*Board of Trustees of the University of Maine System v. Associated COLT Staff of the University of Maine System**

In *Board of Trustees of the University of Maine System v. Associated COLT Staff of the University of Maine System*,[1] the Supreme Judicial Court of Maine, in a four to three decision, held that the Board of Trustees of the University of Maine System (University) breached its duty to bargain in good faith by discontinuing annual wage increases included in the expired collective bargaining agreement (CBA) between the University and the Associated COLT[2] Staff of the University of Maine System (ACSUM). This case arose from a complaint filed by ACSUM with the Board alleging that the University violated the University of Maine System Labor Relations Act (MSLRA).[3]

Specifically, ACSUM alleged that the University violated the MSLRA by discontinuing the payment of annual salary step increases after the expiration of the agreement between the University and ACSUM.[4] ACSUM asserted that the University's act constituted a unilateral change in the conditions of employment affecting employees in the bargaining unit in violation of the University's duty to bargain in good faith.[5] The Maine Labor Relations Board (Board), applying the "dynamic status quo" rule,[6] found that the University's act constituted a violation of the MSLRA and ordered the University to continue to implement salary step increases until the parties either came to an agreement or the parties came to "ultimate impasse."[7] In addition, the Board ordered the University to reimburse employees for the wages and interest lost through the delay resulting from the proceedings since the expiration of the contract.[8]

The University appealed the Board's ruling to the Superior Court of Kennebec County, which vacated the Board's decision by holding that the Board's decision improperly interfered with the collective bargaining

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[1] 659 A.2d 842 (Me. 1995).

[2] COLT is an acronym for "Clerical, Office, Laboratory and Technical."

[3] *See* 26 M.R.S.A. §§ 1021-1035 (1988 & Supp. 1994). In all material aspects relevant to this Note, the MSLRA is similar to the Maine Municipal Public Employees Labor Relations Law, 26 M.R.S.A. §§ 961-974 (1988 & Supp. 1994) and to the public employee labor relations acts of other states.

[4] *See Associated COLT Staff*, 659 A.2d at 844.

[5] *See id.* (citing 26 M.R.S.A. § 1027(1)(A) and (E) (1988 & Supp. 1994)).

[6] Under the dynamic rule, an employer has a continuing duty to pay wage increases, such as annual step increases or cost-of-living adjustments, following the expiration of a contract until an agreement or ultimate impasse is reached.

[7] *See Associated COLT Staff*, 659 A.2d at 844.

[8] *See id.*

process.[9] ACSUM and the Board then appealed to the Supreme Judicial Court of Maine, which affirmed the Superior Court's decision by holding that "the dynamic status quo rule . . . is contrary to the intent of Maine's public employer labor statute as expressed in its plain language and history."[10]

Although the Maine court focused on Maine case law, it is important to note that this decision represents one of the clearest discussions of the meaning of status quo. As the Maine court described, there are two alternative positions that may be adopted with regard to this issue: the application of a "static status quo" rule[11] or the application of the dynamic rule.[12] The static rule would require the annual salary step increases in the wage provision of a contract to be frozen during the period of the status quo ante.[13] In contrast, under a dynamic rule, a continuing duty would exist for the employer to pay annual salary step increases after the expiration of the CBA.[14]

After analyzing Board precedent, the majority noted that "[u]ntil 1991, the Board had construed status quo to mean that wages existent at the expiration of a CBA were frozen. In doing so, the Board rejected the notion that increases in wages scheduled in the expired contract should be extended beyond the expiration of that contract."[15] The majority then noted that the Board overruled its previous position in 1991 and adopted a dynamic rule, wherein public employers are required to pay their employees annual step increases in wages included in an expired contract.[16]

Although the majority does not question the Board's jurisdiction over the issue, the majority does find that the application of the dynamic rule is

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[9] *See id.*

[10] *Id.* at 846.

[11] Under a static rule, the status of the parties at the time a CBA terminated freezes until a new agreement is reached. *See id.* at 845-846.

[12] *See id.*

[13] *See id.*

[14] *See id.* at 846. Neither rule infringes on the parties' right to waive application of the prevailing rule, if the waiver is consensual, clear and unmistakable. Metropolitan Edison Co. v. WLRB, 460 U.S. 693, 702 (1983). For the effect of waiver in the private sector, see *Struthers Wells Corp. v. NLRB*, 721 F.2d 465 (3rd Cir. 1983). For the effect of waiver in the public sector, see *In re Volusia County*, 22 FPER ¶ 27,066 (Fl. 1996).

[15] 659 A.2d at 844 (citing M.S.A.D. No. 43 Teachers' Ass'n v. M.S.A.D. No. 43 Bd. of Directors, 432 A.2d 395, 397-398 (Me. 1981)). *See also* Easton Teachers Ass'n v. Easton Sch. Comm., No. 79-14 (M.L.R.B. March 13, 1979).

[16] *See id.* at 845 (citing Auburn Sch. Adm'rs Ass'n v. Auburn Sch. Comm., No. 91-19 (M.L.R.B. Oct. 8, 1991), *consolidated appeals dismissed per stipulation*, No. CV-91-459 & CV-91-464 (Me. Sup. Ct. April 24, 1992).

particularly unfair, given the Board's divergence from *stare decisis*. The majority devotes considerable attention to the equities of applying the dynamic rule, even though the static rule was in effect at the time of contract formation.[17] For example, the Board's decision forces the University to fund wage increases for which it had not budgeted.[18]

In extolling the virtues of an application of the static rule to the facts in this case, the majority states several policy arguments.[19] First, the majority argued that the adoption of the dynamic rule results in the unlawful extension of the collective bargaining agreement beyond its contractually stated duration.[20] Second, the majority asserted that the dynamic rule unfairly gives employees an advantage in the negotiation process because they are potentially awarded for not diligently negotiating.[21] Third, the majority noted that the dynamic rule makes negotiating for automatic wage increases much more difficult for the employer.[22]

The majority's position seems inapposite to the public policy rationale behind public sector labor statutes. Such statutes were designed to establish the rights of employees to bargain collectively and to promote employee interests in the collective bargaining process. Hence, through its holding, the majority ignores the public policy rationale behind the MSLRA, effectively legislating away ACSUM's statutory right to maintain the status quo.

The dynamic rule clearly fulfills the public policy rationale of the MSLRA by bolstering the rights of labor interests in negotiations with management. In addition, the dynamic rule has been adopted in federal labor law; the NLRB has adopted the dynamic rule for defining the status quo in the private sector.[23]

Although the case law supports the dynamic rule for the private sector, there is some division among the jurisdictions as to whether the dynamic

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[17] *See id.* at 845.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See generally* Katz v. NLRB, 369 U.S. 736 (1962). *See also* Litton Fin. Printing v. NLRB, 501 U.S. 190 (1991); NLRB v. Harvstone Mfg. Corp., 785 F.2d 570 (7th Cir. 1986); NLRB v. Allied Prods. Corp., 548 F.2d 644 (6th Cir. 1977); General Motors Acceptance Corp. v. NLRB, 476 F.2d 850 (1973); Producers Dairy Delivery Co. v. Western Conference of Teamsters Pension Trust Fund, 654 F.2d 625 (9th Cir. 1981) (applying dynamic approach to employer's payments to pension fund); Intermountain Rural Elec. v. NLRB, 984 F.2d 1562 (10th Cir. 1993) (applying dynamic approach to medical payments for self-insuring employer).

rule or static rule should prevail in the public sector.[24] An implicit assumption that seems to underlie the majority's equity concerns is that public sector employers should not be held to the same standards that might apply in the private sector. At least two unique characteristics of public sector employers might be noted in support of this position. First, public sector employers are limited to public funding. Second, public sector employers are not driven by profit.

In contrast, jurisdictions that reject the static rule and adopt the dynamic rule adhere to the arguments that are applied in the private sector cases.[25] These jurisdictions note that public sector employers are not substantially different from their counterparts in the private sector and that the importance of the public policy rationale behind labor laws exists in both the private sector and the public sector. Hence, equity is achieved by the balancing of labor rights with those of management within the labor-management dynamic.[26]

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[24] *See, e.g.*, California State Employees' Ass'n, CSU Division, SEIU Local 1000, AFL-CIO v. California State Univ., 19 PERC ¶ 2107 (Ca. 1978); *In re* Board of Educ. of the Sault Ste. Marie Area Pub. Sch., 8 MPER ¶ 26,006 (Mich. 1994); Fairview Sch. Dist. v. Pennsylvania Unemployment Compensation Bd. of Review, 454 A.2d 517 (Penn. 1982); Appeal of Milton Sch. Dist., 625 A.2d 1056 (N.H. 1993). However, in states that apply the static rule, there are certain situations in which the dynamic rule will be applied. *See, e.g.*, Parajo Valley Unified Sch. Dist., 2 PERC ¶ 2107 (Cal. 1978) (holding that where annual wage increases exist as a past practice whether in an expired contract or prior to the formation of a first contract, these past practices must be accounted for); Wayne County Gov't Bar Ass'n v. County of Wayne, 426 N.W.2d 750 (Mich. App. 1988) (holding that dynamic rule applies where payment was periodic, was established by formula and had significant impact on wages, hours and other terms and conditions of employment).

[25] *See, e.g., In re* City of Delray Beach, 20 FPER ¶ 25,130 (Fl. 1994); Vienna Sch. Dist. v. Illinois Educ. Labor Relations Bd., 515 N.E.2d 476 (Ill. 1987); Indiana Educ. Employment Relations Bd. v. Mill Creek Classroom Teachers Ass'n, 456 N.E.2d 709 (Ind. 1983); Galloway Township Bd. of Educ. v. Galloway Township Educ. Ass'n, 292 A.2d 218 (N.J. 1978)

[26] Naturally, this is a "fairness" argument in the converse. Note, however, that this is a more logical approach to the resolution of the query because it acknowledges that the legislature is in the best position to determine the equilibrium of labor and management rights. Thus, in those states in which the legislature has not enacted a Public Sector Labor Relations Act, it becomes readily apparent that those states favor management in the equilibrium by thwarting the effective organization of labor. In contrast, those states, like Maine, with an active Public Sector Labor Relations Act, should defer to the legislature where further definition is required as to how the public sector labor-management dynamic should be balanced. Where the legislature is silent, it is most logically presumed that the general purpose of a given statute should be furthered. In the case of labor statutes, the purpose is clearly to

In sum, though there remains a division among the jurisdictions as to whether the static rule or the dynamic rule should be applied to public sector labor relations and, though the majority in the instant case finds in favor of the static rule, the dynamic rule remains both legally sound and widely used.[27] Although the Supreme Judicial Court of Maine, with its narrow majority, apparently seeks to distinguish the public sector labor-management dynamic from the private sector through its ruling, other jurisdictions continue to recognize certain universal principles of labor law policy and apply the dynamic rule. Thus, the majority decision, although controlling law in Maine, only represents a single jurisdiction's position regarding a divisive issue within public sector labor law and should not be viewed as a progressive trend toward an enlightened resolution of the issue.

Robert Lewis Weise, Jr.

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enhance the bargaining position of labor interests in the labor-management dynamic. Thus, the dynamic rule best serves this purpose.

[27] As has been discussed in this Note, labor law statutes are designed to promote the interests of labor in recognition of management's inherently stronger position in the labor-management dynamic. Furthermore, the parties' rights to insert express provisions in a CBA that prohibit the continuation of annual wage increases or other similar provisions with potential "dynamic" ramifications upon a contract's expiration, are ever-present and remain uncompromised by the "dynamic" application of the status quo rule.