



14 Del.C. section 4007 (a)(5)) and discouraged membership in the employee organization (in violation of 14 Del.C. section 4007 (a)(3)).

The District filed its Answer on September 23, 1988. A public hearing was held on October 5, 1988. The Public Employment Relations Board issued a slip decision on October 7, 1988, denying the Association's request for preliminary injunctive relief. The decision rendered herein is based upon the testimony and arguments presented during the hearing.

#### FACTS

At all times relevant to this dispute, the Christina Education Association, Inc. and the Board of Education of the Christina School District were parties to a collective bargaining agreement, effective September 1, 1987 through August 31, 1990. This agreement provides at Article 18.4, in relevant part:

The employees normal in-school work day shall be seven continuous hours and shall normally fall between the hours of 7:30 a.m. and 4:30 p.m.

The Christina School District provides for transportation of its students to and from Wilmington and suburban schools through a combination of District owned and operated buses and contract bus services. All contract buses and most District buses regularly drive double runs (i.e., pick up and drop off one group of students and then pick up and drop off a second group of students). At the beginning of the 1987-88 school year (September, 1987), the District experienced an acute shortage of part-time bus drivers. This situation necessitated

the drafting of mechanics and dispatchers to drive regular runs. The District attempted to hire more drivers through widely publicized employment postings and media advertisements. No additional local funds were made available for salary increases for part-time drivers. The shortage of drivers continued throughout the 1987-88 school year and was expected to worsen by the 1988-89 school year. The situation was exacerbated by a disproportionate increase in the District's elementary student population in the 1988-89 school year.

On or about July 20, 1988, a memo was distributed from Assistant Superintendent William Russell to District administrators describing the transportation problem stemming from the shortage of bus drivers. [Association Exhibit #1] The memo provided:

We now find it necessary to make changes in the transportation schedule or risk not having enough drivers or buses to meet growing transportation needs in the District....

The changes will mean that secondary students will be picked up approximately 15 minutes earlier. Some elementary students will start their day 15 - 30 minutes earlier and others as much as 40 minutes later....

Attached to the memo was a schedule detailing starting times for all District schools. Under this schedule, secondary school students were scheduled for arrival at 7:15 a.m.

On or about July 26, 1988, the District's Assistant Superintendent for Personnel, Franklin Rishel, contacted the Association's Secretary/Treasurer, Dorothy Grzybowski, to solicit Association support for the District's proposal to change the starting

time in the District's six secondary schools from the contractually defined 7:30 a.m. to 7:15 a.m. Mr. Rishel requested that the Association cooperate with the District in altering the normal work day in the affected schools. Approximately two days later, Ms. Grzybowski advised Mr. Rishel by telephone that, after having contacted other available members of the Association's Executive Board, the Association did not agree to the District proposed action. She further stated that the Association would abide by the contractually defined starting time. Mr. Rishel responded that he did not think the District could adjust sufficiently to accommodate a 7:30 a.m. start time and would proceed to establish bus schedules based on a 7:15 start time for the effected schools. No further formal communication occurred between the District and Association regarding this matter.

On the first day of the 1988-89 school year (September 6, 1988) the District implemented its proposed change and required its secondary school teachers to report for duty at 7:15 a.m.

#### ISSUE

The issue here presented for resolution is two-fold:

- 1) Whether the Public Employment Relations Board has jurisdiction to rule on an unfair labor practice charge where the underlying issue involves the interpretation of contractual language?
- 2) Whether the District committed an unfair labor practice in violation of sections 4007 (a)(3) and (a)(5) of the Act when it unilaterally changed the required starting time for teachers in designated schools from 7:30 to 7:15 a.m., without first

negotiating the matter with the exclusive representative of the affected employees?

### POSITIONS OF THE PARTIES

#### I. Jurisdiction:

The District argues that this case raises a question of whether section 18.4 of the collective bargaining agreement was violated. It asserts that a decision on the merits of this dispute requires an interpretation of a contractual provision which is proper subject matter only for the contractually defined grievance procedure. The District cites Brandywine Affiliate v. Brandywine Bd. of Education (Del.PERB, U.L.P. No. 85-06-005 (Feb. 5, 1986)) as establishing that the unfair labor practice forum is not a substitute for the grievance procedure agreed to by the parties. The District argues that by accepting jurisdiction in this case, the PERB would be imposing itself as a substitute for the grievance procedure.

The Association argues that since the Public School Employment Relations Act provides a process and remedy for the resolution of unfair labor practice charges, this matter is excluded from arbitration under the contractual grievance procedure by Article 3.7(a) of the current collective bargaining agreement which states in relevant part:

No claim by an employee or the Association shall constitute an arbitrable matter or be processed through arbitration if it pertains to:

- (a) A matter where a specific method of remedy or appeal is prescribed by law; (e.g., the Fair Dismissal Act)

and/or by this Agreement.

The Association further asserts that the contractual grievance procedure provides an insufficient forum for resolution of this matter in that it does not contain provisions for the expedited processing of issues, and it could, therefore, provide only a partial remedy, at best. Finally, the Association maintains that there is no statutory provision which contemplates deferring an unfair labor practice charge to a contractual grievance procedure nor has such a doctrine been established by the Public Employment Relations Board in its case law.

## II. Substantive Issue

The Association asserts that the District has acted unlawfully by failing to negotiate with the Association its change in a mandatory subject of bargaining. The Association argues that although the District was on notice that a transportation problem existed throughout the 1978-88 school year, it waited until late July, 1988 to notify the Association of circumstances which the District believed compelled it to alter the contractually defined starting time in some of its schools. The Association further argues that there were a number of alternative solutions which could have been either negotiated or implemented by the District in compliance with the contract. It maintains that the District's unilateral action undercut the Association by altering the contract without Association consent. The Association maintains that the word "normally", as included in article 18.4 of the contract, was intended to take into consideration an emergency requiring a short term change rather than an "abnormal" situation which would require a long-term deviation from the agreed

upon 7:30 a.m. starting time. Finally, the Association argues that the Public Employment Relations Board must determine that where a mandatorily negotiated provision has not been honored, an unfair labor practice occurred; otherwise, the collective bargaining process is undermined as is the Association's ability to function effectively as the representative of employees.

The District asserts that the existing transportation problems constitute an abnormal situation which necessitates the change in the starting time. It stresses that Article 18.4 provides that the start time shall "normally" be 7:30 a.m. and argues that the Association's position is logical only if the word "normally" is read out of this provision. The District asserts that once it had "worked its way through the alternatives", it contacted the Association in the spirit of cooperation. The Association, it maintains, was unresponsive and never expressed a desire to further discuss the issue.

#### DECISION

##### I. JURISDICTION

The Public Employment Relations Board held in Brandywine Affiliate v. Brandywine Bd. of Education (Del.PERB, U.L.P. No. 85-06-005 (Feb. 5, 1986, p. 12)):

...the issue here is not whether the disputed action taken by the District was in violation of the labor agreement. What is at stake is whether or not the District's unilateral action constituted a unilateral change of the status quo sufficient to violate section 4007(a) of the Act, as alleged. In an unfair labor practice proceeding it is of no consequence that

the disputed conduct may also constitute a violation of the collective bargaining agreement... The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. It may, however, be necessary for the Board to periodically determine the status of specific contractual provisions in order to resolve unfair labor practice issues properly before it.

Clearly, where, as here, there exists a reasonable suspicion that an unfair labor practice has been committed, the Board will accept jurisdiction despite the fact that the issue may also constitute a grievable matter.

## II. SUBSTANTIVE ISSUE

In order for the Association to sustain its charge that the District has failed to bargain in good faith, it must prove that the District effected a unilateral change in a mandatory subject of bargaining. Unilateral disruptions of the status quo are unlawful because they frustrate the statutory objective of establishing working conditions through the collective bargaining process. Appoquinimink Education Assn. v. Bd. of Education, Del.PERB, U.L.P. No. 1-2-84A (July 23, 1984). The status quo of a terms and condition of employment is subject to change only through the collective bargaining process. New Castle County Vo-Tech Education Assn. v. Bd. of Education, Del. PERB, U.L.P. No. 88-05-025 (August 19, 1988).

The statute clearly establishes that the parties are obligated

to negotiate in good faith with respect to terms and conditions of employment (14 Del.C. sec. 4002(e)) which "...means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions". 14 Del.C. sec. 4002(p). The question of starting time is, therefore, a mandatory subject of bargaining within the parameter of hours.

The District argues that it fulfilled its obligation to bargain in good faith by communicating with the Association in late July, 1988. What constitutes good faith bargaining can only be determined by a review of the totality of the conduct by the parties, on a case by case basis. Smyrna Education Assn. v. Bd. of Education, Del. PERB, U.L.P. No. 87-08-015 (October 26, 1987, p.13) By its own testimony the District established that it was aware of the magnitude of its transportation problems throughout the 1987-88 school year. On July 20, 1988, its intent to start secondary schools at 7:15 a.m. was distributed to administrators in preparation for the new school year. Whether or not this was a draft policy is not as important as the fact that the District had unilaterally decided upon a solution which involved the alteration of a mandatory subject of bargaining.

Contrary to the District's assertion that the Association was uncooperative in responding to its invitation to discuss its proposed change in starting time, the facts support the Association's contention that it was presented with a fait accompli and asked to "go along" only as an afterthought. The Association did respond to the District by asserting that a current contractual provision was in force which controlled the issue of school hours. The burden is on the party seeking change in a mandatory subject of bargaining to provide the

other side with timely notice of its desire and to provide the opportunity for good faith bargaining. Smyrna, (Supra., p. 14). The District was required to adhere to the agreed upon mandatory terms and conditions of employment during the term of the existing collective bargaining agreement, and to bargain desired modifications with the exclusive representative of the affected employees. Smyrna, (Supra., p. 15). In this case, the Christina School District provided neither timely notice of its desire to alter school hours nor did it attempt to constructively bargain such a modification with the Association.

The contractual provision defining the status quo with respect to hours provides that the seven continuous hours comprising a normal in-school work day "shall normally fall between the hours of 7:30 a.m. and 4:30 p.m.". Article 18.4. The District argues that the transportation difficulties constitute an "abnormal" situation sufficient to support changing these "normal" hours for some teachers. There was no testimony by the District that the altered starting times are intended to constitute a temporary, quick fix to an "abnormal" situation. Where the District had at least one year's prior notice of the impending problem and its magnitude, and recognized it as a problem that would continue into the foreseeable future, it is unreasonable to conclude that this was an issue which would fall within a standard definition of "abnormal".

For the reasons stated above, it is determined that the Christina School District refused to bargain in good faith with the Christina Education Association, Inc., in violation of section 4007 (a)(5) of the Public School Employment Relations Act.

The Association also charged that the District, through its

actions, discouraged membership in the Association. Section 4007 (a)(3) prohibits an employer from discouraging union membership "by discrimination in regard to hiring, tenure or other terms and conditions of employment". Since there has been no proof of the requisite discrimination in this case, it is determined that the Christina School District did not violate 14 Del.C. section 4007 (a)(3).

#### CONCLUSIONS OF LAW

1. The Board of Education of the Christina School District is a public employer within the meaning of 14 Del.C. section 4002(m).

2. The Christina Education Association, Inc., is an employee organization within the meaning of 14 Del.C. section 4002(g).

3. The Christina Education Association, Inc., is the exclusive representative of the certificated professional employees of the Christina School District within the meaning of 14 Del.C. section 4002 (h).

4. By unilaterally altering the starting time of its secondary schools from the contractually defined 7:30 a.m. to 7:15 a.m. without having first bargained this mandatory subject with the Association, the District has engaged in conduct in violation of 14 Del.C. section 4007 (a)(5).

5. The District did not discourage membership in the Association by discrimination with regard to hiring, tenure or other terms and conditions of employment. The Association's charge that the District engaged in conduct in violation of 14 Del.C. section 4007

(a)(3) is dismissed.

REMEDY

The parties are currently in the second year of a three year collective bargaining agreement. The District's concern that any change in its adopted schedule during the school year will be disruptive to both student welfare and community relations is valid. While there is no excuse for the District's refusal to bargain the change in hours with the Association, there are compelling circumstances which mitigate against mandating a return to the status quo ante for the balance of the 1988-89 school year. Because of the difficulties inherent in altering schedules for students, staff and buses during the middle of the school year, the parties are ordered to continue the current schedule for the remainder of the 1988-89 school year. However, absent mutual agreement to the contrary, the Board of Education of the Christina School District shall return all schools to a 7:30 a.m. starting time at the beginning of the 1989-90 school year, in accordance with the provisions of Article 18.4 of the collective bargaining agreement.

WHEREFORE, PURSUANT TO 14 DEL.C. SECTION 4006 (h)(2), THE BOARD OF EDUCATION OF THE CHRISTINA SCHOOL DISTRICT IS ORDERED TO:

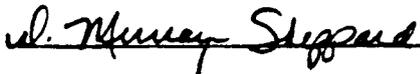
- A) Cease and desist from refusing to bargain collectively in good faith with the Christina Education Association, Inc., an employee representative which is the exclusive representative of

employees in an appropriate unit.

B) Take the following affirmative actions:

- 1) Return all district schools to a 7:30 a.m. starting time at the beginning of the 1989-90 school year in accordance with the provisions of Article 18.4 of the current collective bargaining agreement, absent mutual agreement to the contrary.
- 2) Within ten (10) calendar days from the date of receipt of this decision, post a copy of the Notice of Determination in each school within the District in places where notices of general interest to teachers are normally posted. This notice shall remain posted for a period of thirty (30) days.
- 3) Notify the Public Employment Relations Board within thirty (30) calendar days from the date of this Order of the steps taken to comply with the Order.

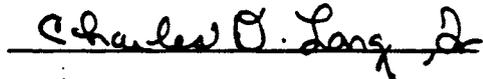
IT IS SO ORDERED.

  
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DEBORAH L. MURRAY-SHEPPARD

Principal Assistant/Hearing Officer

Delaware PERB

  
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CHARLES D. LONG, JR.

Executive Director

Delaware PERB

DATED: November 29, 1988

