

NH Supreme Court reversed and remanded this decision on November 10, 1992, Slip Opinion No. 90-478. 136 N.H. 332 (1992).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

FRANKLIN EDUCATION ASSOCIATION/ :
NEA-NEW HAMPSHIRE :
Complainant :
v. :
FRANKLIN SCHOOL BOARD :
Respondent :

CASE NO. T-0202:7

DECISION NO. 90-72

APPEARANCES

Representing Franklin Education Association/NEA-NH:

Jan Paddleford Loto, UniServ Director
Mary E. Gaul, UniServ Director

Representing Franklin School Board:

Bradley F. Kidder, Esq., Counsel
Harry S. Gale, Consultant

Also appearing:

Fokion Lafionatis, Superintendent
Donna Kelley, F.E.A.
Norma MacIver, F.E.A.
Stephen Hart, F.E.A.
Robert Lamothe, F.E.A.
Jane Soule, School Board
Janet Hill, School Board
T.E. Comstock, N.H.S.B.A.
Jeff Lyons, W.F.T.N.
Scott Hilyard, Concord Monitor
Scott Horsley, W.K.X.L.
Tom Caldwell, Evening Citizen
Warren Hastings, Union Leader

BACKGROUND

On June 4, 1990, the Franklin Education Association/NEA-NH (Association) filed a Motion for Cease & Desist Order from PELRB alleging that the Franklin School Board (Board) had failed to abide by the collective bargaining agreement; that the Board had issued contracts in April to the individual

teachers based on the CBA's negotiated increases, then on or about June 2, 1990 rescinded those contracts and issued new level funded contracts calling for no wage increases. Accompanying the new contracts was a letter from the Superintendent stating that they should be signed and returned to his office by June 15, 1990 and that teachers failing to sign and return them by that date would no longer be considered employees of the District.

PELRB held a hearing on the request for a Cease and Desist Order on June 14, 1990 at which time the parties presented documents and extensive testimony from various witnesses.

PELRB issued a temporary Cease and Desist Order pending a hearing on the merits of the unfair labor practice charge.

Hearing on the merits was held on August 7, 1990 at the PELRB office in Concord, New Hampshire

FINDINGS OF FACT

1. PELRB held a 6-hour hearing on June 4, 1990 at which it received opening statement from the Association outlining the negotiations process which began in June, 1988, mediation in January, 1989 and factfinding in June, 1989 with 27 issues still outstanding.

2. The factfinder's report was issued on November 13, 1989, some 5 months later.

3. Using the factfinder's report as a basis for further negotiations in December, 1989, the parties reached a 3-year agreement.

4. Article IV, Section 4.4 of the new agreement states:

"Any agreement reached shall be reduced to writing and signed by the Board and Association. Any agreement reached which requires the expenditure of additional public funds for its implementation shall not be binding upon the Board, unless and until the necessary appropriations have been made by the Franklin City Council. The Board shall make a good faith effort to secure the funds necessary to implement said agreements."

5. Article XV, Final Resolution states:

"This agreement represents the final resolution of all matters in dispute between the parties and shall not be changed or altered unless the change or alteration has been agreed to and evidenced in writing by the parties hereto."

6. At the conclusion of negotiations, letters were exchanged between the Association's negotiator and Consultant for the District which the parties called a "side-bar" agreement and a part of the agreement.


The side-bar agreement indicated a willingness by the parties to abide by the decision in the Sanborn teachers case which is still pending in N.H. Supreme Court and which deals with the validity of multi-year agreements.

7. The District aggressively supported the negotiated agreement before the City Council which is the legislative body in Franklin as defined under RSA 273-A:1, II and X.
8. Necessary funds were appropriated to fund the 1st year of the agreement for the 1989-90 school year.
9. RSA 189:14 (a) requires the notification of renewal or non-renewal to teachers on or before March 31 each year.
10. Cost effect of the contracts was submitted to the City Council on May 7, 1990 and on May 10, 1990, the Council voted 8 to 1 to reject the cost items for year two of the negotiated agreement.
11. The School Board at an emergency meeting on June 2, 1990 voted to ask the Association to resume negotiations on the 1990-91 salary schedule in an effort to save some 18 teachers from termination and many program cuts.
12. The unfair labor practice revolved around three issues: (1) whether the language of Article IV, section 4 required the parties to return to negotiations upon rejection of the cost items by the legislative body, (2) whether a side-bar agreement can be considered a part of the negotiated contract, and (3) has the District violated RSA 273-A by breaching the collective bargaining agreement.

DECISION AND ORDER

- A. Article 4.4 of the CBA states that the parties must return to the negotiating table if the expenditures of additional public funds are not approved by the Franklin City Council. The Council did not appropriate the necessary funds for implementation of salary increases in year two of the three-year agreement.
- B. The "side-bar" agreement is not valid as it is unsigned by the parties to the original agreement nor is it appended to the CBA.
- C. The unfair labor practice against the District is DENIED.
- D. The temporary Cease and Desist Order issued June 4, 1990 is hereby vacated.
- E. The parties are ORDERED to return to the negotiating table in accordance with Article 4.4 of the CBA.
- F. Compliance to this order and periodic written reports to be submitted by both parties, in writing, to PELRB on the progress made.

Signed this 15th day of August, 1990.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present, Executive Director Evelyn C. LeBrun.



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PROFESSIONAL, ADMINISTRATIVE AND
TECHNICAL EMPLOYEES OF DERRY

Complainant

v.

TOWN OF DERRY

Respondent

CASE NO. M-0626:1

DECISION NO. 90-73

APPEARANCES

Representing Professional, Administrative and Technical Employees of Derry:

Malcolm P. MacIver, Captain, Police Department

Representing Town of Derry:

Harry S. Gale, Consultant

Also appearing:

Jack Dowd, Town of Derry
Ed Garone, Town of Derry
Glenn Hunter, Town of Derry
Ronald Gagnon, P.A.T.E.
George Sioas, Town of Derry
John M. Foreman, Town of Derry
Cissy Taylor, Union Leader
Rodney Bartlett, Consultant

BACKGROUND

Hearing on Professional, Administrative and Technical Employees of Derry's (PATE) request for the issuance of a Cease and Desist Order against the Town of Derry (Town) was held on August 9, 1990. The issue is the proceedings now ongoing by the Town Administrator in the discharge of the Superintendent Water/Waste Water under the Town's personnel rules.

Captain Malcolm MacIver representing PATE offered testimony that the Superintendent's case was being processed under the Town's personnel rules and should more properly be a matter for the grievance procedures available to other Town employees who are in recognized bargaining units; that PATE was in negotiations with the Town for its first contract after becoming a properly certified bargaining unit on June 1, 1990; and that an agreement between the Town and PATE which deals