

THE PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF DELAWARE

IN RE: SEAFORD EDUCATION )  
ASSOCIATION REQUEST FOR ) No. A.D.S. 87-10-019  
MEDIATION )

OPINION

The Seaford Education Association ("Association") and the Seaford Board of Education ("Board") are engaged in a dispute, the resolution of which is governed by 14 Del. C. Ch. 40, the Public Employment Relations Act ("Act"). More specifically, the Board has appealed the decision the Executive Director of the Public Employment Relations Board ("PERB") on October 22, 1987 granting the request of the Association to mediate a dispute under the terms of the current collective bargaining agreement between them. The parties have filed memoranda in support of their respective positions. This is the decision of the Board on that appeal, affirming the decision of the Executive Director to grant the Association's request for mediation.

Facts

The parties entered into a collective bargaining agreement effective from July 1, 1986 thru June 30, 1990. Article 15 entitled "Local Salary Payments" reads in relevant part:

...15.1 The local supplement schedule for FY1987 will be as provided for in Appendix "A".

15.2 The local supplement schedule for FY1988 will be as provided in Appendix "B" unless the Board passes a current expense tax referendum during FY1987, in which case Article XV will be automatically reopened for negotiations as of July 1, 1987....

On May 19, 1987, a current expense referendum was passed by the

taxpayers of the Seaford School District. Shortly thereafter, the Association requested and the parties entered into negotiations concerning the local salary supplemental for FY1988.

Those negotiations began and ended on July 8 to September 1, but failed to result in an agreement. On September 4, the Association requested that the PERB appoint a mediator pursuant to §4014(b) of the Act which reads as follows:

...If the parties have not voluntarily agreed to enlist the services of a mediator and less than 30 days remain before the expiration date of the existing collective bargaining agreement, or, in the case of a newly certified exclusive representative, more than 90 days have elapsed since negotiations have begun, the Board must appoint a mediator if so requested by the public school employer or the exclusive bargaining representative. The mediator shall be chosen from a list of qualified persons maintained by the Board and shall be representative of the public....

The District objected, stating that it had not voluntarily agreed to the appointment of a mediator, nor could one be appointed without such an agreement under the language set forth above since the collective bargaining agreement would not expire until June 30, 1990. Its position is that the language of §4014(b) is clear and unequivocal, and does not leave the PERB with the discretion to reach any other conclusion. It also argues that the failure to provide the PERB with the authority to appoint a mediator under other circumstances means that the General Assembly did not intend for it to do so. The Association responded that the general policy considerations underlying the Act and the lack of an express prohibition in the Act against appointing a mediator in such circumstances leaves the PERB free

to take such action.

The Executive Director, in his decision below, while agreeing that the entire contract did not expire until June 30, 1990, held:

...The District's reliance on Article 4014, section (b) fails to consider the impact of Article II, Term of Agreement, para. 2.1, of the current collective bargaining agreement between the parties. It provides:

This agreement shall go into effect the first day of July, 1986 and continue in full force and effect until the last day of June, 1990, except as provided in sections 5.9, 15.2, and 15.6 (emphasis added).

The parties have, by this provision, agreed that certain contractual provisions are subject to modification during the fixed term of the contract. This voluntary agreement creates a separate and distinct expiration date for Article XV matters. The re-opener provision represents a device created by the parties to resolve an area of dispute by permitting them to deal it at a later time, upon the occurrence of the mutually agreed upon condition. A party cannot avoid impasse by agreeing to a re-opener clause, thereby enjoy the fruits of a negotiated settlement and then claim immunity from the statutory process provided for impasse resolution if, in fact, impasse results from the re-opener becoming operative. Such a position is incompatible with the good-faith bargaining requirement of the Act. By agreeing to stipulate a time, within the fixed term of the contract, when modified of Article XV could occur, the parties impliedly accepted the statutory rights and obligations which normally accompany expiration, including the availability of the impasse resolution procedures....

He found support for that construction in the private sector in the form of support rulings made by the National Labor Relations Act, 29 U.S.C. §151, et seq., the "expiration date" of a contract as used in §8(d)(4) of the Labor Relations Act. He also found a similar philosophy against construing that Act in such a manner that would produce results inconsistent with the stated purpose

of the statute. See the cases cited at page 5 of the letter opinion of the Executive Director.

Based upon the record before us, the PERB is in complete agreement with the decision and reasoning of the Executive Director. To allow the District to prevail would be to frustrate the purpose of the Act as well as the agreement entered into by the parties as to the local salary supplement. Article 2, §2.1 and Article §15, §15.2, clearly contemplate the expiration of the contract and the resumption of negotiations in that regard. Mediation under §4014 of the Act is designed to facilitate that aspect of the parties' relationship and their agreement must be read with that goal in mind.<sup>1</sup> Accordingly, the Executive Director is hereby directed to appoint a mediator to assist the parties in reaching an agreement the local salary supplement for FY1988.

PUBLIC EMPLOYMENT RELATIONS BOARD

BY: Arthur T. Van Wart  
ARTHUR T. VAN WART, Chairman

Charles H. Toliver, IV  
CHARLES H. TOLIVER, IV, Member

Dated: December 4, 1987

<sup>1</sup>In light of its decision, the PERB need not reach the alternate ground advanced by the parties as a basis for their respective position, i.e., the effect of the absence of any reference in the Act to mediation under any circumstances other than those set forth in §4014.