



Appeal to NH Supreme Court withdrawn
Supreme Court No. 94-062.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA SCHOOL DISTRICT

Complainant

v.

NASHUA TEACHERS UNION, LOCAL 1044
AFT, AFL-CIO

Respondent

CASE NO. T-0244:12

DECISION NO. 93-138

APPEARANCES

Representing Nashua School District:

Andrew Waugh, Esq., Counsel
Jane Bangert, Nashua School District
Berard Masse, Superintendent

Representing Nashua Teachers Union:

Emmanuel Krasner, Esq., Counsel
Barbara Padellaro, Nashua Teachers Union

BACKGROUND

The Nashua School District (District) filed unfair labor practice (ULP) charges against the Nashua Teachers Union, Local 1044, AFT, AFL-CIO (Union) on July 7, 1993 alleging violations of RSA 273-A:5 II (c), (d), (f) and (g) relative to a breach of contract and attempting to grieve subject matter not covered by the grievance procedure. The Union filed an answer on July 16, 1993, after which this matter was heard by the PELRB on September 9, 1993.

FINDINGS OF FACT

1. The Nashua School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Nashua Teachers Union, Local 1044, AFT, AFL-CIO, is the duly certified bargaining agent for teachers employed by the District.

3. The District and the Union are parties to a collective bargaining agreement (CBA) which expired on August 31, 1992. Article 4.8 of that agreement provided longevity pay at the rate of \$1150 for those teachers with 20, but less than 25, years of service as of September 1, 1991. Teachers with 25 or more years of service as of September 1, 1991 were to receive \$1500. Those payments were to be paid annually in January for the school year in question, i.e., in January of 1992. (Board Ex. No. 3)
4. The CBA which expired on August 31, 1992, had no "evergreen" or continuation clause. Article 17:1 thereof provided for that expiration "unless an extension is agreed to by both parties and expressed in writing prior to such date." (Board Ex. No. 2)
5. On January 28, 1993, George Farrington, President of the Nashua Board of Education, wrote to faculty members telling them that enclosed they would "find a check for your longevity payment for the current school year. The amount paid is the same as last year....in an attempt to provide that teachers receive the same income this year as last (i.e., 'status quo') while a successor agreement is being negotiated." Further, "it is understood between the district and the union that these longevity payments are made without prejudice to the Board's position that it is not legally obligated to pay step increases or longevity benefits...." (Board Ex. No. 1)
6. Bargaining unit employees who attained 20 or 25 years of service after the expiration of the CBA on August 31, 1992 have not been moved forward or been paid for either the \$1150 payment or the larger \$1500 payment, both referenced in Article 4:8. Conversely, if they received such payments in January of 1992, they received the same amount in January of 1993.
7. Bargaining unit employees (eight in number) who attained additional educational achievement after the expiration of the CBA on August 31, 1992 have moved laterally across the pay scale (BA, BA+30, MA, MA+30, and DR) in the meantime and have been paid increased compensation.
8. Barbara Padellaro, a bargaining unit member, was hired on September of 1973. She attained 20 years of service on September 1, 1993 as defined by Article 4:8. She did not receive the \$1150 longevity payment in January of 1993 after which she filed a grievance. The District is objecting to that as conduct prohibited by RSA 273-A:5 II (c), (d), (f) and (g).

DECISION AND ORDER


Since the District has chosen to compensate bargaining unit members for attainments in the field of educational achievement (i.e., "track" movement) after the expiration of the CBA, we are not willing to prohibit either the Association or Padellaro from pursuing the same issue as it pertains to longevity payments under the contract before an arbitrator. Article III of the parties' CBA which expired August 31, 1992, provides that the purpose of the negotiated grievance procedure is to settle "grievances which...aris[e] our [sic] of the employer-employee relationship involving wages, hours or other terms or conditions of employment." The pending dispute fits squarely within that definition. Likewise, we have consistently held that a negotiated grievance procedure survives the expiration of a CBA as part of the status quo. Maintenance of the status quo and, in this case, the ability to grieve, is essential to preserving the balance of power between the parties during the negotiations process. To hold differently would discourage both effective negotiations and prompt settlements by holding grievances hostage to the negotiations process.

We are cognizant of the recent Milton decision, 137 N.H. ___ (May 20, 1993), as it relates to step increases being defined as "cost items". Given the manner in which this case was presented, there was insufficient evidence for us to determine whether the longevity article of the contract was a "cost item." The budgetary process which was followed suggests that it may not have been, as least as far as FY 1993-94 is concerned, since longevity payments were originally programmed into the January 30, 1993 payroll and thereafter deleted. (Union Ex. No. 1)

Mindful of the foregoing considerations and our reluctance to let one party to a contract "pick and chose" which parts of a compensation package to honor [Alton Teachers Association, Decision No. 92-195, (December 22, 1992)], we believe both the parties' agreement and their actions warrant the scrutiny of the grievance process. Accordingly, the District's ULP is DISMISSED and the time limits of the parties' grievance procedure are tolled until the date of this decision for purposes of preserving the timeliness of the Padellaro grievance referenced in Finding No. 8, above.

So ordered.

Signed this 22nd day of October, 1993.


 JACK BUCKLEY, Alternate Chairman

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