

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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

NEW CASTLE COUNTY VOCATIONAL TECHNICAL :
FEDERATION OF TEACHERS, AFT, :
Requesting Party, :
and :
NEW CASTLE COUNTY VOCATIONAL TECHNICAL : D.S. No. 88-12-031
SCHOOL DISTRICT, :
Respondent, :
and :
NEW CASTLE COUNTY VOCATIONAL TECHNICAL :
EDUCATION ASSOCIATION, NCCEA/DSEA/NEA, :
Respondent. :

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 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 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 9, 1988, the Federation of Teachers filed this request for declaratory statement, seeking clarification of its rights under the Public School Employment Relations Act (14 Del.C. Chapter 40, hereinafter "Act") with respect to equal access to bargaining unit employees through the use of the school mail system, employee mailboxes, bulletin boards, facilities and equipment. All parties were provided with the opportunity to file position statements with respect to the request with the Public Employment Relations Board.

On December 14, 1988, the PERB issued a preliminary injunction in this matter, ordering both the Education Association and the Federation of Teachers to refrain from all use of District mailboxes, buildings, bulletin boards and release days for the purpose of electioneering until the decision was rendered on the Federation's

Request for Declaratory Statement.

POSITIONS OF THE PARTIES

The Federation of Teachers argues that allowing and/or requiring an employer to discriminate with regard to access to school facilities and methods of communication between an incumbent representative and a challenging organization during a representation election campaign directly affects bargaining unit employees' access to information. The Federation asserts that requiring parity in the extension of these privileges protects and promotes the right of the employees to freely choose their representative.

The Education Association argues that, as it is the currently certified exclusive bargaining representative, it is entitled to a continuing presumption of majority status. Accordingly, the Association argues it is entitled to the full benefit of all rights conferred upon it in this capacity.

The District contends that the privileges sought by the Federation were limited by the expired contract for certain specified uses. 1 The District takes the position that it has no objection to extending the same privileges to the Federation as it extends to the Association, subject to those same limitations on usage.

1 The Federation cites the following provisions from Article 2, Recognized Rights and Privileges, of the expired collective bargaining agreement as the basis for the privileges in which it seeks parity:

2.2 The Association may be extended the courtesy of using the existing interschool mail facilities and school mailboxes to distribute information to those represented by the Association as it deems necessary so long as it does not interfere with school district usage. The Principal or designee will receive a copy of all information for approval prior to distribution.

ISSUE

The issues presented for clarification are:

- 1) Is it an unfair labor practice under 14 Del.C. section 4007 for an employer to extend privileges, previously granted to an incumbent representative under an expired collective bargaining agreement, (e.g. use of school mail system, employee mailboxes, bulletin boards, school facilities and equipment) to the incumbent during a representation election campaign while excluding challenger organizations from the use of these privileges?
- 2) Is it an unfair labor practice under 14 Del.C. section 4007 for

Footnote 1 (continued)

Material shall not include politically-oriented information. All approved material shall be placed in school building mailboxes by a building secretary designated by the Principal. The Association shall accept full responsibility for the content of such material. Failure to follow this procedure shall result in the loss of this privilege.

- 2.3 The Association shall be provided space on mutually designated building bulletin boards for its exclusive use in posting routine notices. Such notices shall not include politically oriented material. This restriction shall not apply to election campaigns for elected positions in the Association.
- 2.4 The Association may be extended the courtesy of using school facilities and equipment (i.e., meeting rooms, calculating machines and all types of audio-visual equipment) at reasonable times on school property when available and when not otherwise in use. The Association shall pay for the cost of all materials and supplies and other costs incurred related to such use. The Association shall be charged no more than fifteen cents per copy for use of District photo copy equipment.
- 2.7 The Association President or designee shall have five days of release time per school year with pay for the purpose of resolving such contract related problems as may arise within the District. Any of the above mentioned days may be taken in terms of half days or full days. The Association President will notify the Superintendent/designee twenty-four (24) hours prior to the utilization of this time.

an employer to deny and/or discontinue the extension of these same privileges to all organizations during a representation election campaign?

DECISION

The Federation of Teachers bases its request on the specific provisions contained in Article 2.0, Recognized Rights and Privileges, of the collective bargaining agreement between the District and the Education Association which expired on June 30, 1988. Rights such as those contained in Article 2.0 constitute permissive subjects of bargaining. Appoquinimink Education Association v. Board of Education of the Appoquinimink School District (Del.PERB, U.L.P. No. 1-3-84-3-2A (8/14/84)). The PERB has held that the employer's duty to maintain the status quo after the expiration of a collective bargaining agreement applies only to mandatory subjects of bargaining and not to permissive subjects of bargaining. Appoquinimink (Supra.). Therefore, continued adherence to the Article 2.0 provisions is not compulsory.

Further, the Article 2.0 rights are limited primarily to contractual matters and exclude matters of a political nature; therefore they are reserved exclusively to the Education Association as the currently certified representative. Conversely, the right to engage in pre-election campaigning is one which applies equally to both the Association, as the incumbent, and the Federation, as the challenging organization. To hold otherwise would not only conflict with establishment of an election environment which fosters and promotes the free exchange of information but also places the employer in a position inconsistent with its duty to maintain and observe strict

neutrality with regard to the organizations competing for certification. New Castle Co. Vo-Tech School District and N.C.C.V.T. Education Association, NCCEA/ DSEA/NEA and N.C.C.V.T. Federation of Teachers, AFT (Del.PERB, D.S. No. 88-12-030 (12/19/88)).

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 22, 1988