. The Monadnock Regional School District ("the District") is a "public employer" within the meaning of RSA 273-A.
2. The Monadnock District Education Association/NEA-NH ("Association") is an employee organization that represents certain employees of the Monadnock Regional School District for the purposes of collective bargaining pursuant to RSA 273-A.
3. This case involves Article 16.1 of the parties' 2003-2006 Collective Bargaining Agreement ("2003-2006 CBA") titled "Duration." Association Exhibit 5. The parties are in agreement that Article 16.1 sets forth what is also commonly known as an "evergreen clause." 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."
4. The 2003-2006 CBA was preceded by a one year collective bargaining agreement for 2002-2003. The parties did not have a contract for the 2001-2002 time period. The parties did have a contract for the 2000-2001 time period.
5. The 2003-2006 CBA employs the same language as the 2002-2003 contract, which was the first CBA that contained the evergreen clause language at issue in this case.
6. The parties negotiated a successor contract to the 2003-2006 CBA but, in 2006, the local legislature did not approve the cost items. The parties have been without a contract and in status quo since July 1, 2006.
7. The current status quo period is the first status quo period the parties have been in under the current evergreen clause language.

8. The 2003 warrant articles submitted in this case do not address or reference Article 16.1, the evergreen clause, contained in the 2003-2006 CBA, nor do the 2003 articles describe or estimate the financial cost or consequence of the evergreen clause on an annual basis or otherwise. The same is true with respect to warrant articles prepared with respect to the 2000-2001 CBA and the 2002-2003 CBA. There is no other information in the record showing that in 2003 the voters were informed about the 2003-2006 CBA's evergreen clause or the cost of the clause.
9. Warrant Article Nine (District Exhibit A), prepared in 2003, does clearly set forth the cost of the salary increases for the three years of the 2003-2006 CBA.

DECISION AND ORDER

JURISDICTION

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. RSA 273-A:6 I. PELRB jurisdiction is proper in this case as the Association has alleged violations of different provisions of RSA 273-A:5.

DISCUSSION

In this case the Board must decide whether the evergreen clause contained in Article 16.1 of the parties' 2003-2006 Collective Bargaining Agreement is enforceable. To be enforceable, an evergreen clause must satisfy several very clear and understandable requirements. These requirements are set forth in Appeal of Alton School District, 140 N.H. 303 (1995). The basic principals are worth restating:

A CBA may contain an automatic renewal clause, sometimes referred to as an "evergreen clause." Such a clause purports to continue the terms of the contract indefinitely until the parties negotiate, and the legislative body ratifies, a successor contract. An automatic renewal clause is a cost item, and it therefore does not bind the parties unless it has been ratified by the legislature.

Alton at 307 (citations omitted).

The parties agree that the evergreen language employed in the 2003-2006 CBA is proper, but disagree as to whether the clause was ratified by the local legislature. "Ratification of cost items occurs only if the legislative body approves them with 'full knowledge' of their terms. The PELRB determines in the first instance whether the requisite knowledge exists as a matter of fact." Alton at 307; See also Appeal of Sanborn Regional School Bd., 133 N.H. 513, 520 (1990).

Multi-year collective bargaining agreements are beneficial to both sides. A person included in the collective bargaining agreement should be able to rely upon the integrity of the agreement's terms, and the citizens of the district or municipality should know what demand the multi-year agreement places upon public funds. Neither side should be required to buy a "pig in a poke."

Appeal of Sanborn, 133 N.H. at 521. In Alton, the court held that the evergreen clause at issue was not enforceable because the warrant article dealing with teacher salaries "fails to apprise the Alton voters of the automatic renewal clause or warn them of its significant financial consequences." Alton at 309. The court noted that "neither the warrant nor any other item in the record could support a finding that the voters had full knowledge of the clause." Id.

In this case the Board cannot find evidence sufficient to show that the Monadnock Regional School District voters, who are in an SB 2 District, were provided with full knowledge of the evergreen clause and its "significant financial consequences." It is evident that the voters had full knowledge of some cost items, such as teacher salary increases for each of the three years of the 2003-2006 CBA. This information is described in Article Nine of the 2003 warrant. See District Exhibit A. However, there is no mention in Article Nine of the evergreen clause or its cost, nor is such information presented elsewhere in the portions of the 2003 warrant submitted in this case, or in other evidence relating to the 2003 warrant and the 2003 annual meeting. The fact that funds may have been included in a default budget in an amount sufficient to pay step increases during the first year of status quo is insufficient to satisfy the requirements of Alton unless there is also evidence that the voters had full knowledge that such funds represented the cost of the evergreen clause and the voters approved it on that basis.

The Board also received evidence concerning default budget amounts in 2002, one year prior to the annual meeting at which the 2003-2006 CBA was approved by the voters. The Board understands the holding in Alton to mean, in part, that once a "successor contract" is ratified, it supercedes and replaces the prior contract, including any evergreen clause that might be contained in the prior contract. Accordingly, the Board finds that the probative value of evidence concerning earlier annual meetings or contracts is limited, as each of the earlier contracts was replaced, in turn, by successor contracts, and in this case it is the evergreen clause contained in the 2003-2006 CBA which is at issue. Even if ratification of the cost of the evergreen clause contained in Article 16.1 of the 2003-2006 could be established by evidence concerning ratification of the prior contracts, the Board finds the evidence for those prior time periods to be insufficient to meet the requirements of Alton.

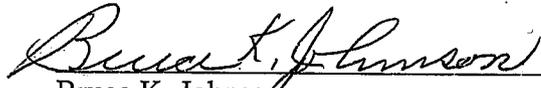
The Association argues that the parties complied with Alton even though this was accomplished through three steps that "were taken in a jumbled manner." Association February 7, 2007 Brief at 2. However, the Board cannot organize this jumble in a way that allows for the enforcement of the evergreen clause. This is unfortunate, since the Board recognizes that at least the District Board of Education and the Association had agreed that an evergreen clause was important for a number of reasons and was considered a valuable component of the educators' employment arrangement. The Board hopes that going forward the parties in this case, as well as other public employers and employees dealing with similar situations, will be careful to take the

action necessary to ensure that voters are provided with full knowledge of an evergreen clause and its cost in a manner that is, upon subsequent review, apparent to all concerned.

In conclusion, there is insufficient evidence to show that, with full knowledge of the evergreen clause contained in Article 16 of the 2003-2006 CBA as well as its financial consequences, the Monadnock Regional School District voters ratified the cost of that clause. Accordingly, the Board finds that it cannot enforce the evergreen clause, and the Association's requests for relief must be denied.

So ordered.

Signed this 3TH day of March, 2007.


Bruce K. Johnson
Alternate Chair

By unanimous decision. Alternate Chair Bruce K. Johnson. Members Carol M. Granfield and E. Vincent Hall present and voting.

Distribution:

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