



NH Supreme Court reversed this decision on December 17, 1993, Slip Op. No. 92-411.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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DERRY SCHOOL DISTRICT		:	
		:	
Complainant		:	
		:	CASE NO. T-0223:16
v.		:	
		:	DECISION NO. 92-77
DERRY EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE		:	
		:	
Respondent		:	
_____		:	

APPEARANCES

Representing Derry School District:

Michael Elwell, Esq., Counsel

Representing Derry Education Association/NEA-NH:

James Allmendinger, Esq., Counsel

Also appearing:

- David M. Brown, Superintendent
- Barbara Yelland, Derry School Board
- Jan Edward, D.E.A.
- Jan Balise, D.E.A.
- Greg Andruschkevich, UniServ Director
- Susan Chagnon, N.H.S.B.A.
- Ted Comstock, Esq., N.H.S.B.A.

BACKGROUND

On January 9, 1992, the Derry School District, (District) filed a Petition for Declaratory Judgement. The Derry Education Association (Association) filed an answer on January 23, 1992. The matter was scheduled for and heard by the Board on April 14, 1992.

The facts in this case are undisputed. The District is the employer of employees represented by the Association. In November

of 1990, the District and the Association reached impasse in their efforts to negotiate a collective bargaining agreement for the 1991-92 school year. Mediation did not settle their differences. Three issues involving purely language items were submitted to fact finding. They were: (1) just cause/teachers' rights, (2) evaluation procedures, and (3) reduction in force. The parties agree that none of these is a cost item or has cost impact. The fact finder's report subsequently issued, was accepted by the Association, and was rejected by the District. Thereafter, the Association wanted the District to submit the fact finding report to the legislative body under RSA 273-A:12 III. The District declined, saying that RSA 273-A:3 I (b) required only cost items to be submitted to the legislative body and, since there were no cost items involved. There was no obligation to do so.

We are presented with only one issue:

If there are no cost items or subjects involving cost items in a fact finder's report, must that report be submitted to the legislative body under RSA 273-A:12, III?

DECISION AND ORDER

Our review of the history and purposes for the submission of the fact finder's report to the legislative body under RSA 273-A:12 III is consistent with the authority of the legislative body to review, approve or reject overall costs associated with the negotiation of or modifications to collective bargaining contracts. This case presents a very unusual set of circumstances where none of the items in the fact finder's report involve any cost items. Under these circumstances, we see no need for the fact finder's report to be submitted to the legislative body. See Franklin School Board (Decision No. 92-53, March 19, 1992) To hold otherwise would subject the legislative body to potential additional expense for balloting and/or a special meeting. The requirements of RSA 273-A:12 III provide for the submission of the fact finder's report subject to a vote "to accept or reject so much of his recommendations as otherwise is permitted by law." (Emphasis added). RSA 273-A:3 (b) provides "Only cost items shall be submitted to the legislative body...." Thus, we conclude that a fact finder's report without cost items is not part of what is "otherwise....permitted by law." The intent of these statutory provisions is to preserve to the voters of the legislative body the ability to review and control cost items associated with the "bottom line" of collective agreements, not to provide for item by item approval of the internal provisions of those agreements. Under the circumstances of this case:

There is no need to submit a fact finder's report to the legislative body under RSA 273-A:12 III if that report contains no cost items.

So ordered.

Signed this 21st day of April, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard W. Roulx and Arthur Blanchette present and voting.