SUPREME COURT OF NEW HAMPSHIRE

2019 Term
May Session

RULE 7 MANDATORY APPEAL OF

MONADNOCK DISTRICT EDUCATION ASSOCIATION, NEA-NH
v.
MONADNOCK REGIONAL SCHOOL DISTRICT

(Appeal from the Cheshire Superior Court)

Case No. 2019-0134

BRIEF OF DEFENDANT MONADNOCK DISTRICT EDUCATION ASSOCIATION

Lauren Snow Chadwick
NH Bar Association #20299

Esther Kane Dickinson
NH Bar Association #20764

Staff Attorneys
NEA-New Hampshire
9 South Spring Street
Concord, NH 03301
(603) 224-7751

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases ***Page***

Statutes

QUESTIONS PRESENTED

I. Did the trial court err when it determined the funds properly appropriated for a multi-year collective bargaining agreement had lapsed under RSA 32:7, I? *Assoc. Answer*[1], at 1-2, 4; *Assoc. Memo of Law*[2], at 4-5. *Assoc. Mtn. Reconsideration*[3], at 2-5.

II. Did the trial court err by interpreting RSA 32:7, I to require a party to request funds for a specific provision of a multi-year collective bargaining agreement prior to the end of each fiscal year or the funds will lapse, despite the funds being previously appropriated by a vote of the legislative body and the contract not requiring such a request? *Assoc. Answer,* at 4; *Assoc. Memo of Law,* at 6-9; *Assoc. Mtn. Reconsideration,* at 2-5.

III. Did the trial court err when it applied its own interpretation of a collective bargaining agreement provision rather than giving the required deference to the labor arbitrator's interpretation? *Assoc. Mtn. Reconsideration,* at 5-6.

IV. And, because the Superior Court afforded no deference to the arbitrator's decision, did the trial court err in its interpretation of the collective bargaining agreement? *Assoc. Answer,* at 8-11; *Assn. Mtn. Reconsideration,* at 6-7.

---

[1] "Assoc. Answer" refers to Association's Answer to School District's Petition for Declaratory Judgment dated May 25, 2017

[2] "Assoc. Memo of Law" refers Association's Motion for Summary Judgment and Memorandum of Law dated August 6, 2018

[3] Assoc. Mtn. Reconsideration" refers to Association's Motion for Reconsideration dated October 26, 2018

STATEMENT OF FACTS

Prior to March 2012, the Monadnock District Education Association (the "Association") and the Monadnock School District (the "District") were negotiating a successor collective bargaining agreement for the term of July 1, 2012-June 30, 2016. *Stip. Facts, App. 24*[4]. Health insurance was a significant discussion point during negotiations. *Id.* The parties had traditionally agreed to the common practice of splitting health insurance costs according to a set percentage. *Id.* For example, the school district paid 85% of the cost of an employee's premium and the employee was responsible for the remaining 15%. During this negotiation cycle, the District proposed a new provision wherein the District would pay a lump sum amount for its total share of the cost of employee health insurance each year and the Association would determine the plans and the resulting employee contribution. *Id.* Any money not expended would be placed in a "pool" to offset healthcare coverage costs (the "Pooled Funds"). *Stip. Facts, App. 24-25; 2012-2016 Collective Bargaining Agreement between the Monadnock District Education Association and the Monadnock Regional School District ("Collective Bargaining Agreement"), App. 34-80.* In the last year of the contract, the parties disagreed about the distribution of the remaining Pooled Funds. The Association requested that the amassed Pooled Funds be distributed to employees to offset all four previous years' health care premium costs. *Stip. Facts, App. 29.* The Monadnock District School Board ("the Board") agreed to reimburse the employees for the current year's health insurance costs using the Pooled Funds, but not for the other three years. The Association grieved, pursuant to the parties' collective bargaining agreement, and after grievance arbitration, the arbitrator agreed with the Association's interpretation of the provision allowing for

[4] Citations to the record are as follows:
"Add." Refers to the Addendum to the Brief
"App" refers to the Appendix filed with this Brief
"Arb. Dec." refers to the Arbitrator's Decision dated February 15, 2017
"Stip. Facts" refers to the Stipulation of Facts of the Parties dated May 31, 2018

reimbursement or retroactive offset of the health care premiums. *Stip. Facts, App. 29-30.* However, the District would not consider complying with the Arbitrator's order until it received a declaratory ruling as to whether the Pooled Funds had lapsed under RSA 32:7. *Dist. Pet. Declaratory Judgment*[5]*, App. 4.* This issue was raised for the first time after the arbitration was over. *Id.*

Bargaining History

The District's proposal became Article 9.1 in the Collective Bargaining Agreement ("CBA") which reads in its entirety:

> 9.1 The [Monadnock Regional School District] will budget $2,300,000 for the first year of this agreement for health insurance.
>
> The [Association] is responsible for selecting the insurance plans and determining the amount of contribution for each eligible employee. The [Monadnock Regional School Board] agrees to maintain in effect an insurance plan chosen by the employee so long as they remain employed by the Monadnock Regional School District. Changes in the carrier may be made by mutual agreement.
>
> If the total number of eligible employed members exceeds 186 in any year, the District will pay the District's portion of the plan selected by the employee based on the [Association] formula. The [Association] authorizes the district to make payroll deductions for purposes of funding each member's contribution to the cost of the plan selected by the employees.
>
> The buyout for employees not electing health care coverage will be determined by the Association, but the minimum buyout shall not be less than $2,000.
>
> The Association will determine the amount each class of eligible employee receives for the contribution rate no later than July 31 of each year of this agreement.
>
> Any amount of money in the healthcare budget not expended from the [District's] contribution to annual healthcare premiums and buyout payments will be placed in a pool to offset healthcare coverage for

[5] "Dist. Pet. Declaratory Judgment" refers to Petition for Declaratory Judgment filed in Cheshire County Superior Court on March 28, 2017

> employee's [sic] electing plans that exceed the District's allotment per employee. Monies will be distributed equally among all employees in each plan classification to offset premium costs, as determined by the [Association]. In no case will an employee receive more money than the cost of an annual plan premium.
>
> The District agrees to fund the health care budget amount by the lesser of the insurance provider's average "guaranteed maximum rate" or 5% for each additional year of the agreement.

In its initial proposal, the District proposed additional language that was not agreed to by the parties. *Arb Dec., App. 83-84.* It proposed an addition to the 6th paragraph: "if money remains in the health care budget at the end of the fiscal year, the [District] will absorb the money." *Id.* While the language was not agreed to in the Association's contract, it was agreed to in the support staff contract which had the same pooled funds concept. *Id.*

In order to fund the contract, the cost items were placed on a warrant article for the legislative body, residents of the towns composing the School District, to vote on. *Stip. Facts, App. 25.* The warrant article included a narrative explanation of the new "cost sharing" arrangement and provided the highest possible cost for health insurance for each year of the contract. *Dist. Memo of Law*[6]*, App. 197-199.* The warrant made no assurances that the health insurance appropriation would be returned to taxpayers if unexpended. *Id.* The warrant article was approved by the voters at the March 2012 annual school district meeting. *Stip. Facts, App. 25.*

Pooled Funds History

From 2012-2016, the Association determined the cost share split in accordance with the collective bargaining agreement. *Stip. Facts, App. 25-29.* The Association determined the split amount for each year by taking into account various factors, including ensuring there was enough money for a beneficial cost share in each year of the

[6] "Dist. Memo of Law" refers to District's Motion for Summary Judgment and Memorandum of Law dated August 2, 2018

contract. *Id., Assoc. Answer, App. 18.* The Association's determinations are reflected below.

School Year	Appropriated Amount	Premium Responsibility	Unexpended Amount ("Pooled Funds")
2012-2013	$2.3 Million	85% District/15% Employee	$213,655
2013-2014	$2.415 Million	90% District/10% Employee	$192,309
2014-2015	$2.5 Million	90% District/10% Employee	$154,633
2015-2016	$2.53 Million	90% District/10% Employee	$0

Dist. Memo of Law, App. 104.

After the town vote in March 2012, the legislative body did not take additional official action regarding the Pooled Funds at any subsequent School District Annual Meeting. *Stip. Facts, App. 25.* The Board simply set the funds aside into a "reserve bank account." *Assoc. Answer, App. 19-21.* The District did not include these Pooled Funds, or "carryover funds," as a separate appropriation or line item in the operating budget that was voted on by the legislative body each year. *Stip. Facts, App. 25-29.* It is unknown to the Association whether these funds were reflected in the Fund Balance line item on each year's School District budget warrant article.

As required by the collective bargaining agreement, by July 31st of each year of the agreement, the Association informed the District of the amount for the health

insurance cost share split for the upcoming school year. *Id.* With one exception[7], the Association did not expressly ask that unexpended funds from the prior year be placed in the pool to be used in the future. *Id.* The collective bargaining agreement did not require this. *CBA, App. 51*

Although it was originally their idea, this health insurance arrangement became unpopular with the Administration and the Board. *Arb. Dec., App. 86-87.* In the spring of 2014, the Board discussed trying to "go after the surplus" (the Pooled Fund "carryover") monies. *Arb. Dec., App. 86.* The Superintendent at the time commented that the Board should correct the "mistakes that were made in negotiations," referring to the health insurance pool concept. *Id.* The Board went so far as to vote to reduce the amount of appropriated funds for health insurance for each year in the future and to "disallow any unapproved carryover surplus from one year to the next." *Stip. Facts, App. 27.* The Board rescinded that action at a subsequent meeting accompanied by a discussion about how the contract was a legally binding document. At the same meeting, the Board ordered the District's business manager to abide by the terms of the collective bargaining agreement, i.e. return the health insurance funding to the contracted amount and allow the funds to carryover. *Stip. Facts, App. 27; Arb Dec., App. 86.* The Board then sought to reopen negotiations with the Association in order to renegotiate Article 9.1, but the Association did not agree to renegotiate. *Arb Dec., App. 95.*

During the 2015-2016 school year, the parties were engaged in negotiations for a successor collective bargaining agreement. *Stip. Facts, App. 28.* The parties negotiated a successor contract that used the carryover Pooled Funds remaining at the end of the 2015-2016 academic year to help fund health insurance costs during the successor collective bargaining agreement and defray employee costs. *Id.* The cost items from the proposed collective bargaining agreement were presented to the legislative body at the annual

[7] On May 16, 2013, the Association did request that the Board place $49,436 of unexpended funds in a "health insurance trust," established pursuant to RSA 198:20-c by vote of the legislative body at the 2011 annual school district meeting. The purpose of the Association's request was to add these funds to the health insurance money available to the Association in the 2013-2014 school year. On May 21, 2013, the Board voted to place these funds in the health insurance trust fund. *Stip. Facts, App. 25.*

school district meeting in March 2016. *Stip. Facts, App. 28-29.* The legislative body voted not to fund the successor collective bargaining agreement and, as a result, no successor collective bargaining agreement went into effect. *Id.*

As the legislative body did not approve the use of the Pooled Funds to fund the successor agreement, prior to the end of the 2015-2016 fiscal year, the Association requested that the District reimburse the Association members for their 10% contribution to their health insurance premiums for the 2015-2016 school year. *Stip. Facts, App. 29.* The Association also asked for reimbursement of employees' contributions for their health care premiums from the three prior years of the contract to a 95%/5% cost share. *Id.* This was essentially a request for a retroactive premium offset.

On June 21, 2016, the Board voted to use some of the Pooled Funds to retroactively offset the Association members' premium cost with the employer paying 100% of health insurance premiums for the 2015-2016 school year. *Id.* The Board declined, however, to retroactively offset the employee cost for prior years of the agreement. *Id.* After making the approved payment toward employee health insurance premiums, the total balance of the Pooled Funds was $392,381.37. *Id.*

STATEMENT OF THE CASE

As a result of the Board's refusal to follow the parties' collective bargaining agreement and retroactively offset or reimburse the employees for 95% of their premium cost in prior years, the Association filed unfair labor practice ("ULP") charges with the New Hampshire Public Employee Labor Relations Board ("PELRB") on July 25, 2016. *Stip. Facts, App. 29.* The Association withdrew the ULP after the parties agreed, per terms of the collective bargaining agreement, to proceed to non-binding advisory arbitration on the interpretation of Article 9.1. *Stip. Facts, App. 30.* The arbitrator found that the "bargaining history and practice of the parties since the contract was adopted" unequivocally demonstrates that the monies in the insurance pool were intended for the sole purpose of paying for insurance premiums for members of the

bargaining unit." *Arb. Dec., App. 95.* He wrote further, "[t]here is nothing in [Article 9.1] that restricts or bars the Association from deciding that the monies in the insurance pool can be used to retroactively adjust the contribution amounts previously determined by the Association." *Id.* at 16. This decision is advisory and non-binding on the parties per the collective bargaining agreement grievance procedure. *CBA, App. 54.* The final grievance step is for the District to act on the arbitrator's award by either accepting its terms or rejecting the award altogether. *Id.* The District has done neither. *Dist. Pet. Declaratory Judgment; App. 4.*

Instead, the District sought a declaratory judgment from the Superior Court stating:

> "Pursuant to the CBA, the Board must now vote whether to accept the arbitrator's award and issue a full refund of the amount remaining in the pool, or reject the award. However, the District believes the funds in the pool lapsed in prior years pursuant to RSA 32 and that it would therefore be unlawful to transfer those funds to the Association or its members unless or until the voters appropriated the funds for that purpose. As a result of this legal uncertainty, and in the face of demands by the Association, the District seeks a declaratory judgment from this Court regarding the lawfulness of any transfer of the funds set aside in the health insurance pool. "

Id.

The District and the Association submitted stipulated facts and filed cross-motions for summary judgment. On October 16, 2018, the District's Motion for Summary Judgment was granted and the Association's Motion for Summary Judgment was denied. Superior Court Order October 16, 2018. The Superior Court agreed with the Association that a collective bargaining agreement can be a legally enforceable obligation that prevents funds from lapsing under RSA 32:7, I . *Order*[8]*, Add. 42.* However, the Superior Court determined that the legislative body's vote approving the cost items, and therefore binding the District to its terms, was not sufficient to encumber the funds prior to the end of each fiscal year and that the Association was required to re-request those funds each

[8] "Order" refers to Cheshire Superior Court Order on Cross-Motions for Summary Judgment dated October 16, 2018

year in order for them not to lapse. *Order, Add. 43, 46-48.* Reconsideration was denied and the Association appealed. *Order on Reconsideration*[9].

SUMMARY OF ARGUMENT

Collective bargaining agreements are legally enforceable obligations that encumber municipality funds and keep them from lapsing for the duration of the contract. RSA 32:7, I. *Appeal of Alton,* 140 N.H. 303, 306 (1995). Because multi-year collective bargaining agreements are fully funded by a one-time vote of the legislative body prior to the first year of implementation, all the funds needed to pay for that collective bargaining agreement are encumbered at the time of that vote. *Appeal of Sanborn Reg'l Sch. Board,* 133 N.H. 513, 519. *Appeal of City of Franklin,* 137 N.H. 723, 728 (1993). These funds do not need to become re-encumbered by a vote of the legislative body each year to keep them from lapsing, nor does the Association have to expressly request disbursement of funds from the employer each year in order to keep them from lapsing. RSA 273-A:3,II (b). *Appeal of City of Franklin,* 137 N.H. 723, 729 (1993).

At the end of the collective bargaining agreement term, the parties disagreed about the funding mechanism for health care costs as contained in Article 9.1. A neutral labor arbitrator found that under the collective bargaining agreement the Association was permitted to direct the use of unexpended health insurance carryover funds, thereby allowing the Association to direct reimbursement, or retroactive offset, to employees for prior years health insurance expenses. This remedy is allowable under the law and the District may legally disburse these funds to the employees.

The Superior Court erred because it did not recognize that the funds had been encumbered by a vote of the legislative body. In doing so, the Superior Court misinterpreted the relevant law and previous holdings of this Court. And, it erred

[9] "Order on Reconsideration" refers to Cheshire County Superior Court Order on Motion to Reconsider dated January 31, 2019

because it conducted a *de novo* review of the collective bargaining agreement rather than using the correct standard of review. Its decision should be reversed.

ARGUMENT

I. The trial court erred when it determined properly appropriated funds for a multi-year collective bargaining agreement had lapsed under RSA 32:7, I

The Superior Court agreed with the Association that a collective bargaining agreement can be a "legally enforceable obligation, created by a contract or otherwise" that prevents appropriated municipal funds from lapsing. *Order____. App.*. The Superior Court erred, however, when it determined that the express language of a collective bargaining agreement, as interpreted by the court, governs whether municipal funds have been encumbered, when in fact it is the vote of the legislative body appropriating the funds that binds the municipality to the terms of the agreement. *See Order, 46-48;Alton,* 140 N.H. at 306.

A. Municipality funds do not lapse if they are encumbered by a contract.

Municipalities operate via annual budgets that typically authorize the expenditure of money for only one year. As such, any appropriated funds unexpended at the end of the fiscal year will "lapse" unless one of seven statutory exceptions apply. NH RSA 32:7.

RSA 32:7, I, prevents funds from lapsing when the unexpended "amount has, prior to the end of that fiscal year, become encumbered by a legally enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount." As the Superior Court noted in its Order, the statute does not define what contractual obligations are intended to fall under the RSA 32:7, I, exception. *Order, Add. 41.* And thus, it is reasonable to conclude, as the Superior Court did, that the legislature intended collective bargaining agreements to fall under the parameters of this statutory exception's overly broad language. *Order, Add. 42.* This reasoning is well within the law, considering collective bargaining agreements are contracts. "A CBA is a contract between a public employer and a union over the terms and conditions of employment."

Alton, 140 N.H. at 306. "Collective bargaining agreements are construed in the same manner as other contracts." *Appeal of Timberlane Regional Sch. Bd.*, 142 N.H. 830, 834 (1998). And while "collective bargaining agreements," and "negotiated cost items," are expressly noted in other places in RSA 32, RSA 32:7 broadly encompasses them with the word "contract," as well. *See* RSA 32: 5-a, 19, 19-a.

B. Multi-year collective bargaining agreements encumber funds for the term of the contract.

The Superior Court determined that the express language of a collective bargaining agreement determines whether funds have become encumbered, not the vote of the legislative body appropriating its cost items. *Order, Add 47-47.* This is a misunderstanding of the law. While the language in the collective bargaining agreement may describe the contractual terms, it is the vote of the legislative body that binds the employer to the terms of the contract and encumbers the funds. *Sanborn* at 572.

"Encumbered" is not specifically defined in RSA 32, nor does the statute require a specific process to encumber funds for purposes of RSA 32:7, I. The Court reviews questions of statutory interpretation *de novo*. *In Re Farmington Teachers Association, NEA-NH,* 158 N.H. 453, 456 (2009). Encumbered should be given its plain and ordinary meaning. *Id.*

The New Hampshire Municipal Association provides this guidance on the word "encumbrance" in the context of RSA 32:7:

> 'Encumbered Funds' are those which the municipality has a legal obligation to pay. When this obligation arises before the end of the fiscal year but is not paid by the end of the fiscal year, it is referred to as an encumbered amount. Planning to spend the money is not enough; the obligation to pay must be legally enforceable. For example, suppose the recreation director has placed an order for recreation equipment. The goods and invoice are received, but no payment is made before the end of the fiscal year. There is a legally enforceable obligation for the town to pay and the amount remains "encumbered" until paid." RSA 32:7, I. Moreover, conceptually, under accrual accounting principles, liabilities exist at the time the obligation was created.

The Basic Law of Budgeting: A Guide for Cities Towns, Village Districts, and School Districts. *New Hampshire Municipal Association* p. 45 (2017), *App. 162.*

Voting to fund a multi-year collective bargaining agreement is not a mere proposal to pay future costs, but a binding legal obligation to satisfy the terms of the contract provided the voters are informed of the financial terms. The town vote is binding on the parties, and not unilaterally waivable by either party. "RSA 273-A:3, II(b) (1987) requires the voters to be informed of the financial terms of each year of a multi-year CBA in order for those terms to be *binding*." *Appeal of Town of Rye*, 140 N.H. 323, 327 (1995) (citing *Appeal of Sanborn*) (emphasis added). In practice, once a collective bargaining agreement is funded by the legislative body, the cost of each year of the agreement appears on the yearly school district operating budget in various line items. (i.e., separate line items for salaries, health insurance, employee professional development, etc.) If the operating budget is not approved by the legislative body, the cost of the collective bargaining agreement's items cannot be reduced, and cuts must come from other costs which have not become binding legal obligations. "If the [legislative body] approves a CBA, it has no choice but to fund whatever benefits the teachers decide to enjoy pursuant to its terms." *Franklin, 137 N.H. at 730.*

Under the plain language of RSA 32:7, I, the health insurance funds required for Article 9.1 were encumbered. The extent of the financial liability was properly noticed to the voters at the maximum possible cost and the funds became encumbered upon approval of the town vote on March of 2012, prior to the end of all four fiscal years of the collective bargaining agreement. *Dist. Memo of Law, App. 197.* The Association need not avail itself of any other process or requirements, not contained in RSA 32:7, I to invoke this exception. And the District, should not benefit from a misapplication of the law to avoid its legal obligations.

However, to the extent encumbered is ambiguous, the Legislative History is instructive. "Where the statutory language is ambiguous or where more than one reasonable interpretation exists [the court] reviews the legislative history to aid in [it's] analysis." *Appeal of Inter Lakes Sch. Bd.,* 147 N.H. 28, 32 (2001). RSA 32:7: Lapse of

Appropriations, was a new addition to the Municipal Budget Act when it was re-codified and amended for purposes of providing guidance to municipalities. *Legislative History* HB 615, 1993 Session, *App. 236.* Discussion of RSA 32:7 was limited. However, in testimony before the Senate Executive Departments and Administration Committee, N.H Municipal Association Attorney Bernard Waugh stated that prior to re-codification, he received questions about lapsing funds from municipalities "all the time" asking if they could spend funds previously appropriated. *Legislative History, App. 243.* In his opinion, the new section, RSA 32:7, "[s]et[] forth, as you can see, six paragraphs that tell you when it lapses and when it doesn't. And it basically gives the municipality or the selectmen as wide a range of choices as they could possibly want as long as it is disclosed."[10] *Legislative History, App. 236.* The lack of discussion regarding 32:7 and its simple, forthright, language makes plain that the legislature intended to create many options to encumber funds as they knew municipalities needed to be able to do so, and indicates that the practical application of the statute should apply as long as the appropriation is disclosed.

Furthermore, the legislative history confirms the legislature understood municipalities entered into multi-year contracts including collective bargaining agreement, *Legislative History, App. 247. See also,* RSA 32: 5-a, 19, 19-a. The committee knew about the requirements of *Sanborn* specifically. *Id.* Given this knowledge of the process of appropriating funds for collective bargaining agreements, it would be illogical for the legislature to support a legislative scheme that would allow such funds to lapse during the term of a legally enforceable contract. The presumption is that the legislature "would not pass an act that would lead to an absurd or illogical result." *Stihl, Inc. v. State,* 168 N.H. 332 (2015).

All the funds needed to pay the cost of the parties' collective bargaining agreement in this matter were "encumbered" for purposes of RSA 32:7, I. And therefore,

[10] Atty. Waugh is credited with drafting HB 615 by the Study Committee that authored and introduced HB 615.

the funds did not lapse, and the District must disburse those funds to the Association in accordance with the collective bargaining agreement.

C. The legislative body knowingly approved the warrant article funding the collective bargaining agreement in March 2012, thereby fully funding Article 9.1 and encumbering the funds.

A legislative body can fund a multi-year collective bargaining agreement by voting once to appropriate the funds as long as voters are properly apprised of the costs for all the years of the contract. *Appeal of Franklin Educ. Assoc.,* 136 N.H. 332, 334 (1992). The warrant article need not include much detail in order to properly inform voters of the costs. "Ratification requires knowledge, to some reasonable degree, of the extent of a cost item's financial burden, not just the fact of the burden. The extent need not be precisely ascertainable at the time the cost item is approved, however, and resubmission to the voters is not necessary when the financial burden exceeds expectations." *Town of Rye*, 140 N.H. at 327-28 (internal citations omitted). *See also, Sanborn* "[a]s a practical matter, however, inclusion in the warrant of language apprising the voters of the financial consequences of their actions would seem to be sufficient. *Id.* at 522.

The warrant article in this matter satisfies *Sanbornizing* requirements. In fact, it contained more detail than what is required. The town voters were presented with language describing the new health insurance "cost sharing method" in detail and provided the total cost for health insurance for each of the four years, at the maximum possible cost, on separate line items. *See below.*

ARTICLE SEVEN: To see if the Monadnock Regional School District will vote to approve the cost items included in the four-year Collective Bargaining Agreement reached between the Monadnock Regional School Board and the Monadnock District Education Association (MDEA) for the following increases in wages and benefits at the current staffing levels.

The Agreement includes provisions that change the method of employee/employer cost sharing. The District will fund a total of $2,300,000 for the District's contribution to the MDEA employee's health care costs for the first year of this contract. The MDEA Association will be responsible for selecting the insurance plans and determining the amount of contribution for each union employee. The amount contributed by the District in years two, three and four of the contract will increase by the lesser of the Guaranteed Maximum Rate increase or 5%, each year. Additionally, the amount provided for longevity will decrease $30,000 to $220,000 in year 1 of the contract and remain at that level for the remaining three years of the contract.

The estimated increase in the costs for wages and benefits under the collective bargaining agreement are as follows:

Year	Estimated Increase:	
2012-13	$117,840	Salaries (steps only)
	$ 22,330	Wage-driven benefits (Social Security, NHRS, etc.)
	($ 30,000)	Reduction in the Annual Longevity contribution
	($ 51,900)	Insurance cost sharing decrease
	$ 58,270	Total
2013-14	$112,765	Salaries (steps only)
	$ 21,370	Wage-driven benefits (Social Security, NHRS, etc.)
	$115,000	5% Insurance cost sharing increase (presented at maximum increase)
	$249,135	Total
2014-15	$ 153,200	Salaries (steps plus .5% increase)
	$ 29,030	Wage-driven benefits (Social Security, NHRS, etc.)
	$120,750	5% Insurance cost sharing increase (presented at maximum increase)
	$302,980	Total
2015-16	$266,440	Salaries (steps plus 1.75% increase)
	$ 50,490	Wage-driven benefits (Social Security, NHRS, etc.)
	$126,790	5% Insurance cost sharing increase (presented at maximum increase)
	$443,720	Total

And further to raise and appropriate the sum of $58,270 for the 2012-13 fiscal year, such sum representing the additional cost attributable to the increase in wages and benefits over those of the appropriation at current staffing levels paid in the 2011-12 year. The School Board supports this appropriation. The Budget Committee supports this appropriation. (Majority vote required).

Dist. Memo of Law, App. 198.

As reflected above, the unexpended carryover funds, now in dispute, were encompassed in the total health insurance cost for each year, and in the aggregate amount over the contract term (4 years). The Association is not asking for any more money than the amount the voters approved in the aggregate. In fact, it is asking for a lesser amount by retroactively offsetting the cost share to a 95% (employer) and 5% (employee) arrangement which will not exceed the total amount appropriated by the voters. Therefore, any argument that this would violate RSA 32:8 by disbursing money "in excess of the amount appropriated by the legislative body for that purpose, or for any purpose which no appropriation has been made" is incorrect.

Moreover, the District asserts that despite the detailed warrant article provided to the town, the voters require more information in order to appropriate the funds including the process and mechanism by which funds would carryover. *Dist. Memo of Law, App. 115-116.* This is a burden not required by law. *See Appeal of Derry Educ. Assn., NEA-NH,* 138 N.H. 69, 71-72 (1993). It is also a burden, that would not have been possible to meet at the time of the District vote in March 2012. The express language in the parties' collective bargaining agreement gave the Association broad authority to direct the use of any carryover funds, without prescribing the exact process by which to do so. Prior to the commencement of the collective bargaining agreement, the Association could not know whether retroactive offset would be possible until close to the end of the term of the contract. Therefore, assuming *arguendo* that this was required by law, it would have been impossible to ascertain those details at the time of the vote – assuredly an absurd standard by which the Association would have had to satisfy.

The legislative body need not vote on the express language of every provision in a parties' collective bargaining agreement to encumber the funds. *Id* at 71-72. RSA 273-A:3, II(b) provides that *only* cost items are to be submitted to the legislative body. (emphasis added). RSA 273-A:1, IV defines "cost items" as "any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with which negotiations are being conducted." Salary and benefits such as health insurance are common cost items. *Sanborn*, 133 N.H. at 520-21. The legislative body does not vote on the individual provisions of the collective bargaining agreement or the agreement itself. *Alton* 140 N.H. at 311; *Derry Ed. Assn.*, 138 N.H. at 71-72. The voters need only vote on the total financial impact to appropriate the funds. *Alton,* 140 N.H. at 311. The District in this matter sufficiently informed the voters of the cost of the health insurance arrangement.

Further, "[t]he PELRB determines in the first instance whether the requisite knowledge [of the legislative body] exists as a matter of fact." *Alton*, 140 N.H. at 307. This factual issue was raised first time on March 30, 2017 in the District's Request for

Declaratory Judgment. *App. at 4.* It has not been subject to the PELRB's review, so the question is not ripe for this Court's review.

However, if this Court should examine the warrant article, under this Court's rulings, the warrant was sufficient. This Court has established a clear standard by which a warrant article satisfies the requisite knowledge of town voters to approve of certain costs. "Ratification requires knowledge, to some reasonable degree, of the **extent** of a cost item's financial burden, not just the fact of a burden." *Alton,* 140 N.H. 313 (emphasis in original).

Indeed, a warrant article need not include the entirety of the CBA text concerning cost items to be appropriated by the voters and then bind the employer to its terms. *See Town of Rye,* 140 N.H., at 325-27 (warrant article for employee sick leave provision was held to be valid when it included the total potential financial liability that was far above the appropriation made and no express language from the collective bargaining agreement was included on the warrant). Warrant articles are insufficient when they lack detail of the projected financial cost. *Alton,* 140 N.H. at 309 (warrant deemed insufficient because it did not include the total potential cost of including an automatic renewal clause in the contract). To assert otherwise, as the District is in this matter, is contrary to the holdings of this Court.

Furthermore, the Superior Court erred by relying on the language of the agreement to find that the voters did not knowingly appropriate the Article 9.1's cost. Specifically, in its Order the Superior Court found, "the District was not obligated to reimburse the Association's members in 2015-2016 when it requested reimbursement, since the CBA provided no such obligation. The District instead acted in the only way the CBA obligated it to: to offset the Association's members health insurance premiums for that year." *Order, Add. 47.*

This is a misunderstanding of the law because it requires voters to approve the collective bargaining agreement language rather than the total financial obligation. In applying the *Sanborn* standard, the evidence in the record demonstrates the town voters were sufficiently informed of the financial consequences of the health insurance

arrangement as contained in the collective bargaining agreement provision. The warrant article included the total cost for all four years and detailed the general purpose, to pay for healthcare for employees thereby satisfying both *Sanborn* and RSA 32:8. Further, "It has been the consistent practice of the courts of this state to construe liberally votes at town and school meetings without regard to technicalities or the strict rules of parliamentary procedure." *Lamb v. Danville School Board* 102 N.H. 569, 571 (1960). There was no need to include any further information or interpret the collective bargaining agreement to make the warrant article sufficient under this Court's previous rulings.

Finally, the District argues that included in the warrant was an implicit expectation of the voters that unexpended Fund Balance funds are "returned to the taxpayers in the form of an offset on the funds needed to be raised through general taxation." *Dist. Memo of Law, App. 108*. While this is sometimes true, it is not an automatic result each time there are unexpended funds, or in this case, carryover funds, in a municipal budget. Previously appropriated funds that are unexpended can be transferred to other appropriation line items within the budget so long as "[t]he total amount spent [for the receiving appropriation] shall not exceed the total amount appropriated at the town or district meeting." RSA 32:10, I (a). *See also, Leg. History, App. 237-238*. For example, if less money was spent on teacher salaries than anticipated, money can be transferred to the appropriation for administrative salaries as long as the total appropriation for administrative salaries is not exceeded. The bottom line of the budget cannot increase, but funds can move between appropriations. "RSA 32:8 precludes a school board from paying or agreeing to pay any money, or incur any liability involving the expenditure of money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11." *Foote v. Manchester School Dist.*, 152 N.H. 599, 604-605 (2005) (quotation omitted). Thus, the assertion by the District that any unexpended funds are required to be returned to the taxpayers, as the only option, is misplaced.

D. The Association was not required to request access to the Pooled Funds prior to the end of each fiscal year in order to prevent lapse.

The Superior Court erred in adding this requirement to RSA 32:7. *Order, Add. 43.* Once funds have been encumbered by a legally enforceable obligation, RSA 32:7, I, does not require a second action to re-encumber the funds in each of the subsequent years of the contract. And specifically, "RSA 273-A:3 II(b) does not require submission of a CBA's 'cost items' more than once." *City of Franklin,* 137 N.H. at 730. It is settled law that courts should "interpret legislative intent from the statute as written and [should] not consider what the legislature might have said or add language that the legislature did not see fit to include." *In re Laconia Patrolman Ass'n*, 164 N.H. 552, 555 (2013).

In the collective bargaining context, this court has specifically rejected the idea of re-requesting funds from the legislative body.

> "Clearly [RSA 273-A:, 11, I(b)] contemplates that collective bargaining agreements may be greater than one year in duration. To hold otherwise would fly in the face of the stated purposes of RSA chapter 273-A. One is hard pressed to believe that the legislature, in adopting RSA chapter 273-A, contemplated a situation wherein the school teachers union could be called upon to bargain in good faith for a multi-year contract, perhaps, as in this case, giving concessions in the first year in exchange for more liberal treatment in later years, only to have the intent of the contracting parties frustrated by a failure of the district to meet its obligations in subsequent years."

Sanborn, 133 N.H. at 519.

The Superior Court's order overlooked this point when it determined an additional encumbrance other than the original appropriation was required.

It is not entirely clear whether the Superior Court was requiring a re-vote of the legislative body to re-encumber funds or requiring the Association to request from the Board disbursement of funds prior to the end of each fiscal year of the contract. *Order, App. 43-46.* The latter adds an unnecessary complication in the labor management relationship that is not supported by the law, nor the terms of the collective bargaining agreement, and causes an absurd result. Article 9.1 did not require this request, therefore by analogy, it cannot be the case that before bargained for wage increases are levied each

year, the Association must make an express request of the employer to follow the contract and release those funds. Although the Superior Court may not have intended to create such a broadly applicable requirement, its decision could be interpreted thus.

The Superior Court's ruling is impractical and unlawful in other contractual relationships as well. Municipalities routinely enter into contracts that extend the use of funds beyond one year. Under the Superior Court's ruling, if a construction company were to enter into a contract to build a new school over several years, and the contract provided for an upfront payment, periodic installment payments each year, and a balloon payment upon completion, the construction company would have to ask the District for the funds every year until the completion of the job, or risk having the funds lapse.

> "[If] a town could disregard its contracts at will on the ground that it has no power to bind itself beyond the moment employed in making them, people would be reluctant to enter into contracts with it. A person would not ordinarily risk his labor and money in ventures so precarious, certainly not unless the compensation corresponded to the risk. . . Moreover, a service depending upon such a contract would be unreliable, and subject to constant interruptions, and would not meet the public needs.

Blood v. Manchester Electric Light Co., 68 N.H. 340 (1895).

Notably, the holding in *Blood* was extended to collective bargaining agreements as well. *See Rochester Educ. Ass'n v. City of Rochester*, 116 N.H. 402, 405 (1976). *See also* RSA 32:13, I: "This subdivision shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts).

II. The Superior Court erred by interpreting the collective bargaining agreement *de novo* rather than deferring to the arbitrator's decision.

As discussed above, the vote of the Monadnock School District legislative body legally encumbered the pooled funds for purposes of RSA 32:7, so they did not lapse. However, because the Superior Court did not recognize "*Sanbornizing*" as creating an encumbrance, in fact misapplying the case altogether, it unnecessarily examined Article 9.1 of the collective bargaining agreement to see if the language of the contract created an encumbrance. *Order, Add. 43-48.* This was a *de novo* review of the contract which is the improper standard of review for collective bargaining agreements. *Appeal of Merrimack County,* 156 N.H. 35, 39-40 (2007). While the Superior Court has jurisdiction to review an arbitrator's award if it is a final order, it cannot reject the decision simply because it disagrees with it. *Univ. Sys. of New Hampshire Bd. of Trustees v. Dorfsman*, 168 N.H. 450-58, (2015). It must give the arbitrator's decision due deference.

> A court should not reject an award on the ground that the arbitrator misread the contract. As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision. The court's task is thus ordinarily ... limited to determining whether the arbitrator's construction of the [CBA] is to any extent plausible.

Merrimack County, 156 N.H. at 40 (internal citations omitted).

The Superior Court overlooked the arbitrator's reasoned findings with regard to the extrinsic evidence, bargaining history, and witness testimony. This is not consistent with this Court's standard for reviewing an arbitrator's decision and cannot stand. "[J]ust as the Court may not reject the arbitrator's factual findings simply because it disagrees with them, neither may the court reject the arbitrator's interpretation of the CBA simply because the court disagrees with it." *In re Merrimack County* at 40 citing *United Paperworkers International Union, AFL-CIO, et al. v. Misco, Inc.* 484 U.S. 29 at 38 (1987).

The Superior Court did not allege that the arbitrator was acting outside of his authority or "fashioning his own brand of industrial justice." *Dorfsman,* 168 N.H. at 457. Nor did the Superior Court limit its review to the plausibility of the arbitrator's construction of the collective bargaining agreement. *Merrimack County,* 156 N.H. at 40. It simply rejected the decision without any analysis thereby supplanting its own interpretation of the contract. *Order, Add. 46.*

The deference standard of review is practical because, otherwise, thousands of unremarkable grievances filed every year by the hundreds of public sector unions in this state would be subject to *de novo* judicial review. Moreover, this review is not the process the parties bargained for. *Sw.N. H. Transp. Co. v. Durham,* 102 N.H. 169, 174–75, (1959) ("The arbitration clause was intended to establish an expert but informal tribunal for the resolution of questions of fact arising in the administration of the collective bargaining contract. Issues which were raised, or could have been raised, before the arbitration board are not to be retried in the Superior Court.") Although the collective bargaining agreement in this matter contains "advisory only" arbitration, that does not change the deference afforded the arbitrator. The reasons for giving deference remain the same whether the order is binding or advisory. The only difference is that in advisory arbitration either party cannot be held to the arbitrator's decision. If either party wants a binding resolution, they can file for *de novo* review at the PELRB through an unfair labor practice charge. *Appeal of Campton Sch. District,* 138 N.H. 267, 270 (1994). The PELRB issues a final and binding order. *Id.*

True, the PELRB is unlikely to decide the RSA 32:7 question, so the Superior Court jurisdiction is appropriate for deciding it. But, once the Superior Court steps beyond the 32:7 question, and starts to decide collective bargaining questions, the Superior Court trespasses on the primary jurisdiction of the PELRB. The Court did not have jurisdiction to review the decision as the arbitrator's decision was not yet the final decision in the process. *See Dorfsman,* 168 N.H. at 450. "The board shall have primary jurisdiction of all violations of RSA 273-A:5" RSA 273-A:6, I.

Furthermore, the District specifically told the Court that it was not asking for a review of the arbitrator's decision. *Dist. Pet. Dec. Judgment, App. 4, 6. Assoc. Answer, App. 18; Dist. Memo of Law, App. 98; Dist. Response, App. 230-31, 233-34.* "The dispute of whether the funds were to be carried-over from one year to the next, as well as whether the funds could be used prospectively or retroactively to reimburse teachers for health insurance costs was the issue presented to and decided by the arbitrator. The District is not raising that issue in this petition." *Dist. Pet. Declaratory Judgment, App. 6.* This is significant because, had the interpretation of the collective bargaining agreement been the issue, the Association would have argued summary judgment was inappropriate, because interpreting the collective bargaining agreement calls for examining issues of material fact. Instead, the parties stipulated to the arbitrator's decision and sought only an answer to the question of whether the funds had lapsed so the District could understand whether or not it could release the funds. Notably, the court accepted the arbitrator's decision including extrinsic evidence as findings of fact, yet refused to rely on those findings.

Despite the arbitration decision not being at issue, the District proceeded to argue that the language of Article 9.1 did not encumber the funds. *Dist. Memo of Law, App. 109-114.* The District argued that "it is categorically impossible for [the Superior Court] to even resolve the dispute without [interpreting the collective bargaining agreement]" in order to answer their question. *Dist. Response, App. 230.* This is confusing given the District's own question posed to the court was specifically not to review the decision or interpret the collective bargaining agreement. It appears this argument is strategically necessary so the District can hold its position that the legislative body did not encumber the funds. But, even so, it does not change the fact that the voters had done so. And, that the Superior Court did not apply the correct standard of review to the arbitrator's decision when it overturned it.

The Superior Court rejected the arbitrator's decision in part because the arbitrator did not review RSA 32:7. *Order, Add. 39.* RSA 32:7 was not relevant to the arbitrator's decision and was not raised by the parties. The issue posed for the arbitrator was:

"Whether the Monadnock Regional School District violated Article IX of the Collective Bargaining Agreement when, in June of 2016, it refused to reimburse bargaining unit members for health insurance costs incurred in the 2012-13, 2013-2014 and 2014-2015 school years using the unexpended portion of health insurance funds which were part of the 2012-2016 CBA? If so, what shall be the remedy?" *Arb. Dec., App. 82-83.* An arbitrator is bound by the issue submitted to the arbitrator. *See Appeal of Police Comm'n of City of Rochester, 149 N.H. 528, 534* (2003). The job of determining whether it was legal to follow the contract after it is interpreted rests with the courts (or the PELRB in specific matters). Examining 32:7 would not have changed the arbitrator's determination as to the meaning of the contract because neither party raised the issue of 32:7 in negotiations. In fact, both parties, rightfully believed the funds were lawfully carried over from year to year as evidenced by the District's vote to disallow the practice and then the vote to follow the contract and the District's agreement to do so in 2015-2016. *Arb. Dec., App. 94-95.*

III. The Superior Court erred when it determined the CBA did not allow for reimbursement of employee premium costs

Although the Association maintains that the Superior Court should have deferred to the arbitrator's interpretation of Article 9.1 (or refrained from ruling on the meaning of the article altogether), if this court disagrees, then the Superior Court order should still be reversed because it misinterpreted the contract.

The plain language of Article 9.1 grants the Association full discretion to use otherwise unexpended Pooled Funds so long as the total distributions do not exceed the actual cost of the health insurance. To the extent the language is not clear, the testimony of Michelle Couture (NEA-NH UniServ Director), who negotiated the provision, is persuasive evidence as to the parties' intent. Ms. Couture testified that the parties' testimony left out language that would have expressly returned the carryover funds to the District. *Arb. Dec., App. 83-85.*

The express rejection of this language demonstrates that the parties understood the Association would control the Pooled Funds up to the cost of health insurance premiums. *Arb. Dec., App. 95.* The District's proposal was in fact included in the support staff contract negotiated at the same time, demonstrating the District's recognition that the teacher contract did not have the same provision. *Arb. Dec., App. 95.*

The District's understanding of the Association's discretion regarding the Pooled Funds is also evident by the Administration and the School Board's repeated public comments about its displeasure in the provision. *Arb. Dec., App. 94-95.* In the spring of 2014, the Board discussed trying to "go after the surplus" (carryover) monies. *Arb. Dec., App. 94-95.* The Superintendent at the time commented that the Board should correct the "mistakes that were made in negotiations," referring to the health insurance pool concept. *Id.* The Board went so far as to vote to reduce the amount of appropriated funds for the future yearly health insurance allotment and to "disallow any unapproved carryover surplus from one year to the next." *Id.*; *Stip. Facts, App. 27.* This vote alone demonstrates that the District knew that the Pooled Funds carried over from year to year for use by the Association because otherwise, the Board would not seek to take this vote.

The Board rescinded that action at a subsequent meeting accompanied by a discussion about how the contract was a legally binding document. *Arb. Dec., App. 86-87.* The Board ordered the District's business manager to abide by the terms of the collective bargaining agreement, i.e. return the health insurance funding to the contracted amount and allow the funds to carryover. *Stip. Facts, App. 27*; *Arb. Dec., App. 86-87.* The Board then sought to reopen negotiations with the Association in order to renegotiate Article 9.1, but the Association did not agree. *Arb. Dec., App. 86-87.* All of this unequivocally demonstrates the District fully understood the implications of Article 9.1 when it negotiated with the Association, because otherwise it would not have sought to change the terms of the agreement first, unilaterally, and then through a request to negotiate. Of note, the arbitrator rejected testimony of the District that was contrary to this point.

Also, the Superior Court's interpretation of the bargaining language is illogical because it holds that offsetting and reimbursement are different. *Order, Add. 47. See also Dist. Response, App. 233.* They are in fact the same in this matter. In the Spring of 2016, when the District "offset" the premium for the year, it issued reimbursements to the employees for the 10% of the premium they had already paid and also prospectively offset the rate to 0% for the rest of the year. Since reimbursement was permissible in 2015-2016, it would be inconsistent to read the provision not to allow reimbursement in prior years. Not to mention, reimbursement is the only way an offset could be done once the rate share is collected at the lower rate even once. This is why the reimbursement can also be understood as a "retroactive offset."

Finally, this provision was first proposed at the bargaining table by the District. It threatens the integrity of the bargaining process if a school district is permitted to propose such a provision and follow it for three years while it benefited the district, and then, when the Association's members demand the benefit of the bargain, abandon the entire provision as illegal. "When parties enter into a CBA, they are obligated to adhere to its terms, which are the product of their collective bargaining. The collective bargaining process itself is meant to be the result of negotiations between an employer and all employees, collectively." *Appeal of Silverstein,* 163 N.H. 192, 198 (2012) (internal quotations omitted).

CONCLUSION

For the foregoing reasons, the Association respectfully asks this Court to reverse the Superior Court's decision and find that the Pooled Funds did not lapse and can be disbursed to the District employees impacted, and that the court grant such other relief as it deems just and equitable.

Respectfully submitted,

Monadnock District Education Association, NEA-NH

By its attorneys,

Lauren Snow Chadwick, Staff Attorney
NH Bar No. 20288
Esther Kane Dickinson, Staff Attorney
NH Bar No. 20764

NEA-New Hampshire
9 S. Spring St.
Concord, NH 03301
(603) 224-7751
lchadwick@nhnea.org
edickinson@nhnea.org

CERTIFICATE

I hereby certify that the decision being appealed is addended to this brief. I further certify that this brief contains no more than 9,099 words, exclusive of those portions which are exempted.

I certify that on May 28, 2019, copies of the foregoing will be forwarded to James O'Shaughnessy and Demetrio F. Aspiras, Esq., counsel for the school district.

Esther Kane Dickinson

REQUEST FOR ORAL ARGUMENT

The Monadnock District Education Association requests 15 minutes of oral argument before the full Court, argument to be presented by Attorney Esther Kane Dickinson.

Esther Kane Dickinson

ADDENDUM

ADDENDUM

TABLE OF CONTENTS

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Cheshire Superior Court
33 Winter Street, Suite 2
Keene NH 03431

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

File Copy

Case Name: **Monadnock Regional School District v Monadnock District Education Association c/o Marie Szymcik, Co-President, et al**
Case Number: **213-2017-CV-00056**

Enclosed please find a copy of the court's order of January 31, 2019 relative to:

Order on Motion to Reconsider

February 07, 2019

Daniel J. Swegart
Clerk of Court

(555)

C: James A. O'Shaughnessy, ESQ; Demetrio F. Aspiras, III, ESQ; Lauren S. Chadwick, ESQ; Esther Kane Dickinson, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Cheshire County

Cheshire Superior Court

Monadnock Regional School District v Monadnock District Education Association c/o Marie Szymcik, Co-President, et al
213-2017-CV-00056

ORDER ON MOTION TO RECONSIDER

After thoroughly reviewing both pleadings and this Court's prior order, the motion to reconsider is DENIED. Even though the issue of jurisdiction can be raised at any time - contrary to the petitioner's assertion - the Court has jurisdiction to adjuciate the claim and does not see any law or fact that it has misapprehended in its orginal order.

So Ordered.

January 31, 2019
Date

Signature of Judge

Hon. David W. Ruoff
Printed Name of Judge

()

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CHESHIRE, SS.

Monadnock Regional School District

v.

Monadnock District Education Association, NEA-NH

No. 213-2017-CV-00056

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Petitioner Monadnock Regional School District ("the District") has brought this action, seeking declaratory judgment, in regard to $392,381 in unexpended funds set aside over a period of four years pursuant to a collective bargaining agreement with the Monadnock District Education Association, NEA-NH ("the Association"). The parties have submitted stipulated facts and have both filed motions for summary judgment. This Order addresses both motions. For the following reasons, the District's motion for summary judgment is GRANTED and the Association's motion for summary judgment is DENIED.

FACTS

The parties have stipulated to the same facts. Doc. 13 (Stipulated Facts.) The following is a recitation of the facts the Court has determined to be material to this Order.

The Monadnock Regional School District is a cooperative school district, established pursuant to RSA 195, composed of the towns Fitzwilliam, Gilsum, Richmond, Roxbury, Swanzey, and Troy. (Id. at ¶ 1.) The District is a duly constituted New Hampshire municipal corporation. (Id.) The Association is the exclusive labor

representative of all members of the bargaining unit in the Monadnock School District, which includes high school department heads, classroom teachers, school assigned counselors, librarians, specialists, speech education teachers, media generalists, and elementary teaching assistant principals. (Id. at ¶ 2.) The District and the Association were parties to a collective bargaining agreement that was effective from July 1, 2012 to June 30, 2016 ("the CBA"). (Id. at ¶ 3; id., Ex. A.) In negotiations of the CBA, health insurance was a critical issue for both parties. (Id. at ¶ 4) The CBA included an agreement that the District would appropriate a fixed amount for health insurance for the first year of the CBA, and in future years "fund the health insurance budget amount by the lesser of the insurance provider's average 'guaranteed maximum rate' *or* 5% [of its initial fixed contribution of $2.3 million] for each additional year of the agreement," whichever was less. (Id. at ¶ 5) The CBA stated that the Association was "responsible for selecting insurance plans and determining the amount of contribution for each eligible employee," with the employee contribution amount referring to the percentage of the health insurance premium cost to be paid by the employee, which also determined the District's contribution. (Id. at ¶ 6.) The CBA also established a health insurance "pool" for unexpended appropriated funds:

> Any amount of money in the healthcare budget not expended from [the District]'s contribution to annual healthcare premiums and buyout payments will be placed in a pool to offset healthcare coverage for employee's [sic] [s]electing plans that exceed the District's allotment per employee. Monies will be distributed equally among all employees in each plan classification to offset premium costs, as determined by the [Association]. In no case will an employee receive more money than the cost of an annual plan premium.

(Id. at ¶ 7; id. at Ex. A.)

Pursuant to the CBA, the District funded health insurance coverage for each eligible employee according to the CBA's formula for each of the four years to which the CBA pertained. (Id. at ¶¶ 9–12, 16–19, 24–27, 31–34.) Thus, the CBA required that any unexpended funds from the money in the healthcare budget be placed in the pool to offset healthcare coverage shortfalls to offset premium costs, and the Association was responsible for determining the distribution of offset. (Id. at ¶ 7.)

For the first year of the CBA, 2013–2013, the District appropriated $2.3 million to fund the employees' health insurance benefits. (Id. at ¶ 9.) This amount was sufficient to cover all of the employees' annual health insurance premiums for that year; however, for various reasons, the Association determined the employees should bear some amount of the premium costs. (Id. at ¶ 11.) Therefore, for the 2012–2013 school year, the Association determined that the District would pay eight-five percent of the premium costs and the employees would pay fifteen percent. (Id. at ¶ 12.) For the 2013–2014, 2014–2015, and 2015–2016 school years, the Association determined the District would pay ninety percent and the employees would pay ten percent. (Id. at ¶¶ 19, 27, 34.) Near the end of the 2012–2013 fiscal year, on May 16, 2013, the Association requested the Monadnock Regional School Board ("the Board") place the estimated available funds into a health insurance trust that had been established by vote of the legislative body[1] at the 2011 annual school district meeting, as was permitted by RSA 198:20-c. (Id. at ¶ 12.) The estimated available funds were $49,436. (Id.) The Association

[1] RSA 21:47 defines "legislative body" as the following:

> When used to refer to a municipality, and in the absence of applicable chapter or subdivision definitions, the term "legislative body" shall mean a town meeting, school district meeting, village district meeting, city or town council, mayor and council, mayor and board of aldermen, or, when used to refer to unincorporated towns or unorganized places, or both, the county convention.

intended for this money to be available in the 2013–2014 school year. (Id.) On May 21, 2013, the Board voted to place these funds in the health insurance trust fund.[2] (Id.) At the end of the 2012–2013 school year, there was a remaining balance of $164,159 more of unexpended funds, in addition to the $49,436 voted by the Board to be placed in the health insurance trust, totaling to $213,655 in unexpended funds. (Id. at ¶¶ 12–13.) Thus, the $49,436 had been voted, by the Board, to be placed in the health insurance trust, but the remaining unexpended funds of $164,159 were placed in the District's reserve bank account by Jane Fortson, the District business administrator, pursuant to advice given to her by the District's auditor. (Id. at ¶¶ 14–15.) The 2013–2014 operating budget, approved by the District's legislative body, did not include the $213,655 in unexpended pool funds from the prior year as those funds were in the reserve bank account. (Id. at ¶ 17.)

In keeping with the practice established in the 2012–2013 school year, unexpended funds that remained in the pool were added to the District's reserve bank account for the following two years. The 2013–2014 school year ended with $192,309 in unexpended funds remaining in the pool; and the 2014–2015 school year ended with $154,633 in unexpended funds remaining in the pool. (Id. at ¶¶ 21, 29.) The

[2] The parties' Stipulated Facts include this information and thus the parties do not contest that $49,436 was placed into a "health insurance trust" that the Board had established in 2011. (Stipulated Facts ¶ 13.) However, the District states in its motion for summary judgment that, though both parties have referred to a "health insurance trust" account, "the District voters did not authorize the funds to be appropriated and placed in an expendable trust as required by law." (District Mot. Summ. J. 5, n. 6.) The Association's motion for summary judgment does not discuss this account, but also does not dispute the total amount of unexpended funds, thus including the $49,436 in its calculation of unexpended funds allegedly due to the Association under the CBA. (Ass'n's Mem. Supp. Mot. Summ. J. 3.) For this reason, the Court will not consider the existence of the "health insurance trust" to be a material fact because both parties agree that the $49,436 is included in the total amount subject to dispersion either under the CPA or to the District, as is the issue before this Court. Had the parties disputed this fact, summary judgment would be prevented because monies placed into a "town-created trust fund" are an exception to lapsing under RSA 32:7, II.

unexpended pool funds were not included in either the 2014–2015 or the 2015–2016 operating budgets. (Id. at ¶¶ 25, 32.) After the 2014–2015 school year, the pool funds that had been added to the District's reserve bank account reached $560,000. (Id. at ¶ 29.)

The Association did not request access to the pool funds during the 2012–2013, 2013–2014, or 2014–2015 school years. (Id. at ¶¶ 20, 28.) And, for the 2012–2013, 2013–2014, or 2014–2015 school years, the District did not vote to encumber the pool funds and they were not reserved in a reserve fund or non-capital trust pursuant to a vote of the legislative body. (Id. at ¶¶ 15, 23, 30.)

During the 2015–2016 school year, the parties negotiated a proposed successor CBA containing a provision whereby the money remaining in the pool at the end of the 2015–2016 would be used to fund health insurance costs during the successor CBA. (Id. at ¶ 35.) However, when the successor CBA was presented to the legislative body at its annual meeting in March 2016, it voted not to fund the successor CBA and thus no agreement went into effect. (Id. at ¶ 35.) The Association therefore requested that the District use the unexpended pool funds to reimburse the Association members for their ten-percent contribution to the health insurance costs of the 2015–2016 school year, the final year of the CBA. (Id. at ¶ 36.) Instead, however, the Board voted on June 21, 2016 to use the unexpended pool funds to pay for one hundred percent of the Association employees' health insurance premiums for the 2015–2016 school year, the final year of the CBA. (Id. at ¶ 37.) After making this payment toward employee health insurance premiums, the total balance of the unexpended pool funds was $392,381. (Id.)

As a result of the Board's vote, the Association filed unfair labor practices charges with the Public Employee Labor Relations Board on July 25, 2016. (Id. at ¶ 38.) The District maintained that its contract with the employees required it to return prior years' unexpended health insurance funds to the District and, ultimately, to the taxpayers. (Id. at ¶ 39.) The Association maintained that, as per the CBA, its members were entitled to a distribution of the entire balance of unexpended health insurance funds up to the full cost of health insurance. (Id.; id., Ex. B.) The parties agreed to submit the dispute to arbitration, and on February 15, 2017, the arbitration resulted in a favorable, non-binding arbitration award for the Association that gave the pooled health insurance funds to the Association and its members. (Id. at ¶¶ 40–41.)

The arbitration award determined that the parties' "bargaining history" and the "actual terms" of the CBA supported the Association's position. (Id., Ex. B at 13.) The arbitrator found that the parties' bargaining history demonstrated that the District "sought to change the methodology for providing health insurance to [the Association] by providing a fixed dollar amount each year of the [CBA]." (Id., Ex. B at 13–14.) It also looked to a language the District proposed in forming the original CBA that allowed the District to "absorb" any unexpended funds in the healthcare budget. (Id., Ex. B at 14.) Though this language did not end up in the CBA, it did end up in the Support Staff Collective Bargaining Agreement, something the arbitrator found "significant." (Id.) "The fact that this language does not appear in the [CBA] requires the conclusion that the funds do not revert back to the District and the District has no contractual right to the funds in the insurance pool." (Id.) The arbitrator also found that, "Without question, both parties knew, in 2014, that the omission of the language that excess funds were to

be 'absorbed' by the District meant that the District had no contractual right to the funds in the insurance pool." (Id.) In addressing whether the Association had the contractual authority to direct the unexpended pool funds to "retroactively change the co-share percentage" paid by the employees, the arbitrator relied on the language in the CBA and found that nothing in it "restricts of bars the Association from deciding that monies in the insurance pool can be used retroactively adjust the contribution amounts previous determined by the Association." (Id.)

The CBA required the District to act on the arbitrator's award by either accepting its terms or rejecting the award altogether, neither of which the District did. (Id. at ¶ 42.) This action commenced as a result. (Id.)

STANDARD OF REVIEW

A motion for summary judgment should be granted where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." RSA 491:8-A, III. In deciding a motion for summary judgment, the Court must consider the evidence, and all reasonable inferences therefrom, in the light most favorable to the non-moving party. Stewart v. Bader, 154 N.H. 75, 85 (2006). Where "no genuine issue of material fact exists, [the Court] determine[s] whether the moving party is entitled to judgment as a matter of law." N.H. Ass'n of Counties v. State, 158 N.H. 284, 287–88 (2009); see also RSA 491:8-a, III. A fact is material if it affects the outcome of the litigation. See Bond v. Martineu, 164 N.H. 210, 213 (2012).

ANALYSIS

Because the parties have stipulated to all material facts, summary judgment is proper and the Court determines the questions of law before it. The District's position is that the funds were improperly placed into the District's reserve bank account, that now it cannot expend the pool funds to the Association without authorization from the legislative body, and that the pool funds have lapsed. (District's Mot. Summ. J. 21.) The Association counters that its members are owed reimbursement for their health insurance premium costs from years the CBA was in effect as per a legally enforceable obligation the CBA created, an obligation that also prevents the funds from lapsing as per RSA 32:7, I. (Ass'n's Mem. Supp. Mot. Summ. J. 3, 5–12.) The Association bases its positions on RSA 32:7, I, which is an exception to the statute's mandate that unexpended funds lapse at the end of each fiscal year. (Id. at 4–5.)

The parties' dispute is not controlled solely by contract interpretation because the District is subject to the Municipal Budget Law contained in RSA Chapter 32. While the arbitration award was in favor of the Association, the Court notes the arbitration decision did not consider the Municipal Budget Law and that, because there is governing law on this issue, the Court's determination is not controlled solely by the CBA and contract interpretation. Ashley v. Rye Sch. Dist., 111 N.H. 54, 55 (1971) ("[I]t is a familiar principle of school law that school boards have only such authority as is expressly or impliedly granted by statute . . . ."); Laconia Bd. of Ed. v. City of Laconia, 111 N.H. 389, 391 (1971) (citations omitted) ("The public statutes and the local charter determine in general terms the extent to which the school district administration by the local board of education is subject to financial control by municipal bodies."). Therefore, the CBA's

control of the funds may only be enforced to the extent the Municipal Budget Law permits.

The Court will first analyze RSA 32:7's exceptions that prevent unexpended funds from lapsing. Then, the Court will determine whether the CBA provided an obligation that permits RSA 32:7's application to prevent the funds from lapsing.

I. RSA 32:7

The Municipal Budget Law, contained in RSA Chapter 32, applies to the appropriation and expenditure of money in municipalities, including cooperative school districts. RSA 32:2 ("RSA 32:1-13, shall apply to all . . . school districts, . . . which adopt their budgets at an annual meeting of their voters."); Town of Lebanon v. Lebanon Water Works, 98 N.H. 328, 329 (1953). "[T]he Municipal Budget Law was designed to establish some uniformity in the manner of appropriating and expending public money in the various municipalities of this state." Id. at 330; see RSA 32:1 (Statement of Purpose). A principle in the Municipal Budget Law is that the electorate must have "sufficient information to determine the annual amounts necessary to properly manage town affairs." Hecker v. McKernan, 105 N.H. 195, 197 (1963) (citing Town of Lebanon, 98 N.H. at 330). The law does not permit for any expenditure "in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made." RSA 32:8. In keeping with that principle, any appropriated funds unexpended at the end of the fiscal year will lapse unless the funds fall into one of the seven statutory exceptions. RSA 32:7 ("All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, ..."); RSA 197:1. Thus, a school district cannot retain

unexpended funds from year to year without voter authorization. RSA 32:7 provides seven methods through which funds that have not been expended by the end of the fiscal year may be saved from lapsing. The Court discusses only the exceptions the parties have briefed.

The first exception, under RSA 32:7, I, prevents lapsing when the unexpended "amount has, prior to the end of that fiscal year, become encumbered by a legally-enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount." RSA 32:7, I. The statute does not define what other legally enforceable obligations this provision would include beyond a contract. See RSA 32:3 (Definitions).

RSA 32:7 also includes an exception for funds "legally placed in any nonlapsing fund properly created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or a town-created trust fund under RSA 31:19-a." RSA 32:7, II. To place funds into a trust or a capital reserve fund, a special warrant article is required. RSA 31:19-a; RSA 35:5 (emphasis added) ("[A]ny such town, district, or county may also vote to transfer to said fund, under a special warrant article . . . , any of its unencumbered surplus funds remaining on hand at the end of any fiscal year."); RSA 32:3, V(c) (defining "special warrant article" to include "an appropriation to or from a . . . trust fund under RSA 31:19-a").

Funds may also be directly appropriated to a capital reserve fund pursuant to RSA 35:5 to avoid lapsing. RSA 32:7, II-a.[3]

[3] The Court notes that RSA 32:7, II-a was added to the statute in 2017. See H.B. 251, 2017 Leg. (N.H. 2017).

Neither party asserts that a special warrant article was voted upon in regard to the pool funds at issue, nor were the funds directly appropriated into the reserve fund; both parties agree that the funds at issue were placed into the District's "reserve bank account" under the direction of the District's auditor. (Stipulated Facts ¶ 14.) Therefore, under these facts, the Court is unable to consider the exceptions in RSA 32:7, II or II-a, which both require a special warrant article. The only exception that could apply to the case at bar is RSA 32:7, I. If this exception does not apply, then the funds have lapsed and cannot be expended without further appropriation. RSA 32:7.

The Municipal Budget Law does not define what contractual obligations are intended to fall under the exception. Therefore, the Court looks first to "the plain and ordinary meanings to the words used." JMJ Properties, LLC v. Town of Auburn, 168 N.H. 127, 130 (2015). "We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation." Id. (citations omitted). When a statute's language is plain and unambiguous, the Court need not look beyond it for further indications of legislative intent. Matter of Neal, _ N.H. _, 184 A.3d 90, 93 (N.H. 2018) (citing In the Matter of Muller & Muller, 164 N.H. 512, 517 (2013)).

The statute's language of "a legally-enforceable obligation, created by contract or otherwise," is unambiguous and is explicitly broad enough to include obligations beyond a contract. The statute's broad language indicates that a CBA that is legally enforceable would qualify as such an obligation. However, though the statute's broad language applies to a variety of contracts and legal obligations, the statute also limits

the exception: the amount must become "encumbered" by the legal obligation "prior to the end of the fiscal year." RSA 32:7, I. According to its plain language, the exception will only apply to "anticipated expenditures" that have been unexpended but have become encumbered by a legal obligation that took effect before the end of the fiscal year. RSA 32:7 (introductory sentence); RSA 32:7, I. In other words, if an appropriation is unexpended during the fiscal year but becomes subject to a legal obligation to be expended at another time, that legal obligation will prevent the appropriation's funds from lapsing. Otherwise, those unexpended funds will lapse. The clear triggering event that distinguishes whether unexpended funds for an anticipated expenditure will lapse or not, as per this exception, is whether a legal obligation arose during the fiscal year to encumber that expenditure. The Court therefore determines that the exception in RSA 32:7, I will only apply to unexpended anticipated expenditures that, before the end of the fiscal year, have become encumbered by a legal obligation, such as an applicable CBA. Therefore, the Court must analyze whether the CBA in this case created a legal obligation to encumber anticipated expenditures.

II. The CBA

"A CBA is a contract between a public employer and a union over the terms and conditions of employment." Appeal of Alton Sch. Dist., 140 N.H. 303, 306 (1995). "Collective bargaining agreements are construed in the same manner as other contracts, subject to the law controlling at the time of their execution." Appeal of Sanborn Reg'l Sch. Bd., 133 N.H. 513, 518 (1990) (citing Mastro Plastics Corp. v. Labor Board, 350 U.S. 270, 279 (1955)). "The interpretation of a contract, including whether a contract term is ambiguous, is ultimately a question of law for this court to decide." Birch Broad.,

Inc. v. Capitol Broad. Corp., 161 N.H. 192, 196 (2010). "When interpreting a written agreement, we give the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole." Behrens v. S.P. Const. Co., 153 N.H. 498, 503 (2006). If a contract is unambiguous, the parties' intent will be determined from the plain meaning of the language used in the agreement. Id. But, when a contract is ambiguous, the Court must determine, "under an objective standard, what the parties, as reasonable people, mutually understood the ambiguous language to mean." Sunapee Difference, LLC v. State, 164 N.H. 778, 790 (2013). "In applying this standard, a court should examine the contract as a whole, the circumstances surrounding execution and the object intended by the agreement, while keeping in mind the goal of giving effect to the intentions of the parties." Id.

The CBA contains a provision directly on point to the question before the Court. Article 9.1 of the CBA states: "Any amount of money in the healthcare budget not expended from [the District]'s contribution to annual healthcare premiums and buyout payments will be placed in a pool to offset healthcare coverage for employee's [sic] [s]electing plans that exceed the District's allotment per employee." (Stipulated Facts ¶ 7.) The Association argues that the CBA is a legally enforceable contract that RSA 32:7, I contemplates and obligates the pool funds to the Association's members in the form of a reimbursement for past health insurance premium payments. (Ass'n's Mem. Supp. Mot. Summ. J. 4–5, 8–11.) The District argues that the CBA is only binding "with respect to terms and conditions of employment," and does not create an obligation to

expend the funds such that the CBA encumbers the funds. (District's Mot. Summ. J. 10, 14–15.)

The Court notes that the District's attempt to distinguish the CBA as a legally enforceable contract only in respect to the Association's terms and conditions of employment is unconvincing and unsupported. The CBA itself addresses more than the terms and conditions of employment. Indeed, the dispute before the Court involves healthcare benefits for the Association's members, and the CBA contains a provision directly addressing the occurrence of unexpended pool funds. While the CBA's terms may be limited by its own language or the Municipal Budget Law, the Court does not accept the District's assertion that the CBA is only enforceable to part of its explicit terms and unenforceable to others that the District has previously fulfilled by contributing to the healthcare benefits during the relevant fiscal years. Nor does the District articulate why any part of the CBA should be enforced but other parts of it should not. Therefore, for this analysis, the Court considers the CBA to be a legally enforceable contract. Nevertheless, the Court does not find that the CBA is a contract that RSA 32:7, I contemplates for the following reasons.

In analyzing the undisputed, stipulated facts, the Court finds that the CBA did not create a legal obligation that encumbered the pool funds according to RSA 32:7, I. The CBA's language in Article 9.1 plainly states what money is to be put into the pool fund: "money in the healthcare budget not expended from [the District]'s contribution to annual healthcare premiums and buyout payments." (Stipulated Facts ¶ 7 (emphasis added).) It also plainly states what that money is to be used for: first, the provision states the money "will be placed in a pool to offset healthcare coverage for employee's

[sic] [s]electing plans that exceed the District's allotment per employee," and the next sentence states that money distributed to the Associations' members is "to offset premium costs." (Id. at ¶ 7; id., Ex. A, at 15.) In reading these statements in context, the Court finds that it is clear that the offset to be paid from the pool funds was intended for the selection of plans that exceeded the District's contributions. The second and shorter statement of the pool funds' intended use cannot be read alone or as its own obligation to reimburse the Association's members; the sentence mandates equal disbursement of an offset to all employees, and does not concern or create a reimbursement mechanism. Because the CBA created a legal obligation only to offset healthcare premiums payments when they exceed the District's allotment, and not to reimburse the Association's members for their premiums payments, the exception in RSA 32:7, I will only apply if that legal obligation arose prior to the end of each fiscal year in question to encumber the pool funds.

The parties do not dispute that the unexpended pool funds were accumulated pursuant to the CBA, under which the District provided the funds as appropriations that were then not expended on the Association's members' health insurance premiums. (Stipulated Facts ¶¶ 9–34, 37.) The parties also do not dispute that the Association did not request access to these funds and that the District did not vote to encumber these funds. (Id. at ¶¶ 15, 20, 23, 28, 30.) In considering the CBA a legally enforceable obligation capable of encumbering expenditures, the Court has determined that the CBA can only be constructed to have created an obligation to offset premium costs, which is action that the Association did not seek in any of the fiscal years. Therefore, there was no instance in which the CBA's legally enforceable obligation concerning the

pool funds arose. The Court therefore cannot find that the pool funds became encumbered by the CBA as per RSA 32:7, I. Had the Association sought access to the pool funds for the purpose the CBA intended—for the offset of premium costs—then the legal obligation would have been prompted. However, the CBA does not provide a right to reimbursement that would have been prompted during the relevant fiscal years. There was thus no legal obligation to encumber the funds. Furthermore, even if the CBA did provide the Association with the option to seek reimbursement, it is undisputed that the Association never requested for the pool funds to be encumbered for reimbursement. Thus, even if the CBA did provide such a right, the Association has not shown that it ever was prompted to encumber the pool funds.

Furthermore, the District was not obligated to reimburse the Association's members in 2015–2016 when it requested reimbursement, since the CBA provided no such obligation. The District instead acted in the only way the CBA obligated it to: to offset the Association's members' health insurance premiums for that year. (Stipulated Facts ¶¶ 36–37.)

The Court also notes the District's emphatic assertion that its legislative body, the voters, did not approve expenditure to the Association for a reimbursement as the Association seeks. (District Mot. Summ. J. 16–19.) Because the terms of the CBA do not provide for reimbursement, the Court agrees that with the District that agreeing to provide reimbursement would have gone beyond the terms of the CBA that the legislative body had approved. RSA 273-A:3, II(b); RSA 32:6 ("All appropriations in municipalities subject to this chapter shall be made by vote of the legislative body of the municipality at an annual or special meeting."); Alton Sch. Dist., 140 N.H. at 307 (citing

RSA 273-A:3, II(b) ("The parties to a CBA are not bound by its cost items unless the legislative body ratifies them."); Id. at 309 ("[R]atification by the principal, in this case the school district voters, requires full knowledge of the financial terms of the collective bargaining agreement."); (District Mot. Summ. J. 17.)

CONCLUSION

RSA 32:7, I is unambiguous and provides an exception from lapse only to legally enforceable obligations that arise prior to the end of the fiscal year. The CBA did provide a legally enforceable obligation in regard to the pool funds, but that obligation did not arise during any of the school years the CBA concerned, as the Association did not seek offset from the pool funds for its members' health insurance premiums. Therefore, the pool funds are unexpended appropriations that have lapsed.

SO ORDERED.

October 16, 2018
DATE

David W. Ruoff
Presiding Justice

TITLE III
TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 32
MUNICIPAL BUDGET LAW

Section 32:1

32:1 Statement of Purpose. – The purpose of this chapter is to clarify the law as it existed under former RSA 32. A town or district may establish a municipal budget committee to assist its voters in the prudent appropriation of public funds. The budget committee, in those municipalities which establish one, is intended to have budgetary authority analogous to that of a legislative appropriations committee. It is the legislature's further purpose to establish uniformity in the manner of appropriating and spending public funds in all municipal subdivisions to which this chapter applies, including those towns, school districts and village districts which do not operate with budget committees, and have not before had much statutory guidance.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:3 Definitions. –
In this chapter:
I. "Appropriate" means to set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose.
II. "Appropriation" means an amount of money appropriated for a specified purpose by the legislative body.
III. "Budget" means a statement of recommended appropriations and anticipated revenues submitted to the legislative body by the budget committee, or the governing body if there is no budget committee, as an attachment to, and as part of the warrant for, an annual or special meeting.
IV. "District" includes a school district, cooperative school district, village district, district created pursuant to RSA 53-A or 53-B, or municipal economic development and revitalization district created pursuant to RSA 162-K.
V. "Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration, or an appropriation contained in a special warrant article, shall be considered a single "purpose."
VI. "Special warrant article" means any article in the warrant for an annual or special meeting which proposes an appropriation by the meeting and which:
(a) Is submitted by petition; or
(b) Calls for an appropriation of an amount to be raised by the issuance of bonds or notes

pursuant to RSA 33; or
(c) Calls for an appropriation to or from a separate fund created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or trust fund under RSA 31:19-a; or
(d) Is designated in the warrant, by the governing body, as a special warrant article, or as a nonlapsing or nontransferable appropriation; or
(e) Calls for an appropriation of an amount for a capital project under RSA 32:7-a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:1, eff. Aug. 9, 1996. 2003, 95:1, eff. Aug. 5, 2003. 2012, 181:1, eff. Aug. 10, 2012; 186:4, eff. June 11, 2012. 2013, 109:1, eff. Aug. 23, 2013.

32:5-a Presentation of Negotiated Cost Items at the Annual Meeting. – Cost items, as defined under RSA 273-A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting, cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:3, eff. Aug. 9, 1996.

Expenditures

Section 32:8

32:8 Limitation on Expenditures. – No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:9 Exception. – Money may be spent to pay a judgment against the town or district, without an appropriation.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:10

32:10 Transfer of Appropriations. –
I. If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to

that appropriation an unexpended balance remaining in some other appropriation, provided, however, that:
(a) The total amount spent shall not exceed the total amount appropriated at the town or district meeting.
(b) Records shall be kept by the governing body, such that the budget committee, if any, or any citizen requesting such records pursuant to RSA 91-A:4, may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers.
(c) A statement comparing all legislative body appropriations against all expenditures shall be deemed adequate for purposes of the records required by subparagraph (b), so long as every expenditure has been properly authorized and properly classified and entered and any expenditures exceeding the original legislative appropriations are offset by unexpended balances remaining in other appropriations, in which case the governing body shall not be required to designate the specific source of each transfer.
(d) Any amount appropriated at the meeting under a special warrant article, or to a capital reserve fund pursuant to RSA 35:5, may be used only for the purpose specified in that article and shall not be transferred.
(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.
II. As used in RSA 32:10, I(a)-(d), concerning transfers of appropriations and records thereof, "purpose" refers, in addition to its meaning in RSA 32:3, V, to individual line items in whatever detailed budget or chart of accounts is regularly used by the municipality. The general wording of a vote adopting a budget or portion of a budget shall not be considered a "purpose" to which an amount may be transferred. The definition of "purpose" as used in RSA 32:10, I(e) shall be the definition of "purpose" under RSA 32:3, V.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:4, eff. Aug. 9, 1996. 2004, 113:1, eff. July 16, 2004. 2017, 127:4, eff. Aug. 15, 2017.

32:11 Emergency Expenditures and Overexpenditures. –

When an unusual circumstance arises during the year which makes it necessary to expend money in excess of an appropriation which may result in an overexpenditure of the total amount appropriated for all purposes at the meeting or when no appropriation has been made, the selectmen or village district commissioners, upon application to the commissioner of revenue administration or the school board upon application to the commissioner of education, may be given authority to make such expenditure, provided that:
I. Such application shall be made prior to the making of such expenditure. No such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing. If there is no budget committee, the governing body shall hold a public hearing on the request, with notice as provided in RSA 91-A:2.

II. The commissioner of revenue administration or the commissioner of education may accept and approve an application after an expenditure if caused by a sudden or unexpected emergency, in which case paragraph I shall not apply.
III. Neither the commissioner of revenue administration nor the commissioner of education shall approve such an expenditure unless the governing body designates the source of revenue to be used. Neither commissioner shall have the authority to increase the town or district's tax rate in order to fund such an expenditure.
IV. When applying to the commissioner of education for such authority, the school board shall send a copy of such application to the department of revenue administration. The commissioner of education, when granting authority to the school board, shall notify, in writing, the commissioner of revenue administration of any and all authorizations given to school boards for emergency expenditures or overexpenditures, and the revenue source for funding such expenditures.
V. Notwithstanding paragraphs I through IV, if the legislative body has by warrant article established a contingency fund in the annual budget for the purpose of unanticipated expenses, the board of selectmen may expend funds from such account to meet the costs of such expenses.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:5, eff. Aug. 9, 1996. 1999, 140:1, eff. Aug. 24, 1999. 2013, 115:1, eff. Aug. 24, 2013.

32:13 Contracts; Expenditures Prior to Meeting. –

I. This subdivision shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts, or to nullify any other binding state or federal legal obligation which supersedes the authority of the local legislative body.
II. This subdivision shall not be construed to affect the authority of the local governing body, in towns with a March annual meeting and a January through December fiscal year, to make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1997, 318:2, eff. Aug. 22, 1997. 2001, 71:3, eff. July 1, 2001.

32:19 Collective Bargaining Agreements. – Whenever items or portions of items in a proposed budget constitute appropriations, the purpose of which is to implement cost items of a collective bargaining agreement negotiated pursuant to RSA 273-A, either previously ratified or concurrently being submitted for ratification by the legislative body, or the purpose of which is to implement the recommendations of a neutral party in the case of a dispute, as provided in RSA 273-A:12, such items shall be submitted to the budget committee and considered in its budget preparation. Such appropriations shall be submitted to the legislative body and shall include a statement of the governing body's recommendation and a separate statement of the budget committee's recommendation. If such appropriations were not recommended by the budget committee, then such appropriations shall be exempt from the 10 percent limitation set forth in

RSA 32:18. The failure of the budget committee to recommend any portion of such appropriations shall not be deemed an unfair labor practice under RSA 273-A.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2001, 71:4, eff. July 1, 2001.

Section 32:19-a

32:19-a Presentation of Negotiated Cost Items at the Annual Meeting. – Cost items, as defined under RSA 273-A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting, cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:6, eff. Aug. 9, 1996.

TITLE XXIII
LABOR

CHAPTER 273-A
PUBLIC EMPLOYEE LABOR RELATIONS

273-A:1 Definitions. –

In this chapter:

IV. "Cost item" means any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with which negotiations are being conducted.

273-A:3 Obligation to Bargain. –

II. (b) Only cost items shall be submitted to the legislative body of the public employer for approval at the next annual meeting of the legislative body, unless there is an emergency as defined in RSA 31:5 or RSA 197:3. If the legislative body rejects the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on the entire agreement. No cost item agreed to by the public employer and the employee organization shall be modified by the legislative body of such public employer.

Source. 1975, 490:2. 1977, 437:2. 1979, 374:3. 1985, 39:1. 1998, 205:1, eff. Aug. 17, 1998. 2013, 244:1, eff. Sept. 22, 2013.

273-A:6 Violations. –

I. The board shall have primary jurisdiction of all violations of RSA 273-A:5, but no complaint may be filed with the board for violation of RSA 273-A:5, I(c) or (d) until the complainant has exhausted the administrative remedies provided by statutes other than this chapter. The board may refer any prohibited practice charges, as defined in RSA 273-A:5, to a hearing officer who shall conduct a hearing, make findings of fact, and report to the board within the time limits set forth in this section.

273-A:11 Rights Accompanying Certification. –

I. Public employers shall extend the following rights to the exclusive representative of a bargaining unit certified under RSA 273-A:8:

(b) The right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire.

Source. 1975, 490:2, eff. Aug. 23, 1975.