



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SANBORN REGIONAL SCHOOL DISTRICT :
: Petitioner :
v. :
SANBORN REGIONAL EDUCATION :
ASSOCIATION/NEA-NEW HAMPSHIRE :
Respondent :

CASE NO. T-0256:15

DECISION NO. 91-07

APPEARANCES

Representing Sanborn Regional School District:

Bradley F. Kidder, Esq., Counsel

Representing Sanborn Regional Education Association/NEA-NH:

James F. Allmendinger, Esq., Counsel

Also appearing:

- Susan R. Peterson, School District
- Maryann B. Clancy, School District
- Mark V. Joyce, Superintendent
- Barbara Gittlin, Sanborn Taxpayer
- Suzanne J. Ryan, Sanborn Taxpayer
- Madeleine J. Kozec, Sanborn Taxpayer
- John & Ruth Swasy, Sanborn Taxpayer
- Prudence Wood, S.R.E.A.
- Allen Taylor, S.R.E.A.
- Regina Nason, S.R.E.A.
- Muriel A. Ingalls, S.R.E.A.
- Richard N. Chretien, President S.R.E.A.
- Neal A. Murphy, NEA-NH
- Pamela A. Cantin, Newton Community
- Vincent Palumbo, Kingston
- Ted Comstock, Esq., N.H.S.B.A.
- Don Milotts, Sanborn Taxpayer
- Dave Knight, Kingston
- Karen Dandurant, Kingstonian
- Electra L. Alessio, School Board

BACKGROUND

This case comes before the Public Employee Labor Relations Board on remand from the New Hampshire Supreme Court. In Appeal of the Sanborn Regional School District, NH 89-529 (August 14, 1990) the New Hampshire Supreme Court reversed a decision of the PELRB which dismissed an unfair labor practice complaint by the Sanborn Regional School District. The District complained against the Sanborn Regional Education Association for its refusal to bargain about the effect of the March 9, 1989 rejection by voters of the cost items in the second year of a three-year contract. It was the position of the School District that the effect of the rejection by the voters was to require the parties to re-negotiate the cost items of the contract. The Association took the position that the three-year contract had been adopted when the voters funded the first year of the contract at their 1988 School District meeting. The PELRB agreed with the position of the Association. The Supreme Court reversed that decision, stating that unless the voters clearly understood the ramifications of their vote and unless they were clearly "warned" that the effect of ratifying the first year was to ratify all three years of the contract as to cost items, the vote to ratify the first year did not in fact adopt the three-year contract. In its decision, the New Hampshire Supreme Court upheld the proposition that multi-year contracts are legal under New Hampshire law. Nevertheless, the Court stated that absent "...any evidence in the record establishing that the voters had knowledge of the financial terms relating to all three years to the Collective Bargaining Agreement, the District is not bound to fund the second and third-year terms of the Agreement." Appeal of Sanborn Regional School Board, supra at page 8.

The Supreme Court, in its decision, stated that if a proper warning of the multi-year nature of a contract was clearly indicated in the warrant for the School District meeting or by other appropriate "alternate mechanism by which the District voters may be sufficiently apprised of subject matter upon which favorable action will bind the District to monetary obligations extending over a term of years under a Collective Bargaining Agreement...", a multi-year agreement could be adopted by appropriate vote at the School District meeting. The Supreme Court indicated that a clear expression in the warrant article would be such a mechanism but that other mechanisms also exist. The Court did not define the non-warrant article "alternate mechanisms", however.

On remand, the PELRB has held two hearings. The first hearing considered the purpose of the remand. It was argued at that hearing by the School District that the reason for the remand was to consider its unfair labor practice complaint which, by reversal of the earlier PELRB decision, had been reinstated and therefore had to be acted upon by the Board. The Association argued that the purpose of the remand was to fashion appropriate alternate mechanisms but not to act on the initial unfair labor practice complaint. At the first hearing, the School District made a motion to withdraw its complaint. This request was opposed by the Association on the basis that it had filed a cross-complaint in the original action and a dismissal would prejudice its rights under its cross-complaint. The cross-complaint had sought an unfair labor practice finding against the district due its refusal to honor the three-year agreement.

A second hearing, limited to the question of what occurred at the 1988 School District meeting, was held on December 11, 1990. The purpose of the hearing was to determine whether the voters were sufficiently "warned" at the School District meeting in 1988 so that the effect of their vote funding the cost items for the parties would have the effect of binding the School District

for all three years. Put in another way, the inquiry was to see whether the events at the 1988 meeting constituted an appropriate "alternate mechanism" for notice to the voters that their action was to consider a multi-year contract and act upon it.

FINDINGS OF FACT AND RULINGS OF LAW

The Board has considered evidence presented to it at the December 11 hearing. Both parties had an opportunity to present evidence of the events at the School District meeting held on March 3, 1988. This meeting was held three days after the Association had ratified the three-year agreement which had been agreed upon by the negotiators for both parties, and approximately two weeks after the School Board had ratified the contract. Both ratifications occurred after the warrant for the School District meeting had been printed and posted in accordance with New Hampshire law. Therefore, there was no opportunity after the parties reached agreement for a new warrant article to be drafted, no opportunity for a public hearing to be held to discuss the specific items of the agreement, and no time for the School Board or the Union to put out letters, notices of press releases. Indeed, evidence at the hearing indicated that no such publicity took place prior to the meeting. At the meeting, a representative of the School Board read a speech which clearly stated that the agreement "is a three-year contract and tonight we are asking for District approval for the first year of that contract." The statement went on to describe the cost in the first year and indicated that, as to additional years, "in the second year of the contract there is a 10% increase, raising starting salaries to \$19,450, and in the third year it is a 11% increase raising starting salaries to \$22,000." There was no additional discussion of the cost of the second and third years. There was a detailed estimate of the cost for the first year. Evidence at the hearing indicated that all witnesses understood that the School Board representative had stated that it was a three-year agreement but there was no discussion as to the legal effect of the vote for the first year binding the District to the three-year agreement. Some evidence indicated that when a question was asked, some representative of the School Board or other party present at the meeting indicated that the vote was only on the first year and additional votes would be taken for subsequent years. Additional evidence presented by a then-member of the School Board indicated that a member did not understand the ramifications of the vote and thought that the action at the School District meeting was merely to fund the first year of the contract, leaving the second and third years open to further action by subsequent School District meetings.

There was conflicting evidence at the hearing as to what individuals attending the meeting thought or understood the legal effect to be, witnesses produced by the Association indicating that they thought it was a three-year contract binding the District to fund all three years, and witnesses produced by the School Board stating that they believed that the action requested and taken merely ratified the first year's cost items with other years to be voted on subsequently.

What is clear and what the Board finds is that there was no clear discussion or presentation concerning the legal effect of the vote. There was nothing in the warrant, discussion prior to the vote taken, or official record of the School District meeting which could in any matter be construed to notify the voters either before or at the hearing that if they voted for the first years of the contract, they would be binding the District for all three years. While it was the position of the PELRB and the understanding of the Association prior to the Supreme Court decision that a vote on the first year would have that

effect, the Supreme Court has clarified that issue and requires that such notice must have been clear either through the warrant or acceptable "alternate mechanism" for the vote to have had a multi-year binding effect.

On the basis of the evidence presented, the Board is unable to find that there was any acceptable alternate mechanism employed at the 1988 School District meeting for the Sanborn Regional School District as required by the Supreme Court. At a minimum, such a mechanism must notify the voters of the legal effect of their action to bind the District to a multi-year contract and notify them of the cost of such an action in each year of the contract. Neither criterion was met in this case. There was only general discussion of the cost in second and third years of the contract and there was no clear warning that the vote to be taken would bind the District for three years for cost items. Therefore, the assertion that an effective alternate mechanism was employed fails.

The PELRB will hold a subsequent hearing and accept suggestions from all interested parties as to possible alternate mechanisms which may be employed to notify voters. It is clear from the Supreme Court decision that a warrant article which clearly sets forth that the vote to be taken will have a multi-year effect and which warns the voters effectively as to the cost of the contract to be considered is such a mechanism. It is also clear that the Supreme Court contemplates that other mechanisms can exist. As stated above, such mechanisms would have to clearly notify voters of the legal effect and cost of any contract. They would also have to warn the voters prior to the meeting of such matters so that voters would have an opportunity to attend the meeting. The Board is not prepared to set forth a definitive list of such mechanisms in this decision and notes that parties proceed at their own peril if they employ any mechanism other than a clear statement in the warrant article of the cost and effect of multi-year agreement proposals being submitted for ratification.

The Sanborn Regional School Board submitted requests for findings of fact and rulings of law at the conclusion of the December 11 hearing. While the Board has made its findings above on all relevant matters, it rules on the requests as follows:

Requests #1, 5, 16 (as stated), 21 and 22 are denied.

Requests #2, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 17, 18, 19, 20, and 23 are granted.

Request #10 is granted except the characterization as to what part of the day ratification took place.

Request #13 is granted in part but the entire statement of Muriel Ingalls relevant to the issue is "The agreement is a three year contract and tonight we are asking for District approval for the first year of that contract." The Board finds this to be insufficient explanation as to the legal or financial effect of the vote.

The remedy requested by the School District is an unfair labor practice finding against the Association for its failure to negotiate after rejection by the voters of the second year of the contract at its 1989 School District meeting. Given the then-understanding of the Association as to the legal effect of the vote at the 1988 meeting, this Board is reluctant to find an unfair labor practice because of the failure to negotiate. The Association

requested an unfair labor practice finding against the School District for its failure to observe the three-year contract, notwithstanding the 1989 vote. Because of the Supreme Court decision and the inability to find that an alternate mechanism consistent with the requirements of the Supreme Court decision was employed at the 1988 meeting, the Board denies the request of the Association. However, the parties are ordered to meet and confer concerning the effect of the rejection by the voters of the second year cost items, consistent with RSA 273-A and the Supreme Court decision.

ORDER

Consistent with the above decision, the PELRB issues the following order:

1. The Sanborn Regional School Board and the Sanborn Regional Education Association are hereby ordered to meet, confer and negotiate concerning the effect of the rejection by the voters in the second year of their three-year agreement at the 1989 School Board meeting and report the results of their negotiations to this Board thirty (30) days from the date hereof and at thirty (30) day intervals thereafter until agreement is reached.
2. The request for unfair labor practice findings by each party against the other are hereby denied given the circumstances of the case.
3. A further hearing by the PELRB will be held concerning appropriate alternate mechanisms for notification in multi-year contract cases will be scheduled by the Board at its convenience.

So ordered.

Signed this 28th day of January, 1991.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present, Board Counsel, Bradford E. Cook, Esq.