PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

IN RE:	:	
	:	
KENT VOCATIONAL TECHNICAL EDUCATION ASSOCIATION, INC.	:	**REP. PET. NO. 85-02-002**
Kent Co. Vocational Technical School	:	
P.O. Box 97	:	
Woodside, DE. 19980	:	

DECISION ON QUESTION CONCERNING REPRESENTATION

The issue to be resolved concerns a question of representation in the Kent County Vocational Technical School District. The parties of interest are the Kent Vocational Technical Education Association, Inc., hereinafter the Association; the Delaware State Education Association, hereinafter DSEA; the American Federation of Teachers, hereinafter AFT; and the Kent County Vocational Technical School District, hereinafter the District. The AFT, while notified of the matter, has neither responded nor otherwise participated in the proceedings.

A collective bargaining agreement is currently in effect between the Kent County Vocational Technical School District and the Kent Vocational Technical Education Association, Inc., Local #4108, American Federation of Teachers, Inc., AFL-CIO. The effective date of the Agreement is July 1, 1982 and the Agreement continues in effect until the last day of June, 1985. The controlling law is the Public School Employment Relations Act, 14 Del.C. §§4001-4018 (Supp. 1982), hereinafter referred to as the Act.

FACTS

The relevant facts are determined to be as follows:

On February 27, 1985, DSEA filed with the Delaware Public Employment Relations Board, hereinafter the PERB, a "petition for exclusive recognition on behalf of the Kent Teachers Association, an affiliate of DSEA/NEA". The petition is supported by authorization cards sufficient to meet the thirty percent statutory requirement for certification petitions. 14 Del.C. §4011(a). Notice of the Petition was forwarded to the District and was posted "in all areas where notices affecting public school employees" are posted for a period of ten (10) days. Regulation 3.5, Rules and Regulations, Public Employment Relations Board, State of Delaware (1984).

An informal conference was scheduled for March 25, 1985 for the purposes of discussing alternatives available in processing the petition and to clarify the record. In attendance at this meeting were representatives of the District, the Association, DSEA and the PERB.

On March 27, 1985, two days after the informal conference, the membership of the Kent Vocational Technical Education Association, Inc., Local #4108, DFT/AFT, held a meeting at which it unanimously voted by a secret ballot vote to change its affiliation from AFT, Inc., AFL-CIO to DSEA/NEA. On April 3, 1985, thirty five of the thirty seven members of the bargaining unit unanimously voted by secret ballot vote to support the affiliation vote of the union membership. The affiliation action taken by KVTEA, Inc. is in accord with Article II §b of the local Association's constitution. On April 4, 1985, the President of KVTEA, Inc. advised the AFT by letter, addressed to its president in Washington, D.C., of

the local Association's decision to change affiliation.

In response to a request from the Executive Director of the PERB, the District submitted its position concerning the petition for recognition filed by DSEA on behalf of the Association. The District's position was that a PERB sponsored election should be held in order to determine the appropriate representative, if any. An addition to that response was filed on April 16, 1985 and contained therein was confirmation that the District had been notified of the affiliation votes of March 27 and April 3, 1985. The District's position, as stated in its April 16 communication was "that unless the union is granted exclusive representation rights by the PERB, the School Board does not have the authority to begin to negotiate with DSEA".

On April 25, 1985, in order to assure that due process requirements were met, the PERB notified the Delaware Federation of Teachers, AFT, of the pending recognition petiton filed on behalf of KVTEA, Inc. and requested the Federation to submit its position not later than May 3, 1985. To date, there has been no response from DFT/AFT. Also on this date, the PERB requested the KVTEA and the District to supply detailed information concerning the initial certification of the Association and any subsequent changes to the original certification. Both the District and the Association complied with the Board's request in a timely fashion.

Also on April 25, 1985, the PERB received from the Association written notification of the affiliation votes of March 27 and April 3, 1985 and a statement of the procedure used to conduct the two affiliation votes. The Association also requested that the PERB amend the original certification of the existing bargaining agent so as to clarify the change

in affiliation.

The District continues to maintain that a PERB sponsored election should be held in order to establish the status of the bargaining representative in the Kent County Vocational Technical School District.

Currently before the PERB are the petition of February 27, 1985 filed by DSEA on behalf of the Association and the Association's written request of April 25 that the PERB "amend the original certification for the existing bargaining agent to clarify the new affiliation".

ISSUE

Whether or not the change in affiliation from DFT/AFT to DSEA/NEA adopted by secret ballot vote of the union membership and approved by secret ballot vote of the bargaining unit is sufficient to establish KVTEA, Inc., DSEA/NEA as the exclusive bargaining representative or whether a PERB sponsored election must be held?

OPINION

This is the first instance where the Public Employment Relations Board has been called upon to resolve an issue concerning representation and certification. The fact that this matter also contains the element of affiliation further complicates the situation. It should be noted from the outset that the relationship of affiliation status to recognition and certification is, at times, difficult to determine and often turns on the specific circumstances of the given situation.

In resolving the issue at hand, it is helpful to review in greater detail the historical relationship of the parties as it relates to recognition, certification and affiliation. According to the documentation submitted by the District and Association, the initial recognition occurred in 1970 when the District recognized the Kent Center Teacher's Association as the exclusive bargaining repesentative for the Kent Center staff. Prior to the collective bargaining agreement effective July 1, 1976, there is no record of a written agreement between the parties. The parties to both the 1976 agreement and the subsequent agreement effective July 1, 1978 were the Kent County Vocational Technical School District and the Kent Vocational Technical Education Association. The Recognition Article from both of these Agreements states:

> A. The Board hereby recognizes the Association as the exclusive Negotiating Representative of the Certified Non-Administrative Instructional employees, not including supervisory or staff personnel of the District.
>
> B. Definitions
> 3. The Association, as used in this Agreement, shall mean the Kent Vocational Technical Education Association.

According to these contractual provisions and relevant portions of School Board Meeting Minutes, it is sufficiently clear that the original certification and recognition extended to the local Association.

On September 5, 1980, in accord with the provisons of 14 Del.C. §4004, the KVTEA applied to the District for exclusive bargaining representative status as an affiliate of DFT/AFT, AFL-CIO. This request resulted from a prior internal vote of the local Association's membership and as a result of the request, a general election was held. The choices on the election ballot were: (1) Kent County Independent Vocational Technical Education

Association; (2) Kent Vocational Technical Education Association, Inc., Local #4108, DFT/AFT, AFL-CIO; and (3) No Negotiating Unit Desired. In accord with the prior internal vote of the Association, KVTEA as an affiliate of DFT/AFT, AFL-CIO received a majority of votes cast and was certified by the School Board.

Thereafter, collective bargaining agreements were negotiated in 1981 and 1983. The parties to these two contracts were the Kent County Vocational Technical School District and the Kent Vocational Technical Education Association, Inc., Local #4108, American Federation of Teachers, Inc., AFL-CIO. Article II, 2.1 Recognition, identical in both Agreements states:

> 2.1 RECOGNITION The Board hereby recognizes the Association as the exclusive negotiating representative for collective negotiations for two (2) years from date of certification, as defined in Chapter 40, Title 14, Del.Code, Section 4006a, in all matters related to salaries, employee benefits, and working conditions for: Certified Teachers, Certified Guidance Counselors, and Certified Nurses.

As was the case with the 1976 and 1978 Agreements, the District in both the 1981 and 1983 Agreements continued to recognize "the Association" as the exclusive bargaining representative. The 1981 and 1983 collective bargaining agreements were entitled an Agreement between the District and the Association and authorized representatives of these two parties were the only signators to the agreements.

A second document requiring consideration and analysis is the KVTEA Constitution, specifically Article I and Article II, which state:

> Article I - Name: Kent Vo-Tech Education Association
>
> Article II - Purpose: Shall be to afford its members the opportunity to serve as an organized group.
>
> b. This association can be affiliated with State/and

> or National Education Associations operating on a fiscal year, beginning September first.

These provisions provide a clear intention on the part of the Association to exist as an independent body, with the authority to control its own destiny concerning the question of affiliation. The Association may expressly affiliate with a state or national education association whose fiscal year commences September first. In so deciding whether or not to affiliate, the Association necessarily must also retain the authority to determine with whom it will affiliate. There is no constitutional limitation on its authority to change its decision.

Both the February 25 petition for exclusive recognition and the letter of April 25 requesting amendment of the certification reflect an effort on the part of the Association to have the KVTEA, affiliated with DSEA/NEA, recognized as the exclusive bargaining representative for all "certified teachers, certified guidance counselors, and certified nurses".

In considering the validity of the change in affiliation, it becomes necessary to examine not only the result of the change on both the existing certification and the continuity of representation but also to assure that reasonable due process requirements were met by the Association in reaching its decision.

It has been established, to my satisfaction, that to accept the change in affiliation and to continue to recognize the KVTEA as the exclusive bargaining representative for the existing unit is not inconsistent with the existing certification. To the contrary, when considering the history of the relationship, the Recognition Provisions of the four most recent collective bargaining agreements, and the Constitution of the KVTEA,

it would be inconsistent to hold otherwise.

Nor can it be effectively argued that to recognize the requested change in affiliation causes a break in the continuity of representation. Here, the appropriate bargaining unit remains the same, there is no change in the Association's officers, constitution or by-laws, and the new affiliation with DSEA/NEA is unanimously supported not only by the local Association officials, but also by the bargaining unit membership itself, including both union and non-union members.

The final concern is whether reasonable standards of due process were met in the Association's decision to affiliate with DSEA/NEA and drop the affiliation with DFT/AFT. I find they were. The Association's letter of April 25 clearly sets forth the procedures followed:

> On March 27, 1985, the membership of the Kent County Vocational-Technical Education Association, Local #4108, AFT, AFL-CIO by a margin of 11-0 voted to affiliate with DSEA/NEA.
>
> On April 3, 1985, the entire bargaining unit was asked to support or reject the change in affiliation from DFT/AFT, AFL-CIO to the DSEA/NEA. Each person listed as a bargaining unit member was given a ballot to that effect. Ballots were to be marked, sealed in a large envelope that was to be signed by the voter and placed in a sealed ballot box at the school location of the voter, between 7:45 a.m. and 3:45 p.m. on that date. All voters were advised of the location of the ballot box and of the election procedures. Voters signed the bargaining unit list at the time of voting. At the conclusion of the voting period, the ballots were removed from the sealed boxes, the signed envelopes were checked against the signed voter lists, the small unmarked envelopes were removed and all large envelopes were set aside. All ballots were removed from the small unmarked envelopes and were counted. The procedure for counting the ballots was witnessed by two members of the bargaining unit and one school district administrator, each of whom signed the separate tally sheet. The vote was 35-0 in support of the change in affiliation.

It cannot reasonably be concluded that under the procedures utilized by the Association and the circumstances here present, reasonable due process

requirements were not satisfied. While it may have been preferable to have conducted one vote instead of two, it is not the function of this office to substitute personal judgment for that of the Association.

Where it is not inconsistent with the existing certification, where continuity of representation is present, and due process requirements are met, questions of affiliation are best treated as internal union matters. Absent a result inconsistent with the existing certification, lack of continuity of representation, or violations of reasonable procedural due process requirements, affiliation questions are not properly subjects requiring PERB intervention.

An additional consideration in deciding this matter was the fact the AFT was timely notified of the change in affiliation on two separate occassions: once by the Association, at its national headquarters in Washington, D.C., and once by the PERB at its state office in Wilmington. At no time did the DFT/AFT contest the change in affiliation and this, in itself, is consistent with the autonomy herein afforded the Association to govern itself as to affiliation.

To recognize the change in affiliation clearly upholds the desires of the bargaining unit members. It is not the function of the PERB to inject itself into an issue, thereby causing a delay in pending labor-management matters and creating the potential for disruption and disharmony where none exist. To do so would be contrary to the purpose and spirit of the Act.

While the District would admittedly prefer to have the choice of "no representative" available to the bargaining unit, a question of affiliation is not a statutory basis for this choice; if, in fact, no

representation is desired by a sufficient number of bargaining unit members, there is a statutory avenue to follow. It is not for this Board to presuppose the desires of employees and there has been no such effort to utilize this statutory option.

CONCLUSIONS OF LAW

1. The Kent County Vocational Technical School District is a Public School Employer within the meaning of 14 Del.C. §4002(m).

2. The Kent Vocational Technical Education Association is an Employee Organization within the meaning of 14 Del.C. §4002(g).

3. The change in affiliation from DFT/AFT to DSEA/NEA unanimously adopted by secret ballot vote of the union membership and unanimously approved by secret ballot vote of the bargaining unit is sufficient to establish KVTEA, DSEA/NEA as the exclusive bargaining representative.

4. The Kent Vocational Technical Education Association, DSEA/NEA is recognized as the Exclusive Bargaining Representative of the Kent County Vocational Technical School District's certificated professional employees within the meaning of 14 Del.C. §4002(j).

5. The petition filed on February 25, 1985, by DSEA on behalf of the Association, seeking exclusive recognition of the Kent Teacher's Association, an affiliate of DSEA/NEA, is now moot and is therefore dismissed without prejudice.

IT IS SO ORDERED.

Charles D. Long, Jr.

CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment
Relations Board

D. Murray-Sheppard

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

ISSUED: May 16, 1985