NH Supreme Court affirmed in part, reversed in part this decision on 10-24-95,Slip Opinion No. 93-164, 93-684, 93-685, 140 NH 303 (1995).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ALTON TEACHERS ASSOCIATION/NEA-NEW HAMPSHIRE Complainant v. ALTON SCHOOL DISTRICT Respondent	CASE NO. T-0315:12 DECISION NO. 93-134

APPEARANCES

Representing Alton Teachers Association/NEA-NH:

Jan Paddleford, UniServ Director

Representing Alton School District:

Bradley F. Kidder, Esq., Counsel

Also appearing:

Elaine Brigman, Superintendent
Jack Henderson, Alton School District
Donna Downie, Alton Teachers Association
Charles A Downie, Alton Teachers Association
Richard J. Kirby, Alton Teachers Association

BACKGROUND

The Alton Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Alton School District (District) on May 27, 1993 alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i) relating to breach of contract pertaining to calculating teacher compensation, improperly level funding contracts, and retaliatory conduct. The District filed its answer on June 11, 1993, after which this matter was heard by the PELRB on August 24, 1993.

FINDINGS OF FACT

1. The Alton School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.

2. The Alton Teachers Association is the duly certified bargaining agent for teachers employed by the District.

3. The District and the Association are parties to a collective bargaining agreement (CBA) for the period September 1, 1991 through August 31, 1992 " and thereafter renew[s] itself automatically for successive terms of one year or until a successor agreement has been ratified." (Assn. Ex. No. 3). The parties have been in the process of bargaining for a successor (i.e., after school year 1991-92) CBA since the fall of 1991, a more detailed history of which may be found in our Decision No. 93-131 between these parties. Terms for a successor agreement have not yet been reached.

4. Teachers in Alton are compensated by an unusual scheme which involves the awarding of points for various achievements (e.g., professional education, experience, performance and areas of competence relative to the Districts' needs) which are then multiplied by a point or unit value in order to determine annual compensation. Article 10.7 of the last agreement (Assn. Ex. No. 3) set that unit value at $91.75. (A more detailed explanation of the compensation plan may be found in our Decision No. 92-195, issued December 22, 1992)

5. The cost of advancing bargaining unit members under the compensation formula in order to give them credit for an additional year of experience between school year 1992-93 and school year 1993-94 and to give them credit for newly attained professional education is $23,354. Neither the budget committee nor the Board of Directors included the $23,354 to pay for either the additional experience or additional educational attainment in their respective budgets or the warrant article calling for District's 1993 annual meeting. Notwithstanding this, a floor amendment was offered and passed to add $23,354 to the District's budget for the above purposes. (Assn. Ex. No's. 16 and 17).

6. The appropriated funds in the amount of $23,354 have not been passed on to unit employees in the form of compensation for additional experience or additional attainments in professional education as provided in the CBA.

DECISION AND ORDER

The facts in this case are reminiscent of litigation between these parties one year ago. (Decision No. 92-195, December 22, 1992, appeal denied by New Hampshire Supreme Court on August 11, 1993, Docket No. 93-164). On March 14, 1992 Alton school district voters approved a budget which included the cost of funding the number of units necessary to fund the teachers' additional experience within the profession and within the District. On April 13, 1992, the Alton School Board voted not to grant the additional units for longevity. The PELRB recognized the "unequivocal action" of the voters and directed that the teachers be paid their entitlements for additional experience and educational attainment for the 1992-93 school year. (Decision No. 92-195, December 22, 1992).

The circumstances of this case are strikingly similar. The school board did not include money to fund additional experience or educational attainment in their budget or warrant for SY 1993-94. There is no indication that any infirmity in the calling and holding of the District's 1993 annual meeting has been alleged or proved. During the second day of the District's 1993 annual meeting (adjourned from March 13, 1993 to March 19, 1993 due to a "major snow storm") Terri Noyes made and J. Newton seconded a motion to amend the school funding article of the warrant to include the $23,354 referenced in our findings. Minutes of that meeting show that "the amendment passed, inclusive of an amendment made by S. Moulton to direct the [school] board to live up to the contract as has been determined by the Public Employees' [sic] Labor Relations Board,...seconded by J. Newton." (Assn. Ex. No. 16).

In Decision No. 92-195, we said "this is not a Sanborn, 133 N.H. 513 (1990), case." The same is true of this case. There is no evidence of an infirmity in the noticing, calling or conduct of the District's annual meeting on March 13 and 19, 1993. The pertinent warrant article was open ended, namely "to see what sum the District will vote to raise and appropriate...." The record shows that the District did raise and appropriate sufficient monies to fund the experience and educational attainment amounts at issue in these proceedings.

Since Decision No. 92-195, issued on December 22, 1992, the Supreme Court decided Appeal of Milton School District, 137 N.H. __, on May 20, 1993. This decision said that "steps" and "automatic renewal" or "evergreen" clauses are "cost items" within

the meaning of RSA 273-A:1 IV. Milton is not a bar in this case because the "cost item" nature of the expenses associated with compensation for experience and for educational attainment were specifically addressed and approved at the district meeting, by no less than a separate amendment which met with voter approval.

Last, in Claremont School Board, Decision No. 92-173 (November 5, 1992), we directed payment of funds for steps and increments once there was evidence "that funds were available and had been appropriated by the legislative body for such a purpose." The Supreme Court declined to take an appeal in this case on September 3, 1993. (Docket No. 93-051)

Based on the foregoing and consistent with our holdings in Alton, (Decision No. 92-195) and Claremont, (Decision No. 92-173), we find that the District committed unfair labor practices in violation of RSA 273-A:5 I (h) and (i). By way of remedy, we direct the District to award and pay the necessary units to recognize teachers' experience with the District and educational attainments, consistent with actions taken at the District's annual meeting on March 19, 1993.

So ordered.

Signed this 4th day of November 1993.

EDWARD J. HASELTINE
Chairman

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