

NH Supreme Court declined appeal of this decision on August 11, 1993, Supreme Court No. 93-164.



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

ALTON TEACHERS ASSOCIATION,  
NEA-NEW HAMPSHIRE

Complainant

v.

ALTON SCHOOL DISTRICT

Respondent

CASE NO. T-0315:6

DECISION NO. 92-195

APPEARANCES

Representing Alton Teachers Association, NEA-NH:

Steven R. Sacks, Esq.

Representing Alton School District:

Bradley F. Kidder, Esq.

Also appearing:

- Jack Henderson, Alton School Board
- June D. Tanguay, Alton School Board
- Elaine Brigman, Alton School Board
- Nancy Zappone, Alton Teachers Association
- Donna S. Downie, Alton Teachers Association
- Frank Walker, Alton Teachers Association
- Richard J. Kirby, Alton Teachers Association
- Charles Downie, Alton Teachers Association
- Michael Folan, Alton Teachers Association
- Janet Paddleford, NEA-New Hampshire
- Stanley Moulton, Former School Board Member
- Seth Wheeler, Laconia Citizen
- Richard D. White, Alton Citizen
- Terri A. Noyes, Alton Citizen
- Susan Chagnon, N.H. School Board Association
- Theodore Comstock, Esq., N.H. School Board Association
- Walter Brent, Alton Citizen

BACKGROUND

The Alton Teachers Association, NEA-New Hampshire, (Association) filed unfair labor practices (ULP) charges on August 4, 1992, against the Alton School District (District) alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i). The District filed its answer on August 17, 1992 after which this matter was heard by the PELRB on October 20, 1992.

FINDINGS OF FACT

1. The Alton School District is a "public employer" of teachers and other personnel as defined by RSA 273-A:1 X.
2. The Alton Teachers Association is the duly certified bargaining agent for teachers and other personnel employed by the District.
3. The District and the Association were parties to a collective bargaining agreement (CBA) for the period September 1, 1991 until August 31, 1992 "and [it will] thereafter renew itself automatically for successive terms of one year or until a successor agreement has been ratified."
4. The parties' CBA contains a complex and seldom seen compensation scheme (Article X) which provides for salaries based upon the combined total of three factors: (1) cumulative units relating to professional education and professional experience, (2) annual units relating to service factors which may vary from year to year, and a (3) critical shortage adjustment which applies to attracting new personnel. Annual compensation is then determined by multiplying the points in these three categories by a negotiated amount which appears in the CBA. For 1991-1992 that amount was set at \$91.75 per point or "unit value." It is "cumulative units" which recognize additional educational achievement (e.g., added degrees) as well as experience, both in the profession and in the District.
5. Article V, Section 6 of the CBA prohibits reduction "in rank or compensation without just cause."
6. On March 14, 1992, at the Annual Meeting of the Alton School District, voters rejected a fact finders report and a three (3%) percent increase to the \$91.75 unit value figure. At that same meeting, voters approved a budget of \$3,863,428 (Board Exhibit No. 4) which, according to unrebutted testimony from two witnesses

included the cost of funding the number of cumulative units necessary to recognize the teachers' additional experience within the profession and within the District. This action by District voters manifested an intent to pay the "step" or additional "cumulative units" based on experience for the 1992-1993 school year.

7. On April 13, 1992, the Alton School Board voted unanimously "to not grant the additional ten units for longevity," funded by the voters (finding No. 6, above), Association Exhibit No. 5.
8. On May 1, 1992 the District issued individual contracts to teachers for the 1992-1993 school year. These individual contracts were "level funded" to the extent the \$91.75 unit value did not change and teachers were not given additional points for the experience components found at Article X, Section 6.2 of the CBA. Conversely, teachers who had attained additional educational achievement under Article X, Section 6.1 of the CBA were given points or "cumulative units" for these achievements, as reflected on the individual contracts issued by the District on May 1, 1992. Association Exhibit Nos. 6,7,8, and 9.

#### DECISION AND ORDER

Contrary to the argument advanced by the District, this is not a Sanborn, 133 NH 513 (1990), case, at least so far as school year 1992-1993 is concerned. A notice of the annual school district meeting was properly issued on February 12, 1992 and contained specificity with respect to certain warrant articles. Voters were given notice regarding warrant articles to be voted upon, attended the meeting, and voted on the articles, one of which passed an annual budget of \$3,863,428. Thus, the District's argument that the appropriation was not noticed or voted upon must fail.

Our second area of concern involves the District's unilaterally picking and choosing which parts of the compensation article to fund (Article X, Section 6.1) and which was not to fund (Article X, Section 6.2). The parties have an unusual compensation scheme based on points with a contractually avowed purpose of providing "equitable distribution of funds available for compensation." The contract further states that compensation should be linked to service. Service is defined in four areas (1) professional education, (2) experience, (3) performance and (4) areas of competence in relationship to the District's needs. This contractual declaration coupled with the point scheme which determines annual compensation causes us to conclude that the parties are not dealing with "steps" in the traditional sense in this contract. The CBA (Article X, Section 2.2) has a specific provision that the salary article is intended "to provide a basis

for equitable changes in compensation based on (a) further training, (b) increased experience, (c) performance in the district, and district needs including, but not limited to, filling positions in which there is a critical shortage of candidates." These incentives have a specific purpose in the scheme of the contract. That scheme does not contemplate that one party may pick and choose which elements of the incentives it will fund or encourage. The CBA is a bi-lateral instrument binding on both parties.

The action by the voters was unequivocal. It funded the contract inclusive of the costs for the compensation scheme less adjustments to the \$91.75 figure. Just as the case in Claremont School Board v. Sugar River Education Association, Decision No. 92-.173, November 5, 1992, the action of the District's voters "evidenced [their] intent to pay the increments [cumulative units for attained experience] for the 1992-1993 school year." Sanborn cannot be plead as a bar to an already approved appropriation. The "evergreen" clause carries the employer's contractual obligations forward so that the cumulative units for attained experience for school year 1992-1993 must be awarded and paid for that year. Successive school years must be "Sanbornized" by proper notice to and authorization by District voters. Since this has yet to occur for school years beyond 1992-1993, we do not speak to the District's obligations in those school years at this time.

For the reasons stated, the District committed an unfair labor practice in violation of RSA 273-A:5 I (h) and (i) when it elected to adhere to part of the compensation article of the CBA and to ignore another part of that same article. The District is obligated to award and pay the cumulative units for attained experience for the 1992-1993 school year and shall arrange to do so forthwith.

So ordered.

Signed this 22nd of December, 1992.

  
 EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
 Members Richard Roulx and Richard E. Molan, Esq. present and voting.