

SUPERIOR COURT
OF THE
STATE OF DELAWARE

VINCENT A. BIFFERATO
JUDGE

COURT HOUSE
WILMINGTON, DE. 19801

Submitted: May 10, 1988
Decided: June 24, 1988

Sheldon N. Sandler, Esq.
Young, Conaway, Stargatt & Taylor
Rodney Square North
Eleventh Floor
P. O. Box 391
Wilmington, DE 19899-0391

Marcia Rees, Esq.
Deputy Attorney General
State Office Building
820 N. French Street
Wilmington, DE 19801

Counsel:

RE: Delaware State Education Association, et al. v.
Board of Education of the State of Delaware
C. A. No. 87C-DE-122-1-CV

In this action for a declaratory judgment, both the plaintiffs, Delaware State Education Association, Susan C. Roushey and Brandywine Education Association, and the defendant, Board of Education of the State of Delaware ("Board"), filed cross-motions for summary judgment. The issue before the Court is whether the Board's regulation imposing a minimum teacher work day of 7 1/2 hours conflicts with the Public School Employment Relations Act ("Act"), 14 Del. C. ch. 40.

Since its enactment in 1970, 14 Del. C. §1305(f) empowered the Board to define "full work days." From 1970 until the adoption of the contested regulation, the Board delegated the responsibility to define the work day to the local boards of education.

On November 19, 1987, the Board enacted a regulation defining the work day for all teachers in Delaware public schools as a "minimum 7 1/2 hours, inclusive of lunch plus the amount of time required of a member of a professional staff at public school." The regulation will become effective July 1, 1988 or "when a negotiated contract that provides otherwise expires."

The plaintiffs filed this declaratory judgment action on the grounds that: (1) the Board's minimum hour regulation

directly contravenes the Act which preserved this issue for local negotiations; and (2) the regulation was unlawfully adopted.

The Act requires good faith collective bargaining between boards of education and certified public school employee organizations with respect to the terms and conditions of employment. Title 14 Del. C. §4002(p) defines terms and conditions to mean "matters concerning or related to wages, salaries, hours, grievance procedures and working conditions." The definition further provides, however, that the term shall "not include those matters determined by this chapter or any other laws of the State to be within the exclusive prerogative of the public school employer."

The Public Employment Relations Board has held that although this language "constitutes a broad and encompassing scope of negotiability, it is not without limitation." Appoquinimink Education Association v. Board of Education of Appoquinimink School District, U.L.P. No. 1-3-84-3-2A (August 19, 1984), p. 8. The legislature intended all matters concerning or related to the specified terms and conditions of employment to be mandatorily bargainable unless statutorily reserved to the exclusive prerogative of the public school employer. Id.

The limitations upon the scope of the collective bargaining statute is echoed in the Act itself. Title 14 Del. C. §4013(e) provides:

No collective bargaining agreement shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public school employer's funds, spending or budget, or would otherwise be contrary to law.

Thus, this section precludes the enforceability of contractual provisions which would be contrary to law and, therefore, establishes illegal subjects of bargaining.

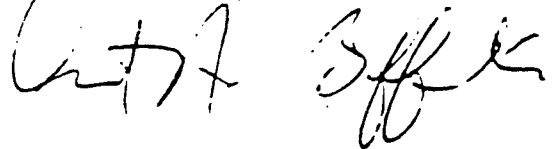
Title 14 Del. C. §1305(f) provides that "[f]ull work days be defined by the State Board of Education." This statement is explicit, definitive and leaves nothing to the discretion of a local board. The parties are not free to alter this statutory mandate through the collective bargaining process. They do not have the authority to do so nor are they free to bargain over matters determined to be statutorily reserved to the exclusive prerogative of the public school employer. This would be a clear violation of §4013(e).

In conclusion, the Board's enactment of the 7 1/2 hour work day requirement is consistent with its general power to exercise control and supervision over the public schools of the State, 14 Del. C. §121, and its specific power to define full work days. 14 Del. C. §1305. The regulation, therefore, is valid.

Accordingly, the plaintiff's motion for summary judgment is DENIED and the defendant's cross-motion for summary judgment is GRANTED.

IT IS SO ORDERED.

Very truly yours,



VAB:dm
xc: Prothonotary

