

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE REQUEST FOR DECLARATORY STATEMENT FILED BY:

NEW CASTLE COUNTY VOCATIONAL TECHNICAL :  
SCHOOL DISTRICT, :  
Requesting Party, :  
and :  
NEW CASTLE COUNTY VOCATIONAL TECHNICAL : D.S. No. 88-12-030  
EDUCATION ASSOCIATION, NCCEA/DSEA/NEA, :  
Respondent, :  
and :  
NEW CASTLE COUNTY VOCATIONAL TECHNICAL :  
FEDERATION OF TEACHERS, AFT, :  
Respondent. :

The New Castle County Vocational-Technical School District (hereinafter "District") is a public school employer within the meaning of 14 Del.C. section 4002(m). The New Castle County Vocational-Technical Education Association, NCCEA/DSEA/NEA (hereinafter "Association") is the exclusive bargaining representative of the public school employer's certificated professional employees within the meaning of 14 Del.C. section 4002(h). The New Castle County Vocational Technical Federation of Teachers (hereinafter "Federation") is an

employee organization within the meaning of 14 Del.C. section 4002(g).

The District and the Education Association were parties to a collective bargaining agreement which expired June 30, 1988. These parties have been engaged in negotiations for a successor agreement since February, 1988.

On November 29, 1988, a Petition for Determination of Exclusive Bargaining Representative was filed by the Federation of Teachers challenging the Education Association's majority status. The petition challenges only the Association's position as exclusive representative and does not contest the appropriateness of the current bargaining unit. On December 6, 1988, the Public Employment Relations Board advised all concerned parties that it had determined the petition to be properly filed. A representation election in this matter is scheduled for January 12, 1989.

On December 6, 1988, the District filed this request for declaratory statement, seeking clarification of its rights and obligations, under the Public School Employment Relations Act (14 Del.C. Chapter 40, hereinafter "Act") with respect to continued negotiations with the incumbent representative. All parties were provided with the opportunity to file position statements with respect to the request with the Public Employment Relations Board.

#### POSITIONS OF THE PARTIES

The Education Association takes the position that it is entitled to a continuing presumption of majority status which requires the District to continue to engage in collective bargaining for a successor agreement. The Association asserts that any contract reached as a

result of such negotiations would be valid and binding, except in the event a new representative would be chosen which would elect to repudiate that contract.

Neither the Federation of Teachers nor the District chose to file supporting briefs.

#### ISSUE

The issues presented for clarification are:

- 1) Is it an unfair labor practice under 14 Del.C. section 4007(a) for the District to continue to engage in collective bargaining with the incumbent representative in the face of a valid and pending petition for determination of exclusive representative?
- 2) Would the District's continued negotiation with the incumbent representative violate any other provisions of the Public School Employment Relations Act?
- 3) If the District and the incumbent representative reach a tentative agreement, can a ratification vote be taken? If such a contract were passed by the membership, would it be a binding and valid agreement with the District?

#### OPINION

The District has raised the issue of whether it would be in violation of the Act if it were to continue negotiating with the incumbent representative while a valid representation petition is pending which asserts that that representative no longer represents the majority of the employees in the unit. In ruling on this question, it is necessary to examine the language of the statute.

The declared policy of the State and purpose of the Public School Employment Relations Act is to "promote harmonious and cooperative relationships between reorganized 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. section 4001. These policies are best effectuated by granting to public employees the right to bargain through representatives of their own choosing and obligating public employers to collectively negotiate with the representatives so chosen. 14 Del.C. section 4001. Further, the Act provides mechanisms for employees to choose their representative. 14 Del.C. sections 4010 and 4011. In the case of an incumbent representative 1 , 14 Del.C. section 4018 provides:

An employee organization that has been certified as the exclusive bargaining representative of a bargaining unit deemed to be appropriate prior to the effective date of this chapter shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this chapter...

As stated in a recently issued slip decision on a request for preliminary injunction (In the Matter of New Castle County Vo-Tech Federation of Teachers, AFT Request for Declaratory Statement, Del.PERB

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1 The New Castle County Vo-Tech Education Association's tenure as the exclusive representative of the bargaining unit predates the passage of the Act.

Slip Decision on Request for Preliminary Injunction, D.S. No. 88-12-031 (12/14/88, p. 2))...

...In processing competing representation claims, the PERB is primarily concerned with preserving the fundamental right of employees to freely chose their exclusive representative. 14 Del.C. section 4003.

Consistent with the clear language of the statute as discussed above and the stated concern of this Board, it is the employer's responsibility to observe strict neutrality with respect to competing organizations during the period of time between the notice of a valid petition for determination of an exclusive bargaining representative and the resulting election or other resolution of the matter. Continuing negotiations with one of two or more competing organizations is inherently incompatible not only with the employer's duty to maintain strict neutrality but also establishment of an election environment which fosters and promotes free choice.

The Education Association cites a number of cases in its memorandum supporting its position that it is entitled to continue negotiations as the exclusive representative until it is ousted by the results of a representation election. Council 81, AFSCME v. State Department of H & S Services (Del.Super., 449 A.2d 271 (1982)) is not controlling in this matter since the facts involved are markedly different. There, the employer sought to sever a current unit represented by Council 81, into two smaller units. The employer refused to negotiate with the exclusive bargaining representative until the appropriateness of the unit was reviewed by the Department of Labor. In the instant case we are not faced with any change in the

composition of the unit. What is questioned is who will represent the employees rather than what employees will be represented. Likewise, City of Winter Park v. Laborers Local 517 (Fl.PERC, 1981-83 PBC Par. 37,403) 2 deals with a situation where an employer refused to negotiate on the basis that it no longer believed the current exclusive representative held the support of the majority of the employees in the unit. Under the Florida statute, no procedure is provided for employers to initiate a representation petition; consequently, an employer may not, of its own volition, refuse to bargain on this basis.

Finally, the decision in this case is in opposition to the current controlling precedent of the National Labor Relations Board, as established by a narrow three to two decision in RCA del Caribe, et al. v. Electrical Workers, IBEW, Local 2333 (NLRB, 262 NLRB 963 (1982)). It should be noted, however, that the NLRB's RCA del Caribe decision constitutes a reversal of its 24 year adherence to the principle announced Shea Chemical Corp. and Oil, Chemical and Atomic Workers International Union (NLRB, 121 NLRB 129 (1958)). The PERB finds the logic advanced by the NLRB under Shea and as asserted by the dissents of Chair Van de Water and Member Jenkins in RCA del Caribe to be the more compelling and reasonable approach. This Board is not convinced that requiring an employer to negotiate during the period pending a representation election works to insure stability while protecting the

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2 The PERB may look to the case law in other jurisdictions for guidance but is not bound by precedent established elsewhere. In making use of such guidance, the Board is cautious to observe any and all differences between underlying statutes.

rights of employees to freely chose their representative. It should also be noted that a number of other state jurisdictions have chosen not to adopt the RCA del Caribe approach for similar reasons.

Having established the policy of insuring employer neutrality, the District's third question becomes moot, for a contract negotiated in violation of the Act would not constitute a valid, binding and enforceable agreement, under any circumstances.

*D. Murray-Sheppard*

DEBORAH L. MURRAY-SHEPPARD

Principal Assistant/Hearing Officer

Delaware PERB

*Charles D. Long, Jr.*

CHARLES D. LONG, JR.

Executive Director

Delaware PERB

ISSUED: December 19, 1988

