CORRECTED DECISION

NH Supreme Court reversed this decision on November 30, 1993, Slip Op. No. 92-380.

# State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| FRANKLIN SCHOOL BOARD<br><br>Complainant<br><br>v.<br><br>FRANKLIN EDUCATION ASSOCIATION/ NEA-NEW HAMPSHIRE<br><br>Respondent | CASE NO. T-0202:8<br><br>DECISION NO. 92-53 |

## APPEARANCES

Representing Franklin School Board:

Bradley F. Kidder, Esq., Counsel

Representing Franklin Education Association/NEA-NH:

James F. Allmendinger, Esq., Counsel
Jan Paddleford, UniServ Director

Representing City of Franklin:

Paul Fitzgerald, Esq., Counsel

Also appearing:

Randy J. Perkins, School Board
Janet C. Hill, School Board
Fokion Lafionatis, Superintendent
Michael Hoyt, F.E.A.
Pam Julian, N.E.A.
Jeff Lyons, W.F.T.N.
Gordon King, Laconia Evening Citizen

## BACKGROUND

On December 16, 1991, the Franklin School Board (employer) through its counsel, Bradley F. Kidder, Esquire, filed a Petition for Declaratory Judgment based on the negotiations for and the

financial rejection of a 1991-92 collective bargaining agreement (CBA) for employees of the teachers' bargaining unit. The Franklin Education Association filed an answer on December 19, 1991. The Franklin City Council filed an answer on January 2, 1992. This matter was set for hearing and heard by the PELRB on March 5, 1992 at its offices in Concord, New Hampshire.

This case involves an interpretation of RSA 273-A:3 II (b) which provides "Only cost items shall be submitted to the Legislative body of the public employer for approval...." The circumstances of this controversy involve: (1) a negotiated settlement between the employer and the Association for the terms and conditions of a 1991-92 CBA, (2) submission of the "cost items" associated therewith to the Franklin City Council (the "legislative body") for approval even though there already was sufficient funding in the employer's (School Department's) budget to pay for the settlement, (3) objection to this approval process by the Association, (4) rejection of the "cost items" by the Franklin City Council, and (5) a subsequent execution of the CBA by representative of the employer and the Association. Our findings provide more detail.

## FINDINGS OF FACT

1. The Franklin School Board is a public employer as defined by RSA 273-A:1, XI and is the employer of employees in the teachers' bargaining unit.

2. The Franklin Education Association/NEA-NH is the duly certified bargaining agent of teachers employed by the Franklin School Board.

3. The Franklin City Council is the "Legislative Body" as referenced in RSA 273-A:1, VII and RSA 273-A:3, II (a).

4. The Association and the employer negotiated and reached agreement on a successor CBA in November of 1991 for the 1991-92 school year. That agreement called for a 5% salary increase costing $98,657.00, FICA, retirement and other fixed expenses costing $9,816.37 and increased medical insurance costs of $24,573.60, or a total of $133,046.97.

5. The School Board unanimously approved the 1991-92 agreement at its meeting on November 18, 1991. (Assn. Ex. No. 1)

6. There were sufficient monies in the School Board's budget to fund the settlement, namely, $66,235.97

from the salary account, $53,495 from staff changes (turnover), $7,440 from negotiations savings, and $5,876 savings in property insurance. (Board Ex. No. 3)

7. The contract (i.e., "cost items" as they related to the utilization of the $133,046.97 under the terms of the settlement) was submitted to the Franklin City Council for approval on December 2, 1991, on representations from members of the School Board that the settlement would not require any additional appropriations and sufficient resources to fund the settlement already existed in its budget. The Council unanimously rejected approval of the settlement on December 2, 1991. (Board Ex. No. 3)

8. School Board Chairman Perkins believed Council approval to be "merely a formality" because such approval was required only if a supplemental appropriation was necessary and because the Council had approved fully funded (included in existing budget figures) settlements for other bargaining units of the School Board (e.g., custodians at 3.5%). (Board Ex. No. 2)

9. School Board/District Chairman Perkins and Superintendent Fokion Lafionatis signed the CBA for the 1991-92 school year, which incorporated changes utilizing the $133,046.97 required to fund the settlement from existing budget resources, on behalf of the Board/District on December 20, 1991. (Board Ex. No. 4).

10. Association President and Chief Negotiator Hoyt had been advised that taking contract to the Council was a "formality" because the funding was already in the budget. The Association postured its negotiations on a consideration that Council approval for additional funding would not be required, i.e., negotiations were conducted "out of what we could get form the existing budget."

11. Article 4.4 of the CBA (Board Ex. No. 4) provides, in pertinent part, "Any agreement reached which requires the expenditure of <u>additional public funds</u> for its implementation shall not be binding on the Board; unless and until the necessary appropriations have been

made by the Franklin City Council." (Emphasis added). This provision does not apply to this case because "additional public funds" were not required to meet new contractual obligations.

12. The Franklin "tax cap" has no bearing on individual line items of the Board's/District's budget, but only to the "bottom line"of that budget.

13. The Board/District retains discretion to move funds from one line item to another, with the exception it doubts it may do so to augment the salary budget line, changes in which, it believes, must be approved by the Council.

14. School Board/District Chairman Perkins believed that management must negotiate within the "bottom line" of the Board's/District's approved budget. This was a factor which influenced negotiations since he was unaware of a contract ever being rejected if the submission to the Council was within the bottom line of existing or approved funding.

## DECISION AND ORDER

We approach this case by examining these areas: the conduct of the parties, the contents of the new CBA (Board Ex. No. 4), and the statutory requirements found at RSA 273-A;3, II (b). Crucial to the first category are two observations. First, the Council, in closing argument, acknowledged that the Board's/District's line items cannot be controlled by the Council; however, it asserted that RSA 273-A:3 II (b) created an exception requiring approval and that contract article 4.4 (Finding No. 11, above) cannot contract away a statutory requirement. We address the 273-A:3 II (b) issue, below. As for contract article 4.4, it neither contravenes the statute [273-A:3 II (b)] nor does it apply since its provisions relate only to the need for "additional public funds."

This brings us to the issue of the CBA itself and its status as an executed document. Our second and final observation relative to the conduct of the parties is the fact that the CBA was executed by Dist. representatives on Dec. 20, 1991, some (18) days after it was rejected by the City Council. (Finding No. 7 and 9). Under our holding in Milton Educ. Assoc. (Dec. No. 92-47, Feb. 27, 1992), an employer who executes such an agreement after rejection by the legislative body engages in conduct "suggesting to us [PELRB] that, if needed funds were not raised under the provision of voter action...the employer nevertheless obligated itself to find the funding required to meet its contract commitments from existing appropriations." The employer in this case had the resources,

executed the contract, and is now obligated to adhere to its contractual commitments. If the employer did not have the resources to fund those commitments (not the situation in this case), it would be required to find the necessary resources, if any integrity whatsoever is to be given to the status of the contract. As noted in Milton Education Association, infra, there is no asserted affirmative defense of ultra vires relative to the actions of Perkins or Lafionatis.

Having directed our attention to the conduct of the parties and the contents of the new CBA, notably Article 4.4, we now turn our attention to the statutory requirements of RSA 273-A:3 II (b). We reject the theory that RSA 273-A:3 II (b), ipso facto, imposes an exception on the School Board's authority to transfer funds from one line item of its budget to another. The Board has authority to change other line items; it has the authority to change the salary line item, unless a "cost item" is involved. There is no justification or acceptable rationale as to why changes in the salary line item should be treated any differently from changes in the maintenance or travel line items, so long as those changes are made within the existing and previously approved budget of the Board/District. When and if such changes cannot be made within the previously approved and appropriated budget, then a "cost item" occurs and the wisdom and evaluation of the legislative body, in this case the Council, is appropriate.

The role taken by the Franklin City Council was inappropriate and unnecessary in this case. The "general management and control of public schools...shall be vested in a board of education consisting of nine members...." (Franklin City Charter, Section 15.00, Assn. Ex. No. 3) Counsel for the Council cited only one basis why transfers to the salary line could not be made unless approved by the Council, namely, RSA 273-A:3 II (b). We have said that does not act as a bar, above. When additional monies do not need to be approved and appropriated, there is no "cost item" event as contemplated by RSA 273-A:3 II (b). Without this, there is no role for the Council as the "legislative body."

Turning to the purposes for reserving control over the budget to the legislative body, the Council referred us to the legislative debate over what became RSA 273-A. Citing to Senator Brown's comments on June 12, 1975 ("Senate Journal", p. 1069), one of those purposes was to "preserve the control of the legislative body of a government over the budget of government." That is precisely what occurred when the Franklin City Council approved the District's budget earlier in the year. There is nothing in the applicable portions of RSA 273-A or in the City Charter to suggest to us that the Council has reserved unto it the type of micromanagement evident by its rejection of an internal change of funding within the overall appropriation it had already approved for the District. Without such a showing, we cannot justify a difference in the manner of implementing internal changes in a line item of the

District's budget when a salary line is involved versus when it is not involved.

We believe this conclusion to be in conformity with Rochester Education Assn. v. City of Rochester, [116 N.H. 402, 405 (1976)] where the Supreme Court held that the city charter which vested in the city council "all fiscal and prudential affairs of the School District" signified that "the city council is the appropriating agency while the school board is the manager and controller of the public schools within the limits of the appropriation made by the city council." (Emphasis added). As recently as last fall, the Court held in City of Portsmouth v. Assn. of Portsmouth Teachers, __ N.H. ___,( October 4, 1991) that "the final approval referred to...is concerned with 'bottom line' budget approval." (Emphasis added) Further, "although the city council may review and give final approval to all municipal public employment contracts, this approval may only be withheld if based on cost items." There was none in this case.

In summary we find and direct:

1. That the collective bargaining agreement was signed December 20, 1991;

2. That funding for that agreement was within the existing budget appropriation of the School Board;

3. That no "cost item" was precipitated; therefore, submission for approval and rejection by the City Council on December 2, 1991 was both unnecessary and inappropriate; and

4. That the Franklin School Board may fund and pay the settlement referenced herein within its existing resources.

So ordered.

Signed this 19th day of March, 1992.

Jack Buckley

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.