IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SEAFORD BOARD OF EDUCATION and SEAFORD SCHOOL DISTRICT,	)	
Appellant,	)	
v.	)	Civil Action No. 9491
SEAFORD EDUCATION ASSOCIATION,	)	
Appellee.	)	

MEMORANDUM OPINION

Submitted: February 4, 1988
Decided: February 5, 1988

Roger A. Akin, Esquire, of SAWYER & AKIN, P.A., Wilmington, Delaware, Attorneys for Appellant.

Sheldon N. Sandler, Esquire, of YOUNG, CONAWAY, STARGATT & TAYLOR, Wilmington, Delaware, Attorneys for Appellee.

ALLEN, Chancellor

The pending appeal from a determination of the Public Employment Relations Board presents a narrow question of statutory construction arising from the Public School Employment Relations Act of 1982, 14 Del. C. § 4001 et. seq. It is whether Section 4014(b) of that Act authorizes the Board to order mandatory mediation of differences in bargaining positions regarding an open contract term in a collective bargaining agreement between a public school employer and a certified collective bargaining agent, in the circumstances presented. A more specific understanding of the precise question, however, will have to await a description of those circumstances.

The case is unusual for this Court as it involves the infrequent use of this forum in an appellate function.[1]

---

[1]A note on jurisdiction, which has been uncontested in this suit. Section 4009(a) of Title 14 provides that "any person adversely affected by a decision of the [Public Employment Relations] Board under § 4008 . . . may appeal to the Chancery Court . . . ." Subsection (b) of that Section gives the Board itself power to sue for specific performance of orders issued pursuant to Section 4008. Section 4008, in turn, gives the Board power to issue remedial orders "whenever it is charged that anyone has engaged or is engaging in any unfair practice described in § 4007 . . . ." Finally, Section 4007 (a)(6) makes it such an unfair labor practice to fail to comply with "this chapter or with rules or regulations established by the Board." I conclude that failure to comply with a valid Board rule issued pursuant to Section 4014(b) would constitute an unfair labor practice and that such an

(Footnote Continued)

In this instance, the petition for review raises a purely legal question. It is elementary that when an appellate tribunal reviews such a question, its function is to reach its own determination of the legal question. Application of Beattie, Del. Super., 180 A.2d 741, 744 (1962). In doing so, however, I am not unmindful that the agency whose decision is being reviewed is an expert one functioning in an area that requires or at least is greatly aided by such expertise. Beth Israel Hospital v. NLRB, 437 U.S. 483 (1978).

To set the stage for a discussion of the pertinent legal issue presented requires both a partial outline of the terms of the Public School Employment Relations Act and a brief description of the facts out of which this particular dispute arises.

I.

Passing over the more remote history of the regulation of labor-management relations between public school

---

(Footnote Continued)
order itself falls within Section 4008 and is appealable by the party resisting mediation under Section 4009(a). The substantive question, of course, is whether the Section 4014(b) order is a valid one in this instance.

employers and their employees,[2] I note that the present Act was enacted in 1982 and constituted a thorough-going revision of its important subject. Its stated policy is "to promote harmonious and cooperative relationships between public school districts and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public school system." 14 Del. C. § 4001. The Act attempts to achieve this goal by a series of measures that may be collected under three headings.

First, it confers certain rights on employees to organize a collective bargaining unit and establishes procedures for creating and regulating such a unit. See Sections 4003, 4004. Second, it obligates boards of education and certified bargaining units to negotiate with each other (see Sections 4004(a), 4013) and prohibits strikes (Section 4016). Third, it establishes the Board (Section 4006), enumerates certain unfair labor practices (Section 4007), gives the Board enforcement powers (Sections 4008, 4009, 4014) and establishes a two-step mechanism for facilitating resolution of impasses in fulfilling the mandate to attempt to reach

---

[2]See Colonial School Board v. Colonial Affiliate, Del. Supr., 449 A.2d 243 (1982).

a voluntary collective bargaining agreement. (Sections 4014 and 4015). The first step in that process is mediation which may be voluntary, (Section 4014(a)), or mandatory, in the sense that it may, in limited circumstances, be compelled by the Board over the resistance of one party (Section 4014(b)). The second step in that process which is available if mediation fails to resolve the impasse, is fact-finding (Section 4015) through which an impartial third party may hold hearings, and issue a recommendation "on unresolved contract issues" (Section 4015(e)(f)). The Board is then to hold a meeting with the parties to review such recommendation. If the impasse cannot then be voluntarily overcome, the Board is directed to "forthwith publicize the . . . recommendations." No other enforcement mechanism, such as binding arbitration, is contemplated by the Act.

II.

The specifics of this dispute arise out of a collective bargaining agreement between the Seaford Board of Education and the Seaford Education Association effective July 1, 1986. That Agreement addresses a large range of subjects of interest to the parties including salaries and benefits, seniority rights, workday and work year definitions, student

discipline, academic freedom, grievance procedures and other matters.

With respect to that part of teachers' salaries that is to be paid from local, as opposed to state funds,[3] the parties agreed as follows:

> 15.1 Local supplement schedule for FY 1987 [4] will be provided in Appendix "A".
>
> 15.2 The local supplement schedule for FY 1988 will be as provided in Appendix "B", unless the Board passes a current expense tax referendum during FY 1987, in which case Article XV will be automatically reopened for negotiations as of July 1, 1987.

The term of the Agreement was set forth in Article II:

> 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.

In the spring of 1987, plaintiff did sponsor and the voters did approve a tax referendum as contemplated by Section 15.2 of the Agreement. The parties promptly commenced negotiations with respect to the local salary supplement. After a

---

[3] See 14 Del. C. Ch. 17.

[4] Emphasis supplied throughout unless otherwise noted.

series of sessions, however, the defendant concluded such negotiations had reached an impasse. Defendant then requested mandatory mediation under Section 4014(b) of the Act. That section provides in pertinent part as follows:

> (b) 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, . . . 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.

Plaintiff resisted the appointment of a mediator by the Board, contending, as it continues to do that, (1) the Board may order mandatory mediation only "if . . . less than 30 days remain before the expiration date of the existing collective bargaining agreement", and that (2) the "expiration date of the existing collective bargaining agreement" is "the last day of June 1990" (Agreement Art. II). Therefore, it contended that the terms of Section 4014(b) unambiguously preclude the conclusion that the Board is authorized to act affirmatively on defendant's request. This argument was rejected by the Board in a careful and thoughtful opinion. I conclude that the Board was correct in the result it reached.

II.

It is of course a court's ultimate aim in construing or interpreting a statute to attempt, in the specific setting of a concrete problem, to satisfy the legislative will or purpose as expressed generally in the statutory language. When that will or purpose has been expressed in clear language that clearly applies, there is no occasion for a court to do more than apply the language. If, however, that will or purpose has not been clearly expressed, interpretation in order to deduce it is required. On other occasions it is reasonably plain that the legislature had no specific intention with respect to the specific problem that later arises. In that circumstance, the best technique to employ — the one most consistent with the special, limited judicial role in our democracy — is for the court to interpret the words used, in a manner consistent both with their ordinary usage and with the discernible overall intent of the statute. In an earlier case, I quoted Judge Learned Hand who captured this thought with his customary dazzle:

> But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning.

Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945).

Thus, in attempting to interpret Section 4014(b), I attempt to place myself in the position of the persons who drafted and enacted it, to determine, imaginatively, how such persons would intend this question to be decided. The first observation I make in that connection is that the persons who drafted § 4014(b) did not have this specific sort of problem in mind and thus cannot be assumed to have actually intended anything at all with respect to it. I say the language of Section 4014(b) is not designed with this kind of problem in mind because it clearly contemplates (sensibly) that each collective bargaining agreement will have a single "expiration date" — that all material aspects of the parties' agreement would expire on the same date ("the expiration date"). But the parties in this instance — for sensible business reasons — did not negotiate an agreement with a single expiration date. Article II establishes the termination date of June 30, 1990 for all contract terms except three, including the quite important term establishing the local salary component. As to that term, the parties specifically agreed that it would be subject to renegotiation upon the happening of a future contingency. Such a provision is the equivalent of an agreement that the result of the negotiation (on that aspect of the whole contract) will expire upon that happening and a new

agreement will be negotiated. That is, a negotiated "re-opener" clause inevitably involves a separate "expiration date" for purposes of Section 4014(b).

With the effect of the re-opener clauses on expiration dates in mind, it can be seen that the statutory language of Section 4014(b) does not itself clearly answer the question presented: whether mandatory mediation may be ordered when a significant term of an existing collective bargaining agreement has expired (by the happening of an agreed-upon act) while other significant terms continue in force. Since the specific statutory language does not clearly answer that question, I turn to the discernible policy or goal of this statute to attempt to address the question, how would the men and women who fashioned this enactment have decided this specific question if they had focused upon it. It seems evident to me that they would affirm the result reached by the Board in this instance.

What motivated the legislature in enacting Section 4014(b)? Stated differently, what risks did the legislature seek to protect against in making mediation mandatory when a threat appeared imminent that no agreement would be reached by the time of "the expiration" of the collective bargaining agreement? Recall that the Act prohibits strikes, so we can be reasonably sure that the legislature was not chiefly

concerned that the failure to reach an agreement would interrupt the operation of schools. But simply having a school open does not exhaust the State's interest; the quality of education delivered to students might be affected were teachers required to continue working without an agreement in place. Thus, even though strikes are prohibited, the state's interest in promoting negotiations towards an agreement becomes more intense when the threat that teachers will be required to work without a contract becomes greater. Section 4014(b) may sensibly be seen as a recognition of that fact.

If that identification of the interest sought to be advanced by the mandatory mediation provision of Section 4014(b) is accurate, then it would seem apparent that the situation presented here involves risks to that same interest. With respect to a critical element of their collective bargaining agreement, the parties now essentially without an agreement. That situation may lead to the same kind of impact upon harmonious relations and the quality of education as could the expiration of an entire collective bargaining agreement. Thus, I conclude that had the legislature focused on the specific situation that here exists, it would have made the mild procedural assistance of mandatory mediation available to either party.

I thus conclude that when a collective bargaining agreement contains a negotiated "re-opener" clause (either fixing a future date for further negotiation of the subject treated or stating a later condition upon the happening of which the matter treated will be open to further negotiation), the agreement does not have a single expiration date for purposes of Section 4014(b); that the date upon which further negotiation is to commence under Article 15.2 of the parties' agreement constitutes one expiration date and that, with respect to the matter that is subject to further negotiation, the Board is obligated under Section 4014(b) to appoint a mediator upon the application of either party once that date has passed and the parties have not succeeded in reaching agreement on the point left open by them.

For the foregoing reasons, the decision of the Board appointing a mediator in this instance is hereby affirmed.

IT IS SO ORDERED.