

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

CHRISTINA SCHOOL DISTRICT, :
Petitioner, :
 :
v. : Petition No. DS-3-2-84-CH
 :
CHRISTINA AFFILIATE, :
NCCEA/DSEA/NEA, INC.. :
Respondent. :

DECISION IN RESPONSE TO REQUEST FOR DECLARATORY STATEMENT

Facts

Petitioner, the Christina School Board (hereinafter "School Board"), is currently involved in collective bargaining over a successor labor agreement with the Christina Affiliate, NCCEA/DSEA/NEA, Inc. (hereinafter "Association").

The filing of this petition arises from a contract proposal of the Association requesting that the parties "submit their differences as to the interpretation or application of the collective bargaining agreement, Board policy, or administrative regulations to an arbitrator for a final and binding decision". The School Board contends that in order to make a decision as to whether it will elect to negotiate grievance procedures which include grievance arbitration it must know whether grievance arbitration may be advisory. The School Board contends that it must know whether the definition of arbitration set forth in Section 4002(b) of the Public School Employment Relations Act (14 Del.C. §§4001-4018 (Supp.1982), hereinafter

"the Act"), necessarily defines the word arbitration if it is included in the successor labor agreement. If so, reasons the School Board, grievance arbitration is arguably binding even if the collective bargaining agreement specifies that grievance arbitration is advisory.

The Association's response to the School Board's petition is, essentially, as follows:

Traditionally, when the word arbitration is used by itself, it is, by implication, binding. However, when the word "advisory" is used in connection with the word "arbitration", it modifies the meaning to remove the binding feature. Of course, some other word would be chosen to accomplish the same purpose if there is any lingering doubt. The Association would have no opposition to a declaratory statement that, by agreement of the parties, arbitration can be non-binding.

Request

The petitioner requests that, in order for the School Board to formulate a position concerning whether it will negotiate with respect to "advisory arbitration", the PERB should issue a declaratory statement that the parties may agree upon advisory grievance arbitration.

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 statements as to the applicability of any provisions of this chapter or any rule or order of the Board".

The Proposed Rules and Regulations of the Public Employment Relations Board had been published at the time of the filing of this petition on March 27, 1984. The basis upon which the Board 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, prior to the issuance of the Final Rules and Regulations. It is apparent that this petition was drafted in accord with the requirements of the proposed rules and regulations. Therefore, the analysis contained herein would be the same with or without final 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 scope of bargaining issues. Neither is applicable to this petition, as presented. Section 6.1(b)(iii) requires the presence of a controversy as to the application of any provision of the Act, or regulation of the PERB.

Section 6.1(c)(i), (ii), (iii), and (iv) set forth the factors required to establish the necessary controversy. Factor (iv) requires that "the matter be in such a posture that the issuance of a declaratory statement by the Board [PERB] will facilitate the resolution of the controversy".

While the PERB is sensitive to the legitimate and periodic needs of parties engaged in the collective bargaining process for assistance in disposing of unresolved issues and questions, it is also keenly aware that for collective bargaining to achieve a primary objective of continuing harmonious and cooperative relationships, its result must be based upon the mutual agreement of the parties. The more the parties accomplish them-

selves, the more enduring and secure will be the application of their agreements. Only where self-help can no longer achieve progress or agreement should resort to third party intervention occur. It is in this light that the requirements of Section 6.1(b) and (c) must be interpreted.

While there may arguably exist a question of applicability under Section 6.1(b)(iii), this opinion does not find it necessary to reach this issue as there is 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 following reasons:

I. The first and perhaps most obvious reason, is that the protection sought by the petitioner is readily available to the parties in the form of self-help through contractual language. In fact, such language exists in the current agreement in Article 11, Miscellaneous, §11.1, which states:

If any provision of this Agreement or any application of this Agreement is held to be contrary to law then such provision shall be null and void. However, all other provisions or applications shall continue in full force and effect. If any such provision or application of this Agreement is determined invalid, the parties shall meet to renegotiate the provision held to be unlawful.

II. Secondly, there is a technical alternative available to the parties. In the Act, the procedure whereby the parties involved in a labor dispute over the interpretation or application of an existing collective bargaining agreement submit their differences to a third party for a final and binding decision is called arbitration. The procedure with which the petitioner is concerned differs markedly from the above in two ways. First, the "interpretation and application" is not limited to the collective bargaining agreement as it also includes School Board policy or administrative regulations.

Second, the School Board's procedure does not require a binding decision, it requests only an advisory opinion. The petitioner's concern results from calling two different procedures by the same name, and can, therefore, be easily eliminated.

III. Thirdly, the parties agree that the granting of the relief sought by petitioner would permit the School Board to formulate its position concerning its willingness to negotiate on this subject. It is also apparent that the granting of the petitioner's request would not be appealed because it would simply grant that which one party sought and to which the other party agreed. A granted request is not the proper subject of appeal. A future judicial holding that "advisory arbitration" is illegal based on the application of the definition of "arbitration" in the Act could still force upon the parties the very result which the petitioner seeks to avoid. Therefore, the granting of the requested statement by the PERB would not conclusively resolve the concern of the petitioner.

It must be stressed that the PERB was created to provide necessary assistance to the parties. This is not, however, to say that all requests by the parties for assistance must necessarily be granted. Section 6.1(c) (iv) requires that the controversy in question be in such a posture that the issuance of a declaratory statement will facilitate a resolution of the controversy. The decision not to issue a declaratory statement in this matter is based on the view that this controversy is not in such a posture. For the reasons stated herein, the declaratory statement sought would not effectively resolve the concerns of the parties. The assistance sought by this request is unnecessary and if granted, would be inconclusive.

Decision

For the reasons stated above, the PERB declines to accept jurisdiction and to issue a declaratory statement as requested by the petitioner.

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