THE PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF DELAWARE

NEW CASTLE COUNTY VO-TECH EDUCATION ASSOCIATION,	)	
Petitioner,	)	
v.	)	No. ULP No. 88-05-025
NEW CASTLE COUNTY VO-TECH SCHOOL DISTRICT,	)	
Respondent.	)	

OPINION

The New Castle County Vo-Tech Education Association ("Association") and the New Castle County Vo-Tech School District ("District") are engaged in a dispute whose resolution is governed by the Public Employment Relations Act ("the Act"), 14 Del. C. Ch. 40.[1] More specifically, the District has appealed to decision of the Executive Director of the Public Employment Relations Board ("PERB") on August 19, 1988 who held that the District had engaged in conduct which violated §4007(a)(5&6) of the Act. 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.

Facts

The decision below fully sets forth the facts underlying this dispute and will not be repeated here in their entirety.

---

[1] Hereinafter referred to by § only.

However, there are certain facts which must be emphasized for present purposes.

After commencing negotiations on February 11, 1988 in an attempt to reach a successor to the then current collective bargaining agreement which was to expire on June 30, 1988, the parties met for a total of six times. The last session was held on April 26, 1988, after they had exchanged and rejected each other's "last, best and final offers". On April 27, both parties made a joint request that the Board appoint a mediator pursuant to §4014 to assist the parties in reaching an agreement.

Less than thirty days after it had joined with the Association in making the aforementioned request, the District, on May 20, informed its employees that effective July 1, 1988, their health insurance rates would increase and the District would no longer absorb the entire cost thereof. After initially advising to the contrary, the Association informed them that they should sign an authorization form supplied by the District which would permit it to deduct the increase from the employees' paychecks. However, it also advised them to add "Subject to the outcome of the unfair labor practice charge". On May 27, the Association filed an unfair labor practice charge alleging that the District violated §4007(a)(1), (3), (5) and (6) of the Act, as follows:

> ...The Association and the School District are parties to a collective bargaining agreement effective June 1, 1985 through June 30, 1988.
>
> Article 9.12 of the collective bargaining agreement provides that the School District shall pay 100% of the

cost of Blue Cross/Blue Shield health benefits for members of the bargaining unit.

The School District and the Association are now engaged in collective bargaining concerning a successor agreement which includes, inter alia, the subject of health care benefits. There has been no impasse in these negotiations.

Collective bargaining concerning the School District's health benefits proposal in a mandatory bargaining subject.

Despite this, the School District, in a memorandum dated May 20, 1988 and attached to this charge as Exhibit "A", has communicated directly with the employees represented by the Association, announcing the unilateral implementation of its proposal on the subject of health care benefits and requesting a written authorization to withhold increased premium payments from the employees salary.

By these acts, the School District was willfully and intentionally failed to bargain collectively in good faith with the union. The School District's actions violate 14 Del. C. §4007(a)(1), (3), (5) and (6) because its actions constitute a unilateral change in the terms and conditions of employment without negotiating the change with the union, an attempt to circumvent the union and bargain directly with employees, and has interfered with, restrained and coerced the public employees in the exercise of the rights guaranteed to them under the Act....2

Those subsections of §4007(a) referred to above specifically prohibit any conduct which would allow an employer to:

...(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

...

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions

---

2 See pages 2 and 3 of the charge filed by the Association dated May 27, 1988.

of employment.

...

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive bargaining representative of employees in an appropriate unit.

(6) Refuse or fail to comply with any provision of this chapter or with rules or regulations established by the Board (PERB) pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter....

After a hearing and the submission of evidence by the parties in support of their respective positions, the Executive Director found no impasse has been reached, and that the District had altered the status quo thereby violating §4007(a)(5)&(6). He dismissed the charges alleging a violation of §4007 (a)(1) & (3).

Conclusion

After reviewing the record of the proceeding below, it is the decision of the Board to affirm the ruling and remedy of the Executive Director as set forth in his opinion of August 19, 1988. The Board reaches this conclusion for the reasons stated below.

First, it must be pointed out that there was no evidence, as the Executive Director found below, of anti-union animus, or any attempt of interference with the rights of any employee to exercise his or her rights under the Act.

It is therefore clear, and the Board so finds, that there were no violations of §4007(a)(1)&(3). Any other finding could not be supported based upon the evidence before us.

The remaining issue before the Board is whether the District, by limiting its payment of health insurance for its employees to the level it paid prior to the expiration of the collective bargaining agreement on June 30, and the July 1 increase in rate instituted by Blue Cross/Blue Shield, refused to engage in collective bargaining as required under the Act. 3

In support of its action the District argued that once the parties had reached an impasse as defined in §4003(j), and had requested mediation, the collective bargaining process had come to an end. It could then institute whatever changes it desired. Alternatively, the District argued that since it had continued paying the same dollar figure for the health care benefits it had not in fact altered the status quo, and that to require it to do more would run afoul of §4006(h)(2). That section prohibits the Board from mandating action which involves an economic cost to a public school employee.

The Association countered by stating that a "final legal impasse" had not been, and would not be reached until the dispute resolution mechanisms under the Act had been exhausted. To allow the District to do otherwise would render those procedures and the intent of the Act a nullity. The Association also argued that maintaining the status quo required the District to pay the

---

3 §4007(a)(6) is a "catchall" provision, and in this case is its duplication of §4007(a)(5). Consequently it need not be considered further and should be dismissed.

entire cost of the health care coverage for its employees as existed prior to June 30.

§4002 of the Act clearly defines collective bargaining, as well as what is required before mediation and fact finding are entered into. As the Executive Director stated:

> ...The statutory definitions are clear and unambiguous on their face. Collective bargaining imposes upon the parties the mutual obligation to confer and negotiate in good faith with respect to terms and conditions of employment and to reduce to writing any agreements reached. Impasse is the failure of the parties to reach agreement, as to terms and conditions of employment, in the course of collective bargaining. Mediation is the confidential effort of an impartial third party to assist in resolving an impasse. The institution of mediation doe snot signal the end of the collective bargaining process; rather, it constitutes a vital step in the continuing process of good-faith bargaining, a process which constitutes from the inception of bargaining, through the impasse resolution procedures, until a written agreement is executed.
>
> There is no statutory basis upon which to conclude that impasse, a prerequisite for mediation, also permits the employer to unilaterally alter the status quo. To the contrary, such a conclusion would be inconsistent with the declared policy of the State and the purpose of the statute which to "...promote harmonious and cooperative relationships between reorganized public school districts and their employees and to protect the public assuring the orderly and uninterrupted operations and functions of the public school system". 14 Del. C. §4001....4

We agree with the limited exception that nothing under the Act requires the parties to agree to a specific proposal, make a concession, or inter into an agreement involuntarily §4002(e). We further hold that a change in the status quo by a school district is a violation of §4006(a)(5) where the collective

---

[4] See the decision of the Executive Director, at pages 8 & 9.

bargaining process is ongoing, and the action taken involves a unilateral change in an area which has not been determined to be within the exclusive province. See §s 4001 and 4005.

In the instant situation, it is readily apparent that under any standard, the parties had not reached the end of the collective bargaining process. Indeed, the District had evidenced its intent to extend the process by entering with the Association, requesting the assistance of a mediator. It was not required to do so. See §4004(6). None of the decisions cited by the District alter this conclusion, and while the parties are not required to agree, they cannot be allowed to neuter the process.

The Board also agrees with the Executive Director's finding that unilaterally altered the status quo relative to health care benefits due under §9.12 of the contract, which reads:

> ...Blue Cross Blue Shield
>
> State pays for individual membership and the district pays 100% of family plan beginning with employment. Eligibility based upon 30 hours of employment per week. State share continues during retirement....

A fair rendering of the foregoing language permits only one interpretation, i.e., the District had an obligation to pay the total cost of the benefits in question. That obligation was not tied to any dollar amount. By letter from Dr. Schuman dated May 20, 1988, prior to the introduction of the mediator, it was to be unilaterally altered as of July 1, 1988. In doing so the District refused to engage in collective bargaining in violation of §4007(5).

In reaching this decision, the Board specifically limits its effect to the facts of this case. A different result may be required under another set of facts, and each case must be viewed individually in light of the requirements and intent of the Act.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: _____
Arthur T. VanWart
Chairman

_____
Charles H. Toliver, IV
Member

_____
Arthur Sloan
Member