

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

APPOQUINIMINK EDUCATION ASSOCIATION :  
Silver Lake Elementary School :  
S. Catherine Street :  
Middletown, Delaware 19709 :  
Complainant, : U.L.P. No. 1-2-84A  
BOARD OF EDUCATION OF APPOQUINIMINK :  
SCHOOL DISTRICT :  
4th and Main Streets :  
Odessa, Delaware 19733 :  
Respondent. :

The dispute presented for adjudication results from an alleged violation of §4007(a)(1) and §4007(a)(5) of the Public School Employment Relations Act, 14 Del.C. §§4001-4018 (Supp.1982), hereinafter referred to as the Act. The charge was filed on or about February 7, 1984, by the Appoquinimink Education Association, hereinafter complainant or Association, against the Board of Education of Appoquinimink School District, hereinafter respondent or District.

FACTS

The Association and District were parties to a collective bargaining agreement effective July 1, 1980 to June 30, 1983. This agreement included a salary schedule setting forth the local salary supplements to be paid the employees based upon level of education and years of

teaching experience. Article XXVIII of the Agreement provided "This Agreement shall not be extended orally and it is expressly understood that it shall expire on the date indicated unless it is extended in writing". This Agreement expired on June 30, 1983, while the parties negotiated, without impasse, over a successive agreement.

The ensuing 1983 - 84 school year commenced in September, 1983, subsequent to the expiration of the referenced Agreement and prior to the parties reaching a successive agreement. On or about August 23, 1983, the Association was advised by the District, through an unsigned memo, that:

- 1) The District would continue to pay district salaries as of the 1982 - 83 schedule, and
- 2) The District would continue to pay the Blue Cross/Blue Shield contribution of the 1982 - 1983 school year.

At the beginning of the 1983 - 84 school year and continuously thereafter for the balance of the school year, the District continued to pay the individual employees at the same local salary contribution level as was paid during the 1982 - 83 school year.

The Association's position is that the negotiated salary schedule, based upon years of service and level of education, is the agreed upon method of payment and thereby represents the status quo which neither party may unilaterally alter without first bargaining the issue, at least to the point of impasse.

As a result of the District's action, on or about February 7, 1984, the Association filed an unfair labor practice complaint against the District alleging that the District has failed to bargain collectively in good faith by failing to maintain the status quo during negotiations

and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them under the Act by instituting a unilateral change in the terms and conditions of employment without negotiation. The District, in its Answer, denies this charge averring that the actin taken does not violate its obligation under the expired Agreement, which was not extended in writing except as to salaries and fringe benefits, in its memo of August 23, 1983. The District maintains this memo has been complied with fully. The District further asserts that the question involved is one of interpretation of its memo of August 23, 1983. The parties have agreed in a written stipulation to the facts here presented. Legal briefs in support of their respective positions have been submitted to the Public Employment Relations Board.

At the time of this decision, a new and successive local salary schedule and fringe benefit package have not been successfully negotiated.

#### ISSUE

The issue is whether the respondent has engaged in and/or is engaging in an unfair labor practice, in violation of §4007(a)(5) of the Public School Employment Relations Act, 14 Del.C. §§4001 - 4018 (Supp.1982), by failing to advance the salary levels of its professional employees along the salary matrix contained in the collective bargaining agreement effective July 1, 1980 through June 30, 1983, for an additional year of service, resulting in a further violation of §4007(a)(1) of the Act.

## OPINION

An employer's unilateral change in the conditions of employment which are under negotiation, without impasse, violates the employer's duty to collectively bargain in that it undermines the bargaining process. N.L.R.B. v. Katz, U.S., 369 U.S. 736 (1962). This fact is acknowledged by the District on page 2 of its Answering Brief. This fundamental tenet of private sector labor law, as it relates to mandatory subjects of bargaining, has been adopted by both the Superior and Chancery Courts of the State of Delaware and applied to cases specifically involving public school employers and the exclusive representative of their employees in similar factual situations (labor disputes involving changes in terms and conditions of employment during the interim period of negotiation after the expiration of a prior collective bargaining agreement). Milford Education Association v. Board of Education of Milford School District, et al., Del.Super., 811 C.A. 1976, Taylor, J. (Feb. 24, 1977); Caesar Rodney Education Association v. Board of Education of Caesar ool District, et al., Del.Chan., C.A. No. 5635, Brown, V.C. (June 30, 1978). As the Katz rule has been specifically adopted and applied to Delaware cases, I find that it is also controlling in this action.

I agree with the District that the adoption of general principles of private sector bargaining does not compel the Public Employment Relations Board to accept as binding precedent specific holdings of other jurisdictions which result from the application of such principles and which would compel a predetermined result. While such decisions may provide some guidance, experience gained in the private sector will not necessarily provide an infallible basis for decisions in the public sector. Seaford

Education Association v. Board of Education of Seaford School District,

Del.PERB, No. 2-2-84S (March 19, 1984). Slip Op. at 5.

The importance of maintaining the prevailing terms and conditions of employment during the period until new terms and conditions are reached by agreement is fundamental to creating an environment in which collective bargaining can most successfully be undertaken. An important factor in determining the status quo after expiration of a collective bargaining agreement, is the terms and conditions of employment prevailing under the expired collective bargaining agreement. Unilateral disruptions of this status quo are held to be unlawful because they frustrate the objective, provided for by statute, of establishing working conditions through collective bargaining. Katz, supra. The General Assembly of this State has obligated the public school employer and employees to collectively bargain terms and conditions of employment, which specifically include wages and salaries. 14 Del.C. §§4001, 4002(p).

The issue before us is not the extension of a clause of an expired collective bargaining agreement requiring a salary increase beyond the contract period to which the parties agreed, but rather the maintenance <sup>of</sup> ~~to~~ the relationship which existed at the time of the expiration of the agreement. Stability during the interim period between collective bargaining agreements is crucial to continuing the orderly and uninterrupted operations of the public school system and to maintaining an environment where the parties are free to negotiate in good faith on an equal basis. Where a prior Agreement specifically ~~specifically~~ addresses the term or condition of employment at issue in an unfair labor practice complaint of this nature, the specific provision of that Agreement may provide insight into the relationship which existed and action which

may be necessary to maintain the status quo. Article VIII E of the 1980 -1983 Agreement between the parties provides in part:

In each year of the contract, teachers shall advance one step on the salary schedule(s) in the traditional manner.

As we are here concerned with events occurring subsequent to the expirations of that Agreement, the language limiting the salary advancement within the salary matrix to each year of the Agreement is not material to the issue before us. Contract provisions are implicitly understood to continue in force only for the term of the contract. However, the field of labor law is unique and special principles have evolved over the years to assist in providing for the continuity and stability of the parties' relationship, even during periods of contract negotiations. The language of Article VIII E does not and cannot limit the legal obligation of the parties to maintain the existing relationship as to the terms and conditions of employment, without change, after the expiration of that Agreement until either negotiations have proceeded to impasses or until a successive Agreement is reached and new terms and conditions of employment established.

The above-referenced language of the prior Agreement, in addition to the matrix which specified the various salary levels, establishes that teachers were routinely advanced on the matrix "one step" at the beginning of each new school year in a "traditional manner". The level of salary paid to teachers in the Appoquinimink School District is contingent upon the level of education and the years of experience of each employee. The conditions precedent to advancement within the matrix are completion of an additional year of teaching experience and/or completion of additional educational credits.

To argue that the 1983 - 84 salary level could be negotiated and awarded retroactively in a successive collective bargaining agreement is to ignore the essence of this issue. The stability of the status quo and therefore the environment in which collective bargaining is undertaken is crucial to assuring the equal status of the parties. While a prior collective bargaining agreement is in existence, its terms serve to preserve the relationship between the parties and govern the operations and functions of the school system. Thereafter, to permit one party to unilaterally impose a change in the existing terms and conditions of employment without prior negotiation and, at least, prior to impasse would be to permit that party to acquire an unfair tactical advantage effectively prohibiting the establishment of terms and conditions of public employment through bilateral negotiation.

It is similarly ineffective to argue that to require the District to pay the experience-credit increments prior to reaching a successive collective bargaining agreement places the District at a financial disadvantage. The obvious and stated purpose of this Act is to assure the orderly and uninterrupted operations and functions of the public school system by providing for collective bargaining between the parties. The Act has provided that an obligation shall not be enforceable against a public school employer if such obligation would be inconsistent with any statutory limitation on the funds, spending or budget of that employer. 14 Del.C. §4013(e). Also, other remedial avenues are available to a party who is genuinely unable to meet its obligations. It is not our function to provide for the conservation of district funds through the destruction of the bargaining environment and relationship but rather to administer the provisions of the Public School Employment Relations

Act and facilitate collective bargaining between the parties.

A number of other jurisdictions have been confronted with factual disputes in the public sector very similar to that presented in this case. The New Jersey Supreme Court, in Galloway Township Board of Education v. Galloway Township Education, (N.J.Supr., 393 A.2d 218 (1978)), held that a district's failure to pay an annual step increment, as provided for in a salary schedule contained in an expired collective bargaining agreement, was an unfair labor practice in that it constituted an unlawful refusal to negotiate in good faith and an unlawful interference with the employee's exercise of their statutory rights. Although the decision was based on the district's failure to meet its statutory obligation to be bound to a salary schedule for a period of two years, the New Jersey court includes logic which is useful here in its decision. In following the Katz principle, it is important to determine whether the annual increment is "automatic", in which case it is considered as part of the status quo, or whether it is "discretionary", in which case its grant or denial would be subject to negotiation. Automatic increases do not disrupt the bargaining relationship because they do not represent actual changes in terms and conditions of employment, as they are recognized and accepted as established practice. If the granting of a scheduled increase without prior negotiation would not be unlawful, then withholding of the same increase would be an unlawful change in the bargaining relationship. Galloway, supra.

The District argues in the case before us that Galloway is distinguishable in that the decision is based on a statutory incorporation of a principle in New Jersey which is more expansive than the Katz principle, and to which Delaware has no correlative legislation. The New Jersey

decision states that the expansiveness of their law is premised on its unlimited applicability to all periods in the labor relationship, whereas Katz specifically applies to the period of negotiation for a new or successive collective bargaining agreement. Galloway, supra, at p. 230, n.9. This distinction is inconsequential in that in the matter before us, the action occurred during a period of negotiation for such a successive collective bargaining agreement. The principles upon which this decision is based are established law in this jurisdiction. While one or more of the parties may not have been aware of or fully understanding of the law as it exists, this cannot be a justification for action in derogation of that law.

Being aware of Board of Cooperative Educational Services, etc. v. New York PERB (N.Y. App., 395 N.Y.S.2d 439 (1977)), and subsequent Statutory modification in New York, suffice it to say that the rationale contained herein leads, in my opinion, to the most logical and equitable decision, and the one most consistent with the Delaware statute and the law of this jurisdiction.

To permit the School Board to unilaterally deviate from the payment of salaries based upon the negotiated salary schedule effectively permits it to decrease the level of pay agreed upon for a given number of years of experience.

Our decision today is consistent with the majority view on this matter. See also Nassau Teachers Assoc., [Administrative Rulings] Pub. Employee Bargaining Rep. (CCH) para. 42, 872 (April 30, 1982).

#### Conclusions of Law

Based on the foregoing, I make the following conclusions of law:

1. The Appoquinimink School Board is a Public School Employer within the meaning of Section 4002 (M), of the Delaware Public School Employment Relations Act.

18 (Supp. 1982)

2. The Appoquinimink Education Association (DSEA, NEA) is an Employee Organization within the meaning of Section 4002(g) of the Delaware Public School Employment Relations Act 14 Del. C. §400118 (Supp. 1982).
3. The Appoquinimink Education Association is the Exclusive Bargaining Representative of the School District's certificated professional employees within the meaning of Section 4002 (J) of the Delaware Public School Employment Relations Act 14 Del. C. §4001-18 (Supp. 1982).
4. By unilaterally failing to recognize a year of service credit for all teachers earning such credit in the 1982-83 school year and failing to pay such teachers the salary increment to which their total years of experience entitled them, without first bargaining at least to the point of impasse, the School Board violated Section 4007(a) (5) of the Act.
5. By engaging in the conduct described above in paragraph 4, the School Board did not violate Section 4007(a) (1) of the Act. There is not sufficient evidence on the record to warrant a finding that the Board interfered with, restrained or coerced any employee in or because of the exercise of any right guaranteed under this Chapter.

Remedy

Pursuant to Section 4006(h) (2) of the Act, the Appoquinimink School Board is ordered to:

a. Cease and desist from:

1. Refusing to give effect to accrued "year of service" experience of certificated professional teachers, thereby unilaterally decreasing the teacher's wages, without first bargaining the issue to at least the point of impasse, during the pendency of the negotiations.

2. The School Board shall take the following affirmative action:

- a. Recognize a year of service credit for all certificated professional teachers who earned such credit during the 1982-83 school year.
- b. Pay to all such eligible teachers the step increment withheld effective September, 1983, retro-active to the date for which each first received pay.
- c. Notify the Public Employment Relations Board in writing within thirty (30) calendar days from the date of this Order of the steps that have been taken to comply with the Order.

It is so ordered.\*\*

Charles D. Long

CHARLES D. LONG  
Executive Director  
Delaware Public Employment Relations  
Board

D. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD  
Administrative Assistant  
Delaware Public Employment Relations  
Board

\*\* A clarifying comment is necessary relative to the "economic impact" of this decision. The Board is aware of §4006(h) (2) of the Act, which states, in part:

In no case, however, should it be empowered, either directly or through a fact-finder, to mandate to the public school employer action which involves an economic cost to the public school employer.

In this particular matter, there is no mandate by the Public Employment Relations Board to the public school employer of an action which involves an economic cost to the public school employer. The award contained herein results from the interpretation and application of law to the given factual situation.