PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

SEAFORD EDUCATION ASSOCIATION Charging Party v. BOARD OF EDUCATION OF SEAFORD SCHOOL DISTRICT, Public School Employer	U.L.P. No. 87-10-018

DECISION

On October 22, 1987 the Seaford Education Association (hereinafter "Association") filed with the Delaware Public Employment Relations Board (hereinafter "PERB" or "Board") an unfair labor practice petition charging the Seaford School District (hereinafter "District") with violating 14 Del.C. section 4007 (a) (5) of the Public School Employment Relations Act (hereinafter "Act"). Section 4007 (a) (5) provides:

> 4007: Unfair labor practices-enumerated
>
> (a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:
>
> (5) Refuse to bargain collectively in good-faith with an employee representative which is the

exclusive representative of employee's in an appropriate bargaining unit.

FACTS

The Association and the District are parties to a collective bargaining agreement effective July 1, 1986 through June 30, 1990. Included in this agreement is Article XV, Local Salary Payments. Section 15.2, provides:

> The local supplement schedule for FY 88 will be as provided in Appendix "B", unless the Board passess a current expense tax referendum during FY 87, in which case Article XV will be automatically reopened for negotiations as of July 1, 1987.

In May, 1987, a tax referendum was passed and pursuant to section 15.2, Article XV negotiations were reopened. The parties met on several occassions during July, 1987. On July 23, the District advised the Association that it was willing to negotiate only the distribution of new equalization funds available from the State as a result of the referendum. (Equalization funds are dollars provided by the State to benefit School Districts with lesser local revenues and which are partially dependent on the level of local dollars available). On August 5, the District modified its position to include the new local dollars generated directly by the referendum. The District's position has since remained unchanged.

POSITIONS OF THE PARTIES

The Association maintains that the contract language of section 15.2 is clear and unambiguous on its face and requires the reopening of Article XV, without limitation. According to the Association, the District's refusal to bargain funds other than equalization and those those dollars generated directly by the referendum imposes an extra-contractual limitation on the scope of the negotiations which violates Section 4007 (a) (5), of the Act. Alternatively, the Association argues that even if the language of section 15.2 is determined to be ambiguous, the bargaining history concerning this provision is sufficient to establish that the intent of the parties was to establish a mutually acceptable event, the occurrence of which was only to re-open, without limitation, the negotiation of Article XV.

Like the Association, the District maintains that the language of section 15.2 is clear and unambiguous; however, it argues that the language imposes the limitation that only the new local dollars generated by the referendum are required to be bargained during the re-opened negotiations. The District also argues that should the language be considered unclear, a review of the bargaining history will support its position.

ISSUE

The issue presented for resolution by the PERB is whether, based upon its reliance on section 15.2 of the collective bargaining agreement, the District's refusal to bargain over funds other than those generated by the referendum constitutes an unfair labor practice

in violation of section 4007 (a) (5) of the Act, as alleged.

OPINION

The issue here is not whether the action of the District violates section 15.2 of the the labor agreement. Such a determination is proper subject matter only for the negotiated grievance procedure for which the unfair labor practice forum is not a substitute. An unfair labor practice, on the other hand, is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board. It is, therefore, not controlling in an unfair labor practice proceeding that the disputed action may or does, in fact, constitute a violation of an existing collective bargaining agreement. While the PERB has no jurisdiction to resolve grievances by interpreting disputed contract language, it may be required to interpret such language in order to resolve an unfair labor practice matter properly before it. Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Board of Education U.L.P. NO. 85-06-005. It is this latter situation which confronts the PERB in this proceeding.

An established principle of labor law requires that where a provision of a collective bargaining agreement is clear and unambiguous, on its face, the literal meaning of the language must prevail. With regard to section 15.2, the language contained therein reasonably raises the question of whether the reopened negotiations are for the limited purpose of distributing only the new monies generated by the referendum or, as the Association claims, are also to include other sources of new local funds, as well as those dollars previously

negotiated and agreed to during the 1986 negotiations. In cases where contract language is unclear or ambiguous, an interpretation should be adopted which is both consistent with the overall terms of the agreement and leads to a fair and reasonable result

Both the Association and the District support their respective positions with extensive testimony and supporting documentation concerning the bargaining history of section 15.2. In considering the interpretation and impact of the disputed language, I shall not endeavor to review every detail of its history, although I have examined those details thoroughly, in order to make my determination. The Association, relying on the testimony of Mr. Frank Cannon, its chief spokesperson, and on its unofficial notes recorded during the 1986 negotiations (Assoc. Ex.2) , maintains there was no indication from the District that it intended to in any way "limit" the re-negotiation of Article XV. More important, however, is the fact that the hearing record, including the testimony of witnesses from both sides and the Association's notes, establishes that there was no communication between the parties concerning the intended scope of the reopened negotiations, should they occur. We are not dealing here with a "unilateral mistake"; rather, a meeting of the minds simply did not occur.

In the absence of substantive discussions concerning this particular point, a review of the circumstances surrounding the negotiation of section 15.2 is helpful in determining the context from which the disputed language emerged. The parties were attempting

to negotiate, for the first time in the Seaford School District, a collective bargaining agreement with an extended four year term. The Association, concerned about the economic security of its members during the term of the proposed contract, agreed to reopener language, which appears in two separate sections of Article XV. The longer term concern over the economic uncertainties inherent in years three and four of the agreement is addressed by the language of section 15.6, which provides:

> If either the Board or the Association desires to modify the terms of Article XV, it shall give notice in writing, no later than March 15, 1988, of the desire to change. Otherwise, the local supplement provided in Appendix "B" and the other provisions of this Article shall remain in force for the full duration of this Agreement.

It is the short term concern which is the subject of section 15.2. While I do not question the sincerity of the concern expressed by the Association in this regard, there is no tangible and convincing proof in the record to establish that the economic conditions anticipated or projected for the District during the second year of the contract were either significantly uncertain or different from those inherent in more standard two or three year collective bargaining agreements not containing reopener provisions.

Unlike section 15.6, section 15.2 removes from the control of the

parties the decision to reopen the negotiations and makes it contingent upon the occurrence of the required condition, i.e. the passage of the referendum. The very selection of this event evidences a presumption that the event itself has some particular significance. This presumption is supported by the testimony of Association and District witnesses that other possibilities, including both flat rate and percentage increases in the District's overall income, were considered and rejected. Also relevent is the Association's demand during the 1986 negotiations to rid the prior contract of the restrictions imposed by Article 13:2:10, of the prior agreement. Article 13:2:10 provides:

> The Board reserves the right to withhold from local salary payments for one year the funds raised by one referendum for specific program(s).

Coupled with this desire on the part of the Association was the District's expressed intent to depart from the existing practice of negotiating annual salary increases based on a fixed percentage increment. The selection of the referendum as the condition precedent to the reopening of Article XV is consistent with a resolution of these bargaining positions.

Finally, Dr. Knorr, Superintendent of Schools and a member of the District's 1986 negotiating team, testifiesd that, at the time the parties agreed to the language of section 15.2, the District had no intention of seeking the passage of a referendum during FY 87. The notes submitted by the Association (Assoc. Ex. 2) indicate that it was aware of this fact when it agreed to the passage of the referendum as the contingent event.

Based on the foregoing considerations, it is illogical to interpret section 15.2 as creating a broad requirement to negotiate new funds, the source and amount of which are unrelated to and independent from the passage of the referendum, plus renegotiate funds already committed, while at the same time severely restricting that right by making it contingent on an event the occurrence of which was known at the time, by both parties, to be unintended and therefore unlikely to occur.

The parties have a statutory duty to "confer and negotiate" in "good-faith". 14 Del.C. 4002(e), 1984. The District's willingness to do so is limited only to the extent that it relies upon the language of section 15.2. The ultimate consideration, therefore, becomes whether the District's reliance is, in fact, rooted in "good faith". The parties attempted during the the 1986 negotiations to establish and stabilize their relationship for the term of the current agreement. The reopener language of section 15.2 represents one attempt to accomplish this objective. Based on a review of that language and for the reasons set forth above, it is found that the District's willingness to negotiate only as to the funds generated by the FY 87 referendum is consistent with the requirement of section 15.2 of the collective bargaining agreement and does not, therefore, constitute a refusal to bargain in good-faith in violation of the section 4007 (a) (5) of the Act, as alleged.

CONCLUSIONS OF LAW

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

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

3. The Seaford Education Association is the Exclusive Bargaining Representative of the certificated professional employees of the Seaford School District within the meaning of 14 Del.C. section 4002(j).

4. The District's willingness to bargain only as to those funds generated by the FY 87 referendum is consistent with the requirement of section 15.2 of the collective bargaining agreement and does not, therefore, constitute a refusal to bargain in good faith in violation of section 4007 (a) (5) of the Act, as alleged.

Be it so ordered.

Charles D. Long, Jr.

CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment
Relations Board

FEBRUARY 2, 1988