PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

LAKE FOREST EDUCATION ASSOCIATION R.D. 3, Box 830A Felton, DE. 19943, Charging Party, BOARD OF EDUCATION OF LAKE FOREST SCHOOL DISTRICT Dorman Street Harrington, DE. 19952, Respondent.	U.L.P. No. 1-10-84-7LF

DECISION

The dispute presented for resolution results from an alleged unfair labor practice in violation of §§4007(a)(1) and (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 October 5, 1984, by the Lake Forest Education Association (hereinafter Association) against the Board of Education of the Lake Forest School District (hereinafter District).

FACTS

The parties, by counsel, have stipulated to the facts in this case. (See Attachment #1).

An unfair labor practice charge was filed with the Public Employment Relations Board (hereinafter PERB) by the Association on October 5, 1985 and a conference was held between the parties and the Executive Director of the PERB

on November 8, 1984. As a result of this conference, the agreed upon Stipulation of Facts was jointly filed by the parties on December 5, 1984. A briefing schedule was established and the final brief was filed on January 22, 1985.

The following matters, while raised in the pleadings, are not in dispute between the parties and are not considered in the decision and supporting opinion:

1. The jurisdiction of the PERB to interpret contract language in determining whether an unfair labor practice has been committed; and

2. The question of deferral by the PERB to the contractual grievance procedure.

POSITION OF THE PARTIES

The Association contends that the notification requirements of Article VI-A of the existing collective bargaining agreement constitute a mandatory subject of bargaining; and that neither the circumstances supporting nor those resulting from the District's unilateral adoption of Resolution 84-135 (See Attachment #2) constituted an "emergency as required by Article VI-A. Therefore the resulting teacher reassignments, occurring after June 1, 1984, violated the notification requirements of Article VI-A. The Association concludes that the unilateral adoption of Resolution 84-135 and/or the resulting reassignment of teachers constitute a unilateral change in a mandatory subject of bargaining in violation of 14 Del.C. §§4007(a)(1) and (5).

The District, on the other hand, maintains that the adoption of Resolution 84-135 is not a subject which requires collective bargaining as it remains within the exclusive purview of the school board under either the exclusive managerial prerogative exception of 14 Del.C. §4002(p) or the inherent managerial policy

exception of 14 Del.C. §4005. The District argues that its decision to add an additional agriculture teacher created an "emergency", as required under Article VI-A, resulting in the right for it to reassign teachers after June 1, 1984, in accord with Article VI-A.

ISSUE

The issue presented for resolution is whether the District has engaged in an unfair labor practice in violation of 14 Del.C. §§4007(a)(1) and (5), by the unilateral adoption of Resolution 84-135 and/or the resulting reassignment of teachers on July 20, 1984.

OPINION

In order to resolve the issue before us the following questions are considered:

1. Do the notification requirements of Article VI-A of the applicable collective bargaining agreement constitute a mandatory subject of bargaining?

2. Was the decision of the District to hire an additional agriculture teacher excluded from the duty to bargain, as established by 14 Del.C. §4002(p)?

3. Did the result of the District's decision of July 17, 1984, create a need to reassign teachers sufficient to constitute an emergency under Article VI-A, thereby creating the right for the District to make post June 1 teacher assignments?

4. If not, did the resulting contract violation also function as a unilateral change in a mandatory subject of bargaining thereby constituting an

unfair labor practice?

The mutual understanding of the parties as to the meaning of Article VI-A of the Agreement is that teacher assignments shall be made and teachers so notified by June 1, except in the event of an emergency; and, that no assignments, including reassignments, shall be made after June 1 unless necessitated by an emergency. While I am not in total agreement with this interpretation of the language of Article VI-A, it is not the purpose of this decision to raise issues where none exist. Therefore, the analysis and discussion contained herein shall adhere to the mutual agreement of the parties as to the negotiated meaning and intent of Article VI-A.

As to question number 1, the District does not refute the Association's contention that the language of Article VI-A is "essentially identical" to the language in Appoquinimink School District which the PERB has previously ruled constitutes a mandatory subject of bargaining. Appoquinimink Ed. Assn. v. Bd. of Ed. of Appoquinimink S.D., Del.PERB, U.L.P. No. 1-3-84-3-2A (August 14, 1984). I am in agreement that the Appoquinimink decision is controlling and the the notification requirements of Article VI-A are mandatory subjects of bargaining.

It is necessary to next determine whether the District's decision to hire an additional agriculture teacher is a mandatory subject of bargaining. While the District argues that the decision to hire a teacher is excluded from the mandatory duty to bargain under either 14 Del.C. §4002(p) or 14 Del.C. §4005, we are only here required to determine whether or not the District's July decision is a mandatory subject of bargaining. If it is not mandatory, the District is under no obligation to consult with the Association. 14 Del.C. §4005, School Employer Rights, in establishing the permissive exception to mandatory subjects of bargaining, states:

A public school employer is not required to engage in collective bargaining on matters of inherent managerial policy which include but are not limited to such areas of discretion or policy as the functions and programs of the public school employer, its standards of services, overall budget, utilization of technology, the organizational structure, curriculum, discipline and the selection and direction of personnel.

There is little question that the hiring of a teacher is the ultimate step in the "selection of personnel". The right and responsibility to hire, including the reasons upon which the decision is based, are traditionally reserved exclusively to the employer and are truly matters of inherent managerial policy. The "selection and direction of personnel" is expressly enumerated in 14 Del.C. §4005 as an inherent managerial policy and cannot be considered a required subject of bargaining. It is therefore unnecessary to apply the balancing test set forth in the Appoquinimink decision (Supra., August 14, 1984). However, the result of such application would be consistent with the result reached here in that the impact on the school district as a whole, of selecting and hiring teachers, clearly outweighs its direct impact on the individual teacher in wages, salaries, hours, grievance procedure and working conditions. Appoquinimink, (Supra., August 14, 1984). To hold otherwise would be to infringe upon the ultimate decision making authority of the employer. For the reasons stated above, it is determined that the school board's unilateral decision of July 17, 1984, to hire an additional agriculture teacher is clearly excluded from the mandatory bargaining requirement of 14 Del.C. §4002(p). Having so determined, it is unnecessary for our purpose to proceed further and determine whether or not the decision to hire might also be excluded from the mandatory bargaining requirement under the "exclusive manage-

ment prerogative" of 14 Del.C. §4002(p).

In analyzing and resolving question number three, we look first to the language of Article VI-A of the collective bargaining agreement, which states:

> TITLE VI: TEACHER ASSIGNMENT
>
> A. Notification
>
> Except in case of emergency, all teachers shall be given written notice of their respective grade and subject assignments, building assignments, and room assignments for the forthcoming year by June 1. The teacher will be notified by letter to the teacher's last known address, of any change in assignment after June 1. Upon notification of this change, the teacher will have the opportunity to set up a consultation with the principal.

The Association's Opening Brief, at page 6, states:

> The provisions of Article VI-A are indisputably procedural. They deal only with time and manner of notification to the School District's employees of their forthcoming teaching assignments.

Elsewhere, at page 7, the Association states:

> Article VI-A does not impede the public school employer's authority to make personnel assignments. It merely governs the notification of those assignments to the teacher involved.

The Association acknowledges that the provisions of Article VI-A clearly set forth procedrues for notification. It is a violation of these procedures which the Association claims constitutes an unfair labor practice.

At page 1 of its Reply Brief, the Association claims:

> ...the language of the collective bargaining agreement, Article VI-A requires that assignments be given by June 1 except in the case of an

emergency. There is no record evidence that an emergency existed requiring the addition of an agriculture teacher.

It is here that the Association's logic goes astray. Under the language quoted earlier, the Association concedes that the provisions of Article VI-A are procedural and non-limiting when it comes to the employer's right to hire and otherwise make personnel assignments. The condition precedent established by Article VI-A, i.e., the existence of an emergency, relates to the post June 1 assignment and notification to employees, not to the decision to hire additional employees. The decision to hire belongs exclusively to the School District and there is no limiting contractual requirement that a state of emergency preceed the decision to hire. According to the parties' mutual interpretation of Article VI-A, however, an emergency must exist prior to the assignment or reassignment of and notification to personnel after June 1. It is readily apparent that the District's decision of July 17, 1984, presented the need for such reassignments. The critical question to ask is whether this need to reassign teachers rises to the level of "emergency", as required under Article VI-A. The District maintains that the decision to hire created the need to reassign teachers and this need rises to the level of the required emergency; otherwise it cannot effectively meet its responsibilities.

The Association's final argument addresses this question and supports the non-existence of the required emergency, as a condition precedent to the assignment and notification of personnel subsequent to June 1. The Association avers that no emergency existed because the circumstances relied upon by the District to create the emergency were not independently caused by a third party and beyond the control of the District. This argument is without merit. It is a long established principle of contract interpretation that words be given their literal and common meaning unless they have come to constitute "words of art"

within the specific context and environment in which they are used. Such is not the case here. Webster's Eighth New Collegiate Dictionary, at page 372, defines emergency as:

> 1: an unforeseen combination of circumstances or the resulting state that calls for immediate action; 2: a pressing need.

The Association, to support its position, attempts to inject a new element into both the definition and common understanding of emergency, i.e., that its cause originate from a third party and be beyond the control of the party claiming the existence of the emergency. This new and proposed element is neither consistent with the dictionary definition nor with the commonly understood definition and usage of the word. In fact, contrary to the assertion of the Association, it can be fairly stated that the cause of many, if not most, emergencies involves the party who later asserts the existence of the emergency or is victimized by it.

To accept the Association's position that the need to reassign teachers did not rise to the level of the required emergency would be to permit contractual language concerning procedural notification requirements to prevent the District from implementing a policy decision which it had the statutory authority to make. To so conclude would be illogical, if not illegal. Under Mt. Pleasant School District v. Wander (Del.Super., 375 A.2d 478 (1975)), the Superior Court of the State of Delaware held:

> The vesting of broad powers in the local school board must carry with it the power to take all steps reasonably necessary to carry into effect those powers.

It is therefore held that the need to reassign teachers after June 1, 1984, did, in fact, rise to the level of the required emergency and there is no resulting

violation of Article VI-A of the collective bargaining agreement.

In determining that the requisite emergency did in fact exist, it becomes a moot question as to whether the alleged contract violation might also constitute an unfair labor practice.

CONCLUSIONS OF LAW

1. The Lake Forest School Board is a Public School Employer within the meaning of 14 Del.C. §4002(m).

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

3. The Lake Forest Education Association is the Exclusive Bargaining Representative of the Lake Forest School District's certificated professional employees within the meaning of 14 Del.C. §4002(j).

4. The notification requirements of Article VI-A of the applicable collective bargaining agreement constitute a mandatory subject of bargaining.

5. The decision of the Lake Forest School District on July 17, 1984, to hire an additional agriculture teacher did not constitute a mandatory subject of bargaining and therefore, did not require negotiations or consultation with the Association.

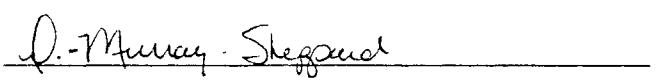
6. The result of the District's decision on July 17, 1984 created a need to reassign teachers which was sufficient to constitute an emergency under Article VI-A of the applicable collective bargaining agreement thereby creating the right for the District to make post June 1 teacher reassignments.

7. By unilaterally adopting Resolution 84-135 of July 17, 1984, thereby

adding a teacher at the high school and thereafter reassigning teachers subsequent to June 1, 1984, the Lake Forest School District did not engage in an unfair labor practice in violation of 14 Del.C. §§4007 (a)(1) and (5).

It is so ordered.

CHARLES D. LONG
Executive Director
Delaware Public Employment
Relations Board



DEBORAH L. MURRAY-SHEPPARD
Principal Assistant
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ISSUED: February 27, 1985

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PERB

ATTACHMENT #1

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

LAKE FOREST EDUCATION ASSOCIATION, R.D. 3, Box 830A Felton, DE 19943 (302) 284-4856 Charging Party,	)	U.L.P. No. 1-10-84-7LF
BOARD OF EDUCATION OF THE LAKE FOREST SCHOOL DISTRICT Harrington, DE 19952 (302) 398-3244 Public School Employer.	)	

STIPULATION OF FACTS

The parties hereto, by counsel, hereby stipulate to the following facts:

1. Due to anticipated decline in enrollment at the High School, the District decided to eliminate two teaching positions. In an effort not to cut core curriculum at the High School, the decision was made to cut one teacher in both the Business Department and the Agriculture Department. A business teacher, under a temporary contract, was laid off. In order to prevent Michael Coverdale, a tenured teacher in the Agriculture Department, from losing his job altogether, he was involuntarily transferred to an unfilled science position at the Middle School.

2. Staffing decisions were then made based on the available staff and on or before June 1, 1984, in accordance with Article VI A of the

Collective Bargaining Agreement, all teachers were given notice of their respective grade and subject assignments, building assignments and room assignments for the 1984-85 school year.

3. On May 8, 1984, two new members were elected to the Lake Forest School Board.

4. On July 17, 1984, the Board of Education passed a resolution "to return the diversified occupations work COOP program to Mr. James Testerman in the Agriculture Department and that Mr. Michael Coverdale be reinstated as a vocational agriculture teacher at Lake Forest High School". The effect of that resolution was to add a teacher at the High School in the Agriculture Department. The position Mr. Coverdale was to assume at the Middle School was filled by hiring a new science teacher.

5. Due to the addition of a teacher in the Agriculture Department, several High School teachers' assignments were changed to integrate the additional teacher, Mr. Coverdale, into the schedule. These teachers were notified of their reassignments by letter mailed to their last known address on July 20, 1984.

6. The aforementioned Board resolution was passed without notifying the Lake Forest Education Association or bargaining with the Association about the subject matter of the resolution.

7. The aforementioned reassignments of teachers were carried out without notifying the Lake Forest Education Association or collectively bargaining about the subject matter of the reassignments although the

individual teachers affected were notified of the reassignments.

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Attorney for Respondent

Dated: November 29, 1984

ATTACHMENT #2

Lake Forest Board of Education Regular Meeting - July 17, 1984

RESOLUTION 84-135

Be it resolved that the Lake Forest Board of Education approve Resolution 84-135 to return the Diversified Occupations Work COOP Program to Mr. James Testerman in the Agriculture Department and that Mr. Michael Coverdale be reinstated as a Vocational Agriculture teacher at Lake Forest High School, effective July 1, 1984 and, further, that the Guidance Department be instructed to enroll any student into any Agriculture or Work COOP Course that he/she desires between now and September 30, 1984.

Roll Call Vote: Mr. Caulk - Yes
Mrs. O'Neal - *
Mr. Feutz - No
Mrs. Williams - Yes
Mr. McCready - Yes

Motion carried - 3 - 2

* I would like the record to show that I refuse to vote because this resolution was not put in three separate categories as we had asked to have it amended and that motion according to Roberts Rules has never been finalized.