



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Professional Fire Fighters of Goffstown, IAFF Local 3420**

v.

**Town of Goffstown**

**Case No. G-0186-2**

**Decision No. 2013-215**

**Appearances:**

John S. Krupski, Esq.  
Molan, Milner & Krupski  
Concord, New Hampshire for the Complainant

Paul T. Fitzgerald, Esq.  
Wescott, Dyer, Fitzgerald & Nichols, P.A.  
Laconia, New Hampshire for the Respondent

**Background:**

On February 25, 2013 the Professional Fire Fighters of Goffstown, IAFF Local 3420 (Union) filed an unfair labor practice complaint<sup>1</sup> under the Public Employee Labor Relations Act (the Act). The Union charges that the Town violated its obligations under the status quo doctrine when it failed to provide a pay increase to three firefighters who had successfully completed their 12 months of probation and obtained certification as emergency medical technicians intermediate (EMT-I) and in hazardous material operations. The Union claims that the Town's conduct violates RSA 273-A:5, I (a), (b), (e), (f), (g), and (i). The Union requests that the

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<sup>1</sup> The Union filed the same charge against the Town on December 30, 2011, PELRB Case No. G-0186-1. The case was submitted for decision on stipulated facts and briefs. The PELRB dismissed the complaint "without prejudice to the Union's right to maintain an unfair labor practice charge, if necessary," by filing a complaint within six months of the completion of the contractual grievance procedure. See PELRB Decision No. 2012-128 (June 7, 2012).

PERLB find that the Town has committed an unfair labor practice, order the Town to make the affected employees whole, and order the Town to cease and desist from any further violations.

The Town denies the charges. According to the Town, the firefighters did receive a pay differential when they obtained their EMT-I certifications but under the status quo doctrine they are not entitled to the demanded pay increase.

The undersigned board held a hearing on May 22, 2013 at the offices of the PELRB in Concord at which time the parties had the opportunity to present testimony and exhibits in support of their positions. Both parties have submitted post-hearing briefs and the decision in this case is as follows.

#### **Findings of Fact**

1. The Town of Goffstown is a public employer within the meaning of RSA 273-A:1.
2. The Union is the exclusive representative of certain employees of the Goffstown Fire Department including Firefighters.
3. During the time period relevant to this complaint the parties were subject to and governed by the "status quo" doctrine as their 2008-10 collective bargaining agreement (2008-10 CBA) had expired and a successor contract had not been negotiated and fully approved. See Joint Exhibit 1 (2008-10 CBA) and Union Exhibit 4 (Joint Stipulated Facts).
4. The subject of pay is covered in Article 14 of the 2008-10 CBA, and the wage schedule is set forth in Appendix A and includes Steps A through I as well as six "hourly incentives." See Joint Exhibit One, Article 14 and Appendix A - Wages.
5. One of the hourly incentives relates to the attainment of EMT-I certification. Article 14.2.2 provides that "[m]embers of the bargaining unit holding emergency medical technician intermediate (EMT-I) certification from the State of New Hampshire shall receive a pay

differential bonus in the amount of \$1.00 per hour.” The “hourly incentives” are independent of, and in addition to, wage Steps A through I.

6. At the time of hire, entry level/probationary firefighters must have certain credentials, including an emergency medical technician basic (EMT-B) certification and a driver’s license valid for all Fire Department vehicles. They are paid according to Step A of the wage schedule although Article 2.2 of the 2008-10 CBA excludes “supervisors, professional, confidential, probationary, temporary, seasonal, call per diem or part time” employees “from coverage or recognition under this agreement.”

7. The parties have stipulated that in the Town’s Fire Department “[n]ewly hired employees must serve a one year probationary period and satisfy certain objective educational prerequisites prior to becoming members of the collective bargaining unit. These objective educational prerequisites include obtaining certification as a hazardous material operations level and having or obtaining the licensure and certification level of EMT-I.” See Union Exhibit 4 (Joint Stipulated Facts).

8. Article 14.2.4 relates to movement from Step A to B on the wage schedule, and provides as follows:

Movement to Step B shall be after the completion of the first year of service and the holding of the following certificates and licenses: C2F2,<sup>2</sup> EMT-I and Hazardous Materials Operations. Fire Prevention is exempt from EMT-I requirement.

9. Firefighters obtain certification as an EMT-I at their own expense and on their own time. The cost of the course is in excess of \$500.00 and involves 120 hours of class time and then additional clinical time. Unlike EMT-I certification, it does not appear that there is any cost or formal course work involved with respect to Hazardous Material Operations proficiency/training.

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<sup>2</sup> No longer applicable/relevant.

10. The parties disagree as to the correct characterization of the Step B wage increase for purposes of the status quo doctrine. According to the Town, Step B is an experience based wage increase given the 12 month service requirement. According to the Union, it is an education based wage increase given the education/training requirements undertaken on the Firefighter's own time and at the Firefighter's expense.

11. Three entry level Firefighters involved in these proceedings satisfied all probationary requirements, including the attainment of EMT-I and knowledge/training/proficiency in Hazardous Material Operations and 12 months of service. All three received the Article 14.2.2 pay differential when they obtained their EMT-I certification. See Town Exhibit A. However, the Town refuses to move them to Step B on the wage schedule, claiming the Firefighters are not entitled to a Step B wage during the status quo period.

#### **Decision and Order:**

##### **Decision Summary:**

The Town committed an unfair labor practice as a result of its failure to provide Article 14.2.4 Step B wages to three firefighters who had completed their probationary requirements, including 12 months of service, certification as an EMT-I, and requisite proficiency in Hazardous Materials Operations. The Article 14.2.4 Step B wage should be treated like an education increase and the affected Firefighters are entitled to the increase on that basis. Further, the Step B wage amount is also the first wage placement for employees when they have achieved "public employee" status under RSA 273-A and have formally become "bargaining unit employees." The Town shall provide the Firefighters with pay at the amount specified in Step B and otherwise make the Firefighters whole.

**Jurisdiction:**

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

**Discussion:**

The Union contends that the movement from Step A to Step B is just like the “additional training” increase discussed in *Appeal of Alton* because employees must obtain EMT-I certification (at their expense and on their time) as well as the Hazardous Material Operations education. The Union also argues that the pay differential is not a substitute for the Step B wage increase. The Union maintains that the Town’s conduct constitutes a violation of the Town’s good faith bargaining obligations per RSA 273-A:3 and the following sections of RSA 273-A:5,

I:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;
- (f) To invoke a lockout;
- (g) To fail to comply with this chapter or any rule adopted under this chapter;
- (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

The Town argues the Step B wage increase is an “experience” increase because movement to Step B requires 12 months of service. Further, the Town contends it has satisfied any obligation to provide an education based wage increase it may have since all three Firefighters have received the Article 14.2.2 pay differential.

The parties stipulate that following the expiration of the 2008-10 CBA they were governed by the "status quo" doctrine.

[T]he principle of maintaining the status quo demands that all terms and conditions of employment remain the same during collective bargaining after a CBA has expired. This does not mean that the expired CBA continues in effect; rather, it means that the conditions under which the teachers worked endure throughout the collective bargaining process.

*Appeal of Milton School District*, 137 N.H. 240, 247 (1993). In *Appeal of Alton School District*, 140 N.H. 303 (1995) the court distinguished "experience"<sup>3</sup> pay increases from "additional training"<sup>4</sup> pay increases, ruling that the former were not required during a status quo period but the latter should be paid.

. . . The raises at issue here are experience increases, comparable to step increases. We therefore find the *Milton* holding applicable.

. . . A raise based on additional training, however, is not an experience increase and cannot be considered its equivalent for purposes of defining and maintaining the status quo. It was a condition of the teachers' employment that time and money invested outside the classroom in course work would be rewarded by a salary increase the following year. Experience raises cannot be equated. Denying education raises may result in differently qualified teachers being paid the same salary. No comparable unfairness occurs when experience increases are withheld unless new, inexperienced hires are paid the same as second-year teachers--something the union has not alleged. We conclude that a school board's unilateral refusal to pay education increases during a status quo period violates its duty under RSA 273-A:5, I(e) to negotiate terms and conditions of employment and, therefore, gives the public employer an unfair advantage in the bargaining process.

*Appeal of Alton* at 310.

We must decide whether the Step B wage increase should be treated like an experience increase or as an education increase. On its face, Step B calls for both additional experience and additional education. A Firefighter who has completed one year of service but has not obtained the EMT-I certification is not entitled to placement on Step B of the wage matrix. Likewise, a firefighter who has obtained the EMT-I certification and satisfied the Hazardous Material

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<sup>3</sup> For example, another year of work experience.

<sup>4</sup> For example, obtaining additional certifications or degrees.

Operations requirement but who has only nine months of service is not entitled to the Step B wage increase.

In *Appeal of Alton* the court required payment of education increases but did not specifically address how an increase based upon both experience and education should be treated. However, *Appeal of Alton* does establish the general proposition that increases based upon additional education are distinguishable from experience increases and must be paid during the status quo. We do not believe that *Appeal of Alton* means that an increase like the Article 14.2.4 Step B increase must be based exclusively upon education before an employee is entitled to a status quo increase or that increases whose eligibility requirements include both education and experience are exempt from *Appeal of Alton's* requirement. If that were true, then the education increase ordered in *Appeal of Alton* would not have been required had the education increase been combined with a period of service requirement. This would make little sense because the involved employee would still have obtained the additional education which the court held entitled the affected employee to an increase during the status quo period.

We find that the Step B wage increase is the equivalent of, and should be treated like, the education based wage increase discussed in *Appeal of Alton*. In order to obtain EMT-I certification the Firefighters paid tuition and, on their own time, completed 120 hours of classwork and additional clinical time.° The importance and value of this education is reflected in part by the fact that the EMT-I certification is essential to a Firefighter's continued employment with the Town and must be obtained in order for a Firefighter to successfully complete probation. The inclusion of an education component like the EMT-I certification in the Article 14.2.4 Step B increase is enough to obligate the Town to provide the increase during the status quo period. The alternative (treating the Article 14.2.4 Step B increase like an experience increase and ruling against the Union) cannot be justified under *Appeal of Alton*. A ruling

against the Union in this case would require that we ignore the legally significant facts<sup>5</sup> which are analogous to those which compelled the court in *Appeal of Alton* to order the payment of education based increase during the status quo.

Since neither Article 14.2.4 nor any other part of the 2008-10 CBA expressly allocates the Step B increase between experience or education it is not possible to apportion the Step B wage increase without, in effect, rewriting the wage schedule. Therefore the entire increase must be paid. There is also no language in the 2008-10 CBA indicating that the Article 14.2.2 wage differential Firefighters receive upon obtaining their EMT-I certification should be treated as a substitute for any portion of the Article 14.2.4 Step B increase or that the differential is otherwise intended to satisfy any status quo obligation the Town may have.

We also conclude that providing the affected Firefighters with the Article 14.2.4 Step B wage is consistent with their legal status. Upon completing the Article 14.2.4 Step B requirements (and any other probationary requirements) a Firefighter transitions out of probationary status. The Firefighter becomes, for purposes of the Public Employee Labor Relations Act, a "public employee" for the first time. See RSA 273-A:1, IX(d). The Firefighter therefore becomes a "bargaining unit employee" for the first time, and is technically covered by the PELRB unit certification for the first time. At this point the Firefighter is entitled to the starting wage for a bargaining unit employee in the Firefighter position, which consists of the amounts specified in Article 14.2.2 (differential for EMT-I) and 14.2.4 (Step B), and we do not believe the status quo doctrine requires a different result.

In summary, the Town's unilateral refusal to pay the Article 14.2.4 Step B increases during a status quo period is an unfair labor practice because its refusal "violates its duty under RSA 273-A:5, I(e) to negotiate terms and conditions of employment and, therefore, gives the

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<sup>5</sup> I.E. the tuition expense incurred by Firefighters, the 120 hours of classroom time, and the additional clinical time.

public employer an unfair advantage in the bargaining process.” *Appeal of Alton* at 310. Similarly, the Town’s conduct violates its RSA 273-A:3 good faith bargaining obligations and therefore is an unfair labor practice in violation of RSA 273-A:5, I(g). There is insufficient evidence to prove that the Town has also violated RSA 273-A:5, I (a),(b),(f), or (i) and those claims are dismissed. The Town is ordered to compensate the Firefighters at the Article 14.2.4 Step B wage rate and otherwise make them whole.

So Ordered.

October 23, 2013

/s/ Charles S. Temple  
Charles S. Temple, Esq., Chair

By unanimous vote of Chair Charles S. Temple, Esq. and Board Members Senator Mark Hounsell and Carol M. Granfield.

Distribution:        John S. Krupski, Esq.  
                         Paul T. Fitzgerald, Esq.