

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

SEAFORD SCHOOL BOARD, :
Petitioner, :
v. : Petition No. 1-DS-3-84-1-1-S
SEAFORD EDUCATION ASSOCIATION, :
DSEA/NEA, :
Respondent. :

DECISION IN RESPONSE TO REQUEST FOR DECLARATORY STATEMENT

FACTS

Petitioner, the Seaford School Board (hereinafter "School Board"), and the Seaford Education Association DSEA/NEA (hereinafter "Association") have been engaged in the negotiation of a collective bargaining agreement since approximately March 1, 1983.

In its contract proposals, the Association has included language relating to (1) the process resulting in the appointment of personnel to teaching positions, (2) the form and method of evaluations, and (3) procedure(s) whereby bargaining unit employees may question aspects of the employment relationship contained in School Board Policy and not in the collective bargaining agreement.

The School Board's position is that the subjects for which the declaratory statement is sought are either illegal or permissive and that the School Board cannot, therefore, be required to bargain with regard to these matters. The basis for the School Board's position is that through the mandate of state statutes, other than the Public School Employment

Relations Act (14 Del.C. §§4001-4018 (Supp.1982), hereinafter "the Act"), the School Board retains unto itself the exclusive right to administer to these area over which the dispute as to negotiability exists.

The Association's answer is that with regard to item #1, the final decision to appoint personnel to teaching positions, and item #3, grievance procedure, both matters have been negotiated throughout the course of the current negotiations, and only item #2, form and method of evaluation, has the School Board refused to negotiate. As to item #1 alone, the Association does not contest the School Board's right to make the final decision. The Association takes issue with the scope of the School Board's interpretation of the term "final decision". The Association also states that the School Board's indicated willingness to negotiate over a broad range of topics was a motivating factor for the Association's willingness to compromise and reach agreement on a number of other items. The Association contends that to now permit the School Board to refuse to negotiate and remove items from the table on the basis of their being permissive would seriously damage the bargaining that has taken place to date. The Association also contends that each of the three areas here in question are, in fact, contained in the prior collective bargaining agreements between the parties.

On March 28, 1984, an informal conference was held involving authorized representatives of the parties, including Mr. Goldlust for the School Board, Messrs. Sandler, Bushweller and Bubb for the Association, and Mr. Long, Executive Director of the PERB. The primary purpose of the conference was to attempt to define the issues involved and to clarify the positions of the parties.

REQUEST

The petitioner requests that the PERB declare the three areas noted in paragraph 2 of the Facts section to be either prohibited areas of bargaining or, in the alternative, to be permissive areas of bargaining, and that the Association cannot insist on bargaining these matters to impasse in the face of the School Board's refusal to negotiate them.

OPINION

The Public School Employment Relations Act itself provides in §4006(h)(4) that the PERB is "to formulate by rule a procedure for the filing and prompt disposition of petitions for declaratory statement as to the applicability of any provisions of this chapter or any rule or order of the Board".

The basis upon which the PERB formulated its proposed rules and regulations was its perception of what ought to exist in order to best provide for the effective and efficient administration of the Act. No change occurred in proposed Regulation 6, Petitions for Declaratory Statement, from the date of its initial drafting in February, prior to the issuance of the proposed rules and regulations on March 20, 1984. It is apparent that this petition was drafted essentially in accord with the requirements of the proposed rules and regulations. The analysis contained herein would be the same with or without the existence and/or adoption of the PERB's rules and regulations.

Regulation 6 sets forth the requirements for filing and the procedures for processing petitions for declaratory statements. Section 6.1(b)(i) and (ii) require a controversy as to either a potential unfair labor practice

or as to the application of any provision of the Act, or regulation of the Board. Section 6(b)(ii) requires the presence of a controversy over whether a matter is within the scope of collective bargaining as defined by the Act.

Section 6.1(c)(i), (ii), (iii), and (iv), set forth the factors required to establish the necessary controversy. Specifically, factor (iv) requires that the matter has matured and is in such a posture that the issuance of a declaratory statement by the PERB will facilitate the resolution of the controversy.

The obvious purpose of a declaratory statement is to "facilitate the resolution of a controversy". In Seaford Ed. Assoc. v. Bd. of Ed., Case No. 2-2-84, the PERB stated:

The Board [PERB], agreeing the Supreme Court of Pennsylvania in Pennsylvania Labor Relations Board v. State College Area School District, (Pa. Supr., 337 A.2d 262 (1975)), recognizes the wisdom of refraining from attempting to fashion broad and general rules that would serve as a panacea. The obviously wiser course is to resolve disputes on a case-by-case basis until there is developed, through experience, a sound basis for developing general principles. Pa. L.R.B. v. State College A.S.D., Supra. at p.265.

While there may arguably exist questions related to the scope of bargaining under Section 6.1(b)(ii), this opinion does not reach that issue here as the petition presents no apparent controversy sufficient to meet the requirements of Section 6.1(c)(iv). For this reason, the petition must be dismissed. The PERB reaches this conclusion for the reasons set forth below.

At the informal conference held on March 28, 1984, the School Board explained its request essentially, as follows:

1. Final Decisions as to Who Shall be Appointed to a Teaching

Position - The School Board perceives a "teaching position" to mean any opening created by any means including, but not limited to, reduction in force (RIF), transfer or promotion, and the word "appointment" to mean the assignment to any teaching position.

2. Form and Method of Employee Evaluations - The School Board defines "form" as literally the form upon which the evaluation is to be recorded and the "method" to be the substance of the evaluation process including the procedure and the criteria. As a result, the School Board would retain the exclusive right to set up any criteria it chooses and to change that criteria at any time and for any reason it sees fit.
3. Grievance Procedure for Non-Contractual Items - The School Board maintains that matters of policy cannot be placed in the collective bargaining agreement; however, in some instances the School Board may see fit to include such matters in a Policy Manual. This Policy Manual is changeable at will and cannot therefore be subject to a contractual grievance procedure. The School Board maintains that there can be no intrusion into either substance or procedure in the area of policy, which by its very nature remains unilaterally in the control of the School Board.

It is unnecessary to restate or evaluate the Association's position.

The subject matter concerning which the School Board requests a declaratory statement is so broad and general that it does not fulfill the requirements of "controversy" as necessary by Section 6.1(c)(iv) of

the PERB rules and regulations.

To issue a declaratory statement that these three general subject areas are either illegal or permissive would be to effectively remove from bargaining a wide range of subjects, most of which are of the utmost concern to the Association and its members. Job security through lay-off, promotion, and transfer procedures, the performance evaluation form and method, and grievance procedures are not to be lightly disregarded.

This decision does not deny the proposition that the "final decision" in a given area may rest exclusively with the School Board and therefore may not be a proper subject for collective bargaining. It does not, however, necessarily follow that all phases of the process leading to the final decision are also improper subjects of bargaining. Within the total framework of the Public School Employment Relations, it is quite possible that specific proposals within each of the broader areas here in question could be determined to be either illegal, permissive, or even mandatory subjects of bargaining.

Section 4001 of the Act obligates boards of education and school employee organizations to bargain collectively as to terms and conditions of employment. Section 4002(p) of the Act defines "terms and conditions of employment" to mean "matters concerning or related to wages, salaries, hours, grievance procedures and working conditions". Absent precedent in the form of judicial or administrative interpretations of the appropriate provisions of the Act, it is unwise to attempt to hastily fashion broad and general rules that eliminate whole areas from the bargaining process at the unilateral option of either party or as a matter of law, and to address specific issues that have never been raised. It is the stated intention of the PERB to formulate broader principles based only on decisions resulting

specific and narrow questions. To do otherwise breeds vagueness, imprecision and confusion.

As to item #1, the Association does not dispute the School Board's right to make the final decision in the appointment of individuals to teaching positions. Their difference occurs over what constitutes the "final decision" and the meaning of the terms "appointment" and "positions". Similarly, in item #2, the breadth of the phrase "form and method", as interpreted by the School Board, renders it impractical to declare it, in total, either illegal or permissive. Conceivably, some portion or portions of the evaluation process may even be mandatory subjects for bargaining. As to item #3, while more limited in scope than either item #1 or item #2, it is also too broad an area to be determined as presented. Whether a subject is illegal and therefore prohibited, or permissive and therefore discretionary, may well depend upon the specific subject matter for which the procedure is sought.

The areas in issue are simply too general and too vague to permit a meaningful statement as to the status of their negotiability. To issue the declaratory statement sought by petitioner would be meaningless, as such a statement would not reach the specific proposals of the Association. Each specific proposal deserves consideration not only as it relates to the others, but also on its own merit. Only in this manner will a decision by the PERB as to the status of their respective negotiability fulfill the requirements of Section 6.1(c)(iv) of the PERB rules and regulations and "facilitate the resolution of the controversy".

DECISION

For the reasons stated herein, the PERB declines to issue a declaratory statement as requested by the petitioner.

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