STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

New Castle County Vocational Technical	)	
Education Association	)	
Charging Party	)	
v.	)	NO. 85-05-025
New Castle County Vocational Technical	)	
School District	)	
1417 Newport Road	)	
Wilmington, DE 19804	)	

DECISION ON REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF

The New Castle County Vocational Technical Education Association ("Association") is the exclusive bargaining representatives of the certificated teachers employed by the New Castle Vocational Technical School District ("District").

The current labor contract between the parties expires on June 30, 1988. Negotiations over a successor agreement commenced on February 11; however, the parties were unable to reach agreement as to the terms of a new agreement. On April 7, they jointly petitioned the Public Employment Relations Board to appoint a mediator to assist them in resolving their differences.

On May 20, School Superintendent, Dr. Conrad Shuman, sent a memo to the District's instructional staff members advising them that Blue Cross Blue Shield of Delaware, the provider of the District's health care package, had announced a rate increase effective July 1. The increase in the monthly premium for the two family plan options was $19.08 for those employees enrolled in the comprehensive plan and $40.34 for those participating in the HMO option. The memo also advised the employees that "effective July 1, 1986, if you wish to continue family plan coverage, we must receive written authorization from you by May 31, 1988, for the withholding from your semi-monthly salary the increase cost in the premium for your health care coverage. An authorization form is attached hereto for your convenience".

As a result of the Shuman letter, the Association filed an unfair labor practice on May 27, contending that the District's action constitutes a willful failure to bargain collectively in-good-faith in violation of 14 Del.C. sections 4007(a)(1), (3), (5), and (6). As part of its requested remedy, the Association seeks an order enjoining the New Castle Vocational Technical School District ("District") from taking any action to unilaterally implement its health care package proposal until it has satisfied its statutory obligation to bargain-in-good faith with the Association.

An expedited hearing on the underlying unfair labor practice charge was held on June 27, 1988, before the Public Employment Relations Board. The Association argued that it is the District's responsibility to maintain the status quo by continuing to pay 100% of

the family premium, after the June 30 contract expiration date, and until such time as a new agreement is reached or final impasse is occurs following exhaustion of the statutory impasse resolution procedures. The District, on the other hand, maintained that its action represents a good-faith effort to advise the effected employees that while the District was agreeable to maintaining the status quo by continuing to pay the premium in effect at the time the contract expired, the July 1, increase initiated by Blue Cross Blue Shield would require a contribution by the employees if they desired to maintain their current level of family protection. The District is also of the opinion that impasse has already occurred and it is therefore entitled to alter the status quo, should it so desire. [1]

At the conclusion of the hearing the parties were provided the opportunity to present oral argument concerning the Association's request for injunctive relief until such time as the underlying unfair labor practice issue is resolved. It is this limited issue which is the subject of this decision.

[1] The PERB has previously held that 'terms and conditions of employment", as defined in section 4005 (f) of the Public School Employment Relations Act ("Act") 14 Del. C. sections 4001=4018 (1983), may not be unilaterally changed by either party, at least to the point of impasse. Appoquinimink Ed. Assn. v. Appoquinimink Bd. of Ed., Del. PERB, ULP No. 1-2-84A (1984).

It is established Delaware law that, to be successful, a request for preliminary injunctive relief must satisfy two requirements. First, the charging party must establish that there is a reasonable probability that it will ultimately prevail on the merits of the dispute; and secondly, that it will suffer irreparable injury if its request for injunctive relief is denied. Gimbel v. Signal Companies, Inc., Del. Ch., 316 A.2d 599 (1974). Failure to establish either element precludes the granting of the requested relief.

A similar issue involving the same parties was decided in 1982 by Vice Chancellor Longobardi. New Castle County Vocational Technical Education Association v. The Board of Education of the New Castle County Vocational Technical School District, Del.Ch. 451 A.2d 1156 (1982). In that case, the District threatened to discontinue the Blue Cross Blue Shield health plan after having continued to pay the increased premium for several months. This fact, coupled with the existence of contractual language not present in the current agreement and the intervening passage of a new collective bargaining law, The Public School Employment Relations Act, distinguish the two cases. Despite these differences, Vice Chancellor Longobardi's reasoning in denying the Association's earlier request is applicable to the current matter, as well.

Most importantly, the Association has failed to establish that a denial of the requested relief will result in irreparable harm to the effected members of the Association. Should the Association prevail in its unfair labor practice issue currently pending before the PERB, the

potential damages are easily ascertained and a make whole remedy is available to the Board, at its discretion.

Based on this finding alone, it is unnecessary to consider the question of whether or not there exists a reasonable probability that the Association would ultimately prevail in the pending unfair labor practice charge. It should be emphasized, however, that in Appoquinimink Education Assn. (Supra., footnote [1]), the PERB decided only that no unilateral action may be instituted regarding terms and conditions of employment at least to the point of impasse. (emphasis added). There is no established case law under the current statute establishing what rights, if any, attach after impasse is reached or when, if at all impasse occurs. Since these questions are in issue in the underlying charge, any decision concerning the Association's probable success would be purely speculative, at this time.

The collective bargaining provisions of the Public School Employment Relations Act encourage the voluntary resolution of issues by the parties. Considering the circumstances present here it would, in my opinion, be inappropriate for the Board to inject itself into an area which is a the subject of the on-going collective bargaining process. In a preliminary injunction matter the burden is with the moving party to clearly demonstate both irreparable harm and the reasonable probability that it will ultimately prevail on the merits of the underlying substantive issue. For the reasons set forth above, the Association has failed to meet its burden and its request for preliminary injunctive relief is, therefore, denied.

Charles D. Long, Jr. June 28, 1988

CHARLES D. LONG, JR., Executive Director DATE

PUBLIC EMPLOYMENT RELATIONS BOARD

D. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD, Principal Asst/Hearing Officer

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