STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

CAPITAL EDUCATORS ASSOCIATION c/o Delaware State Education Assn. 911 S. duPont Hwy, 1st Floor Dover, DE. 19901 (302) 734-5835, Petitioner, and BOARD OF EDUCATION OF THE CAPITAL SCHOOL DISTRICT 945 Forest Street Dover, DE. 19901 (302) 736-5500, Respondent.	: : : : : : : : : : : : : : : :	Declaratory Statement No. 87-04-012

DECISION IN RESPONSE TO REQUEST FOR DECLARATORY STATEMENT

BACKGROUND

The Capital Educators Association and the Capital School District were parties to collective bargaining agreement which expired on June 30, 1984. Included in that agreement was Article X, Class Size. During the course of negotiations over a successor agreement, the District expressed its willingness to continue the existing class size language in the ensuing agreement. The Association, however, continued to pursue its demand for a reduction in the class size schedules as set forth in

sections 10.3 and 10.4. (Section 10:3 established "specific objectives" for class size in grades K through 12 and section 10:4 established the class size which, if reached, required a meeting among the Administration, the effected teacher(s), and an Associatuon representative in order to relieve the situation by such means as may be practical.) The parties failed to reach agreement on a total package and the Association requested that the unresolved issues be submitted to fact-finding. The school disrict argued that class size was an improper subject for fact-finding since it constituted a permissive subject of bargaining which could not be bargained to impasse, by either party. The Association disagreed; but also maintained that, even if class size was determined to be a permissive subject of bargaining, the school district had, by bargaining the subject throughout the course of negotiations, forfeited any right to remove the matter from the fact-finding process. The Association requested the PERB to issue a declaratory statement resolving these differences.

On December 17,1984, the PERB held that:

4. The subject of class size, as it relates to the classroom teacher/pupil ratio, is a permissive subject of bargaining under section 4005 of the Act; and,

5. Neither the provisions of section 4015(e) nor the conduct of the parties during the course of negotiations, compels the school district to submit the issue of class size to the fact-finder for his consideration. Capital Ed. Assn. v. Bd. of Ed. of Capital S.D., Del.PERB, D.S. No. 1-11-84-3CAP (December 17, 1984).

As a result of this ruling, the subject of class size was not

a declaratory statement resolving these differences.

submitted to the fact-finder; however, the existing class size language was carried over into the current contract. (NOTE: Class Size became Article XI in the current agreement and is referred to as Article XI throughout the balance of this decision).

On January 14, 1987, the parties commenced negotiations over the terms of a contract to succeed the current agreement, which expires on June 30, 1987. The Association again proposed changes in the Class Size language, including a reduction in the aforementioned class size schedules and the addition of a new section 11.5, whereby a special education student mainstreamed into a regular class would be assigned a head count value equal to three regular students in the class count as defined in sections 11.3 and 11.4.

The Association also proposed that the existing language of the Article XII, Specialists, set forth below, be retained in the new agreement.

> ARTICLE XII: SPECIALISTS--The Board and the Association agree that an adequate number of competent specialists is essential to the operation of an effective educational program. Adequacy in numbers is determined by the analysis of need and the availability of resources of the Board and as prescribed by law. Study of needs is a proper concern of the Instructional Advisory Council established under Article Twenty-Two of this Agreement.

Based on the PERB's decision in (Capital Ed. Assn. (December 17,

ARTICLE XII: SPECIALISTS--The Board and the

1984, Supra.), and a similar determination in 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), the District refused to discuss class size and advised the Association that it considered Article XI to be non-existant, in its entirety. The District reached the same conclusion concerning the Article XII, Specialists, claiming that it constituted an inherent managerial right protected under 14 Del.C., section 4005 (Supp. 1982).

The Association again petitioned the PERB for a declaratory statement seeking a determination that the construction of the current Article XI, Class Size, and Article XII, Specialists, constitute mandatory subjects of bargaining.

JURISDICTION

The contents of the Petition and the Response being sufficient to satisfy the requirements of Regulation 6.1 of the Board's Rules and Regulations the Board accepted jurisdiction over the matter.

ISSUE

(1) Is the construction of Article XI, Class Size, a mandatory subject of bargaining?

(2) Is the construction of Article XII, Specialists, a mandatory subject of bargaining?

The contents of the Petition and the Response being sufficient to

OPINION

The issue raised in this matter is broader than that previously addressed by the PERB in Capital Ed. Assn. (December 17, 1984, Supra). There, the sole issue involved the Association's proposal to reduce the class size schedules contained in section 10.3 and 10.4 of the contract. In the current matter, the PERB is asked to review the entire language of Article XI, Class Size, and Article XII, Specialists.

I. Article XI: Class Size

The ultimate question to be answered here is whether the current language primarily relates to either the establishment of class size or to the impact of class size upon terms and conditions of employment. If the former, there is no duty to bargain; if the latter, a duty to bargain exists.

The mere fact that Article XI is entitled Class Size infers that the language contained therein was primarily intended to deal with class size. Specifically, Section 11.1 sets forth the agreement of the parties concerning the importance and desireability of limiting class size. Section 11.2 relates class size to several specific considerations, including:

> ...The capacity of the teaching facilities, the number of adequate teaching stations and pupil stations in a room. The appropriateness of the room to the content of the course or purposes to be served, methods to be employed, and the relative preparation of the teacher.....The

bargain exists.

availability of books, supplies, and equipment for adequate teacher and student use.....The general conditions which effect the health, safety and effective supervision of the pupils.

Section 11:3 establishes specific objectives for class size, in academic areas, which are subject to the considerations specified in section 11:2.

The Association, in section 3, paragraph 3, of its petition, maintains that the language of Article XI "merely establishes procedures which seek relief to situations which impact the working conditions of bargaining unit members". This interpretation is overly simplistic and herein lies the crux of the problem. First, sections 11:1 through 11:3 contain no procedures, as alleged; secondly, the effect of section 11:1 is to influence the establishment of class size by making it subject to the factors specified in section 11:2. To the extent the Association is successful in influencing class size, it obtains a corresponding degree of control over the resulting impact on terms and conditions of employment. In Appoquinimink Ed. Assn. (August 14, 1984, Supra), the PERB concluded:

> Generally where the subject matter of a given proposal relates to substance or the establishment of criteria for the ultimate decision, it tends toward permissive, as infringing on the decision-making authority of the employer. Where the subject matter of a proposal relates primarily to matters of procedure or communication, it tends toward mandatory.

Reviewing the contractual language in light of this principle, it is apparent that: section 11:1 involves substantive aspects of class size, i.e., pupil/teacher ratios and its effect upon educational programs;

obtains a corresponding degree of control over the resulting impact on

section 11:2 establishes criteria which, according to the requirement of section 11.3, influence the ultimate decision of establishing class size. Such language infringes on the decision making authority of the employer and therefore constitutes a permissive subject of bargaining over which the employer is not required to bargain.

Section 11:4 presents a somewhat different situation, for it represents the first attempt to provide a mechanism or procedure designed to consider the impact of class size on terms and conditions of employment. The subject of impact bargaining was also addressed in Capital Ed. Assn. (December 17, 1984, Supra), at p. 9, where the PERB stated:

> While class size significantly effects the operation of the district, as a whole, it also has potential impact upon the working conditions of the individual teacher. The extent of this impact on the 'terms and conditions of employment' constitutes a mandatory subject of bargaining which must be so bargained, upon request of the employee representative.

For the reasons previosly discussed, the public school employer is not required to bargain class size, including schedules and the criteria upon which they are based; however, the resulting impact upon terms and conditions of employment is a mandatory subject which carries with it the duty to bargain. The duty, however, does not require that either party agree to either existing or newly proposed language; only that it bargain in good faith.

II. Article XII: Specialists

The language of Article XII sets forth the agreement of the

mandatory subject of bargaining which must be so bargained, upon

parties concerning Specialists. The statutory duty to bargain is limited to "terms and conditions of employment" as defined at 14 Del.C. section 4002(p) to be "wages, salaries, hours, grievance procedure and working conditions". The adequate number of competent specialists and the criteria upon which such a determination is based do not fall within the statutory definition and there is, therefore, no requirement that the District bargain over this subject.

CONCLUSIONS OF LAW

1. The Capital School District is a Public School Employer within the meaning of 14 Del.C. section 4002(m).

2. The Capital Educators Association is an Employee Organization within the meaning of 14 Del.C. section 4002(g).

3. The Capital Educators Association is the Exclusive Bargaining Representative of the District's certificated professional employees within the meaning of 14 Del.C. 4002(j).

4. The content of Article XI, Class Size, sections 11.1 through 11.3 relates primarily to the establishment of class size, which is a permissive subject of bargaining, and for which there is no duty to bargain.

5. The content of Article XI, Class Size, section 11.4 relates primarily to the impact of class size on terms and conditions of employment which is a mandatory subject of bargaining and for which there is a duty to bargain.

6. The subject of Article XII, Specialists, does not come within

3. The Capital Educators Association is the Exclusive Bargaining

the definition of terms and conditions of employment (14 Del.C. section 4002(p)); consequently there exists no duty to bargain.

It is so ordered.

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