

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

APPOQUINIMINK EDUCATION ASSOCIATION :  
Silver Lake Elementary School :  
S. Catherine Street :  
Middletown, DE. 19709 :  
: :  
Charging Party, : U.L.P. No. 1-12-83A  
: :  
BOARD OF EDUCATION OF APPOQUINIMINK :  
SCHOOL DISTRICT :  
4th and Main Streets :  
Odessa, DE. 19733 :  
: :  
Respondent. :

DECISION ON RESPONDENT'S MOTION TO DISMISS

FACTS

The Appoquinimink School District (hereinafter District) and the Appoquinimink Education Association (hereinafter Association) were parties to a collective bargaining agreement effective July 1, 1980 and expiring June 30, 1983. Upon expiration of the Agreement, the parties engaged in negotiations over a successor agreement. During the course of these negotiations, a school board meeting was held on August 9, 1983 and a motion was presented and adopted requiring teachers to report to their buildings ten (10) minutes earlier each day than had been the prior practice. In attendance at the meeting of August 9, was Richard Nabb, President of the Association.

On September 7, 1983, the first in-service day for teachers, the teaching staff was officially advised of the change in hours. According to Mr. Dallas Ashby, District Supervisor, a meeting was held on September

9, 1983, between the Association president and Mr. Ashby, at which time the Association voiced its opposition to the change in hours. At a subsequent school board meeting, the decision to implement the new hours was affirmed.

As a result of the above, the Association filed an unfair labor practice charge with the Public Employment Relations Board.

Two informal conferences were held on March 30 and April 20, 1984, and were attended by representatives of both parties and the Executive Director of the Public Employment Relations Board. As a result of these meetings, a Motion to Dismiss for lack of jurisdiction was filed by the District. A briefing schedule was agreed upon and the final brief was submitted by the District on July 26, 1984.

#### POSITIONS OF THE PARTIES

The Association maintains that the Public School Employment Relations Act, 14 Del.C. §§4001 - 4018 (Supp.1982), (hereinafter the Act), was effective upon the passage by the legislature and the subsequent signing by the Governor on July 2, 1982.

The District argues that section 2 of 63 Del.Laws, c.333, controls the effective date of the Act which, it contends, is August 29, 1983. Under the saving clause of section 4, 63 Del.Laws, c.333, retroactive application of the statute is precluded and since both the contract negotiations and the decision and announcement to change the hours occurred prior to August 29, 1983, the new law does not apply and hence there can be no unfair labor practice.

## ISSUE

Whether or not the District's Motion to Dismiss for lack of jurisdiction should be granted?

## OPINION

The Public School Employment Relations Act (14 Del.C. §§4001-4018 (Supp.1982)), is the current statute governing public school collective bargaining and the resolution of public school labor disputes. This Act replaces the predecessor statute, The Professional Negotiations and Relations Act, 14 Del.C. Chapter 40.

Section 2 of 63 Del.Laws, c.333, controls the effective date of the current Act:

This Act shall be effective 60 days following the appropriation by the General Assembly of sufficient funds for the purposes set forth in the Act.

Appropriation of sufficient funds by the General Assembly occurred on June 30, 1983 and the Act became effective August 29, 1983.

Section of 63 Del.Laws, c.333, states:

This Act shall not apply to any contract negotiations between the public school employer and its employees initiated, pending, or in litigation prior to the enactment of the Act into law and said negotiations shall be controlled by 57 Del.Laws, c.298.

This Act was passed by the legislature and subsequently signed by the Governor on July 2, 1982.

The General Assembly used the term "enactment" in section 4 and the clear language of the legislature must be given effect. The fact that the Act does not become "effective" until August 29, 1983, sixty days after monies were appropriated to effectuate the Act, is not controlling.

The Petitioner argues that a fundamental rule of statutory construction generally precludes the retroactive application of statutes unless the intent to do so is plainly and unmistakably expressed in the statute. Giving effect to the plain language in the statute neither equates with nor requires retroactive application. Nor does it negatively impact the substantive rights of the parties mid-stream or produce a conflicting or inconsistent result, as only negotiations commencing after the date of enactment was affected. Upon being passed by the legislature and signed by the Governor, the legislation became law through the required legislative and legal acts.

The case of In re Raimondi (N.D. Cal., 126 F.Supp. 390 (1954)), cited by the District in support of its position, involves a deportation order. In that particular case, a literal interpretation of the terms "enactment" and "effective" produced an illogical and inconsistent result, thereby prompting the Court to treat them as synonymous in order to give effect to what it termed the obvious intent of the legislature. Such conflict is not the case in the matter before us.

In addition, it is noted that, while not a basis for the ruling in this matter, U.L.P. No. 1-3-84-3-2A, recently decided on August 14, 1984, raised the issue of "hours" and whether or not it constituted a mandatory or permissive subject of bargaining under the Act. It was decided that the Association's hours proposal, as presented, did not constitute an inherent managerial policy exception and was therefore a mandatory subject of bargaining. Lack of jurisdiction was not raised as a defense in that matter, although the same subject matter, the same negotiation period, and the provisions of the same Act were involved and argued.

The clear language of the statute is dispositive of the issue before

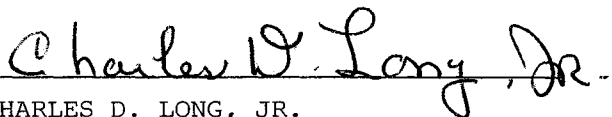
us and it is therefore unnecessary to consider other arguments of the parties in support of their positions.

Finally, the above conclusion is consistent with the advice of the office of the Attorney General of the State of Delaware.

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 §4002(m) of the Act.
2. The Appoquinimink Education Association (DSEA, NEA) is an Employee Organization within the meaning of §4002(g) of the Act.
3. The Appoquinimink Education Association is the exclusive bargaining representative of the School District's certificated professional employees within the meaning of §4002(j) of the Act.
4. For the reasons stated above the School District's Motion to Dismiss for lack of jurisdiction by the Public Employment Relations Board is denied.

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

DATED: August 24, 1984