

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHARLES A. PAUL, :
Charging Party, :
 :
v. : U.L.P. No. 88-12-029
 :
BOARD OF EDUCATION OF THE :
NEW CASTLE COUNTY VOCATIONAL :
TECHNICAL SCHOOL DISTRICT, :
Respondent. :

The Board of Education of the New Castle County Vocational Technical School District ("District") is a public school employer within the meaning of section 4002(h) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 ("Act"). Charles A. Paul ("Charging Party") is an employee within the meaning of 14 Del.C. section 4002(1).

Charging Party filed an unfair labor practice complaint with the Public Employment Relations Board ("PERB") on December 5, 1988. The District filed its Answer on December 15, 1988 and Charging Party filed his Response on December 22, 1988. Because the pleadings contain no dispute as to the material facts upon which the complaint was based, no formal hearing was required. The parties declined to file supplementary briefs concerning the legal issues and the record was, therefore, closed effective January 5, 1988.

FACTS

Charging Party is a teacher in the New Castle County Vocational Technical School District and a member of the collective bargaining unit for which the New Castle County Vo-Tech Education Association, NCCEA/DSEA/NEA, ("Association") is the certified exclusive bargaining representative.

The collective bargaining agreement between the District and the Association expired on June 30, 1988. On September 19, 1988, the parties reached agreement on the terms of a successor agreement, subject to the ratification of the School Board and the Association's membership. On or about October 13, 1988, the tentative settlement was rejected by a vote of the Association's members.

The status of the negotiations was discussed by the School District's Board of Education at its regularly scheduled meeting of November 21, 1988. On November 30, the District published a document entitled "NCCVTSD Board Review" which contained the following paragraph:

Negotiations

Mr. Lynch expressed the Board's disappointment in the fact that the contract was turned down by the teachers.

The motion was made by Mr. Lynch and seconded by Mr. Edstrom that the Board of Education; 1. authorize the administrative team to return to the bargaining table if the teacher's association is agreeable; 2. authorize the Board of Education to send a letter to all professional staff clarifying the Board's position and 3. inform the faculty that the Board

intends not to negotiate retroactivity of local salary after January 1, 1989.

The District's teachers received a copy of the NCCVTSD Board Review through the school mail system.

The District also mailed to all staff members a letter from the Board of Education President, Carl B. Slabach, dated November 23, 1988, concerning the rejected agreement. (attachment #1) The opening paragraph of Mr. Slabach's letter provides:

The Board of Education was notified this past October that the tentative contractual agreement between the Administration and the Association teams was rejected by the Association members.

Both teams worked long and hard to achieve a competitive and fair contract. I wish to provide information to help the faculty better understand the Board's position on several major issues.

These two communications form the basis of the complaint.

ISSUE

Whether or not the District, by its actions as set forth above, violated section 4007 (a)(1), (2), and (5) of the Public School Employment Relations Act, as alleged?

POSITIONS OF THE PARTIES

CHARGING PARTY:

Charging Party argues that by directly communicating to the teachers, via the Board Review, its threatened removal of retroactive

pay from the bargaining process, the District breached its duty to bargain in good faith, in violation of 14 Del.C. section 4007 (a)(5). [1] Charging Party contends that rather than encouraging the parties to return to the bargaining table, the District's action constitutes a threat to the bargaining unit in violation of 14 Del.C. 4007 (a)(1). Charging Party also maintains that the District's action established an environment of fear and doubt which interfered with the Association's ability to fairly present the bargaining issues to its members. Such action, according to Charging Party, constitutes an illegal involvement by the District in the management of the Association and violates 14 Del.C. section 4007 (a)(2). [3]

Secondly, Charging Party contends that Dr. Slabach's letter of November 23rd, is biased and misleading and implies that Association officers have not supplied bargaining unit members with accurate information. He also argues that since the District admittedly recognizes the Association as the exclusive bargaining representative, for it to bypass the Association and communicate directly with the

[1] 4007(a)(5). Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate bargaining unit.

[2] 4007(a)(1). Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this Chapter.

[3] 4007(a)(2). Dominate, interfere with or assist in the formation, existence or administration of any labor organization.

bargaining unit members concerning the status of the negotiations constitutes a violation of 14 Del. C. 4007(a)(2), of the Act.

DISTRICT:

The District argues that the November issue of the NCCVTSD Board Review represents a factual summary of the business conducted at the November 21 Board of Education Meeting. According to the District, similar school board meeting summaries have been distributed for at least the past five (5) years. The District also argues that the Board Review is a part of its periodic communications with its employees and not prohibited by any provisions of the Public School Employment Relations Act.

The District also denies that the introductory paragraph, or any other portion of Mr. Slabach's letter of November 23rd, is either biased or misleading or implies that the Association officers did not supply bargaining unit members with accurate information. The District maintains that Mr. Slabach's letter did not compare the relative positions of the parties but merely provided comparative information for the faculty to consider when evaluating the District's position on several key issues. The District also contends that the content of the letter was reviewed and discussed in advance with both the Association President and the Executive Director of the Public Employment Relations Board, without objection.

DECISION

The subject of an employer's unilateral communications with its employees concerning matters being negotiated with the bargaining

representative is one not previously addressed by the Public Employment Relations Board.

In this matter, the District's authority to discuss and adopt a position concerning the question of retroactivity of local salary increases during the November school board meeting is not questioned. Neither is it disputed that business conducted at a public school board meeting is a matter of public record; nor that the content of the November NCCVTSD Board Review represents an accurate summary of the activity of the November meeting; nor that the District has previously and regularly published and distributed the Board Review in the normal course of business. Under these circumstances, the NCCVTSD Board Review cannot reasonably be considered to constitute either a threat to the bargaining unit, direct dealings by the District with its represented employees, to the exclusion of the exclusive bargaining representative, involvement in the internal affairs of the Association, or, bad-faith bargaining in violation of section 4007 (a)(1),(2) or (5), of the Act, as alleged.

Unlike the NCCVTSD Board Review publication, the November 23rd letter from School Board President Slabach constitutes a special one-time communication which provides information concerning several key provisions of the tentative agreement.

In order for Mr. Slabach's letter to violate section 4007 (a)(2) Of the Act, as alleged, it must constitute an action which can reasonably be considered as tending to "dominate, interfere with or assist in the formation, existence or administration of the labor organization". Not every communication from an employer to its employees is prohibited. Direct communications do not, therefore,

constitute per se violations of the Act; rather, they may be considered as evidence indicating a lack of good-faith bargaining. For this purpose, not only the content of the specific communication in question but also the circumstances surrounding its publication and distribution are relevant.

Contrary to the allegations contained in Charging Party's complaint, the record contains no basis for concluding that the content of Mr. Slabach's letter implies that the bargaining unit officers did not supply the employees with accurate information concerning the tentative agreement. Nor is it biased and misleading. The letter contained no new offers nor did it attempt to demean the position of the bargaining representative. It is to be expected that the employer would present data supporting its position. If the Association considered that a response was necessary, it was free to do so as it deemed appropriate within the confines of the law.

Finally, the District's affirmative defense that it reviewed the content of Mr. Slabach's letter with the President of the New Castle County Vo-Tech Education Association, without objection, prior to its distribution, is also undisputed. For this reason alone, the District cannot be considered to have bypassed the Association and, thereby, breached its duty to bargain with the exclusive representative.

Absent the presence of additional circumstances indicating a breach of the duty to bargain in good-faith, there is no basis upon which to conclude that the November 23rd letter from Board President Slabach to the teaching staff constituted a violation of 14 Del. C., 4007(a)(2), as alleged.

CONCLUSIONS OF LAW

1. The New Castle County Vocational Technical School District is a Public School Employer within the meaning of 14 Del. C. section 4002(m), of the Act.
2. Charles A. Paul is an Employee within the meaning of 14 Del. C. section 4002(1), of the Act.
3. The distribution to the District's teachers of the publication dated November 21, 1988, entitled NCCVTSD Board Review, did not violate sections 4007(a)(1), (2)), and (5) of the Act, as alleged.
4. The letter to the District's staff from School Board President Carl B. Slabach, dated November 23, 1988, did not violate section 4007(a)(2), as alleged.
5. The petition filed on December 5, 1988, by Charging Party, Charles A. Paul, is dismissed.

IT IS SO ORDERED

D. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD

Principal Assistant,

Delaware Public Employment

Relations Board

Charles D. Long, Jr.

CHARLES D. LONG, JR.

Executive Director,

Delaware Public Employment

Relations Board

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