

_____)	
R.S.U. No. 38 SCHOOL BOARD,)	
)	
Petitioner,)	
)	STATUS QUO
v.)	DETERMINATION
)	
MARANACOOK AREA SCHOOLS)	
ASSOCIATION,)	
)	
Respondent.)	
_____)	

On December 12, 2013, the RSU No. 38 Board of Directors filed a petition for a status quo determination under 26 M.R.S.A. §964-A(2). Section 964-A(2) provides that after the expiration of a collective bargaining agreement, the grievance arbitration provision remains in effect for those provisions that are enforceable pursuant to the static status quo doctrine. Section 964-A(2) requires the Board to resolve disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine. The RSU No. 38 Board of Directors and the Maranacook Area Schools Association disagree on whether the provision in the expired agreement awarding salary step increases to certain teachers is enforceable under §964-A(2).

Following the receipt of the petition, the Executive Director contacted the parties to arrange a schedule for submitting a response and written argument. The RSU No. 38 Board of Directors was represented by Bruce Smith, Esq., while the Association was represented by Shawn Keenan, Esq. In its response, the Association not only asserted that continuation of

the step increases was required to maintain the static status quo, it further questioned the Board's jurisdiction to hear the matter. On January 31, 2014, the School Board submitted its written argument addressing both the jurisdictional matter and the substantive issue regarding the step increases. The Association, now represented by Howard Reben, Esq., filed its brief on March 12, 2014, stating that "despite the statutory ambiguity, the Respondents concede the jurisdictional issue." That brief did not address the question concerning continuation of the step increases but, rather, indicated that the Association was expecting an evidentiary hearing on the matter. On March 21, 2014, the Board Chair issued an Interim Order holding that an evidentiary hearing was not appropriate for a status quo determination and ordering the Association to submit written argument on the substantive issue before the Board. The Association's argument was filed on April 24, 2014, and the School's response was filed on May 8, 2014.

JURISDICTION

A status quo determination arises only when a request for arbitration has been filed and the parties disagree on whether a particular provision in the expired collective bargaining agreement is enforceable by virtue of the static status quo doctrine. As the petitioner and the respondent disagree on whether the provision in the expired agreement regarding step increases is within the scope of the static status quo doctrine, the Board has jurisdiction to make this determination.

PROCEDURAL MATTERS

In its written argument, the Association requested that the Board Chair recuse herself from the case because her employment as a "management attorney" allegedly created a conflict of

interest. As is the case for every member of the Board, potential conflicts of interest are addressed prior to the member's appointment to the panel. In the present matter, the Chair's employment raises no conflict of interest; therefore, recusal is not required.

A second procedural issue raised by the Association was the Board's decision that an evidentiary hearing is not appropriate in this status quo determination. As stated in the Interim Order of March 21, 2014,

. . . The question before the Board is whether the issue at hand is a mandatory subject of bargaining and, if so, whether it is enforceable under the static status quo doctrine. The Board's determination does not resolve a grievance, it is merely the mechanism for ruling on whether the issue is arbitrable under §964-A(2). The proper time for creating a factual record is at arbitration, not at the Board.

The Interim Order further explained that the express language of §964-A(2) reiterates the fact that the Board does not have jurisdiction over grievances, thereby providing further support for the Board's conclusion that it would be inappropriate to hold an evidentiary hearing in this matter. A copy of the expired collective bargaining agreement is all that is needed to make a status quo determination.

DISCUSSION

In making a status quo determination, the Board must address two questions: First, whether the provision of the collective bargaining agreement at issue is a mandatory subject of bargaining, and second, whether enforcement of that provision is precluded by the Law Court's holding in Board of Trustees of the University of Maine System v. Associated COLT Staff, 659

A.2d 842 (May 26, 1995) ("COLT").

With respect to the first question, the mandatory subjects of bargaining are defined in the Municipal Public Employees Labor Relations Law as "wages, hours, working conditions and contract grievance arbitration." 26 M.R.S.A. §965(1)(C). At issue here is the provision in the expired collective bargaining agreement that states, "Employees shall move up one level of the salary scale each year." Clearly, this provision, whether called a step increase or a salary escalator, is a component of wages and is therefore a mandatory subject of bargaining.

The second question of the analysis in a status quo determination is whether enforcement of the provision at issue is precluded by the Law Court's holding in COLT. In COLT, the Law Court held that the duty to maintain the status quo does not include the obligation to continue to pay step increases when there is no express language to do so in the expired agreement. The Law Court overturned the Board's holding that step increases must be continued as part of the "dynamic status quo." The Law Court explained that the Board's holding "changes, rather than maintains, the status quo." COLT, 659 A.2d at 846. The reference to the "static status quo" in §964-A(2) makes it clear that the holding in COLT must be taken into account in a status quo determination. See IAFF Local 1650, Augusta Fire Fighters v. City of Augusta, No. 11-03SQ at (Dec. 15, 2011), aff'd, City of Augusta v. Maine Labor Relations Board et al., 2013 ME 63.

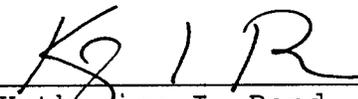
We conclude that the salary increase provision stating that employees shall move up one level of the salary scale each year is not enforceable pursuant to the static status quo doctrine. This issue is a matter of law that was directly

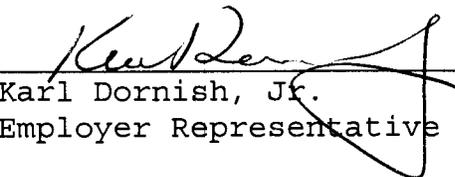
addressed by the Law Court in COLT. The provision in the parties' expired collective bargaining agreement for annual movement up the salary scale is indistinguishable from the step increases that the Law Court disallowed in COLT.¹ Enforcement of the salary escalator provision in a grievance filed under §964-A(2) is therefore precluded by the Law Court's holding in COLT.

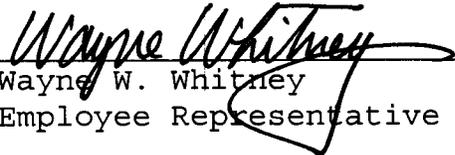
Dated at Augusta, Maine, this 15th day of May 2014

MAINE LABOR RELATIONS BOARD

The parties are advised of their right pursuant to 26 M.R.S.A. § 968(5)(F) to seek review of this decision and order by the Superior Court by filing a complaint in accordance with Rule 80B of the Rule of Civil Procedure within 15 days of the date of this decision.


Katharine I. Rand
Chair


Karl Dornish, Jr.
Employer Representative


Wayne W. Whitney
Employee Representative

¹ Contrary to the Association's assertion, the fact that the RSU 38 salary increase provision gives credit for teaching experience outside RSU 38 is irrelevant to the analysis.