

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INDIAN RIVER EDUCATION ASSOCIATION, :
:
and : D.S. No. 89-03-035
:
BOARD OF EDUCATION OF THE INDIAN :
RIVER SCHOOL DISTRICT :

DECISION

The Board of Education of the Indian River School District (hereinafter "District") is a public employer within the meaning of section 4002 (m) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (Supp. 1982)(hereinafter "Act"). The Indian River Education Association (hereinafter "Association") is the exclusive bargaining representative of the public employer's certificated professional employees within the meaning of 14 Del.C. section 4002(h).

STIPULATED FACTS [1]

1. For approximately twenty (20) years involving several different collective bargaining agreements, the Board of Education of

[1] As jointly agreed to by the parties on May 12, 1989, and submitted by the District on June 9, 1989

the Indian River School District has entered into collective bargaining agreements with the Indian River Education Association.

2. Pursuant to the Public School Employment Relations Act, negotiations on a new collective bargaining agreement between the Board of Education of Indian River School District and the Indian River Education Association began on January 31, 1989, more than ninety (90) days prior to the expiration date of the existing Contract of June 30, 1989.

3. At each meeting, the discussion between the parties centered on "guidelines" for negotiations, more frequently referred to as "ground rules". While agreement has been reached on most of the ground rules proposed by both parties, one ground rule proposed by the Board has been the subject of controversy. The ground rule in controversy states as follows:

The membership of the Indian River Education Association Team shall reflect all certified personnel recognized in Article I, Recognition, of the Contract between the Indian River Board of Education and the Indian River Education Association and their professional consultant(s).

4. The Board Team clarified this proposal at the table to mean that the only persons eligible for membership on the Association Team were people who are employed within the bargaining unit represented by the Association and professional consultants (such as DSEA representatives) selected by the Association.

5. At the first meeting and again at the second meeting, the Indian River Education Association introduced as members of its Negotiating Committee persons who were not members of the Indian River

Education Association Teachers Bargaining Unit nor were those persons certified personnel as that term is defined in the existing Collective Bargaining Agreement.

6. At both of those sessions, the IREA introduced as part of its bargaining team persons employed by the School District but who are not members of the IREA Teachers Bargaining Unit and who are not employees under Title 14, Chapter 40.

7. From 1977 until the instant dispute, the IREA has not sought to include on its IREA Bargaining Team persons employed by the District who were not members of the IREA Teachers Bargaining Unit. For the period 1968 to 1977, the Petitioner has no knowledge that its practice was different than that stated above.

8. At the second meeting, the IREA asserted that the Board of Education did not have the right to interfere with the selection of members of the IREA Teachers Bargaining Team.

9. At the second meeting between the parties, the Association also asserted its belief that the selection of team members is not a mandatory subject of bargaining. Accordingly, the Association declined to negotiate over the matter.

10. Thereafter, the Board continued to propose the above-quoted ground rule with regard to makeup of the negotiating teams.

11. At the conclusion of the second negotiating meeting, the Board confirmed its intention to continue proposing the ground rule at issue and the Association continued to assert that it did not wish to negotiate the ground rule. Thus, the parties reached a deadlock on this issue, and this deadlock prevents the parties from entering into negotiation over the actual substantive issued to be contained in the

successor contract.

ISSUES

I. Does the Public Employment Relations Board have jurisdiction to decide whether an exclusive bargaining representative, over objections of the District, may include on its bargaining committee persons employed by the District who are not "employees" under the Act?

II. Does Title 14, Chapter 40 prohibit an exclusive bargaining representative from including on its bargaining committee persons employed by the District but who are not "employees" under the Act?

III. Is the composition of the exclusive bargaining representative's negotiating committee a mandatory subject of bargaining under the Act?

POSITIONS OF THE PARTIES

DISTRICT:

The District avers that the Public Employment Relations Board is without jurisdiction to rule in this matter because the non-bargaining unit members the Association seeks to include on its negotiating committee are not "employees" as defined and covered by the Public School Employment Relations Act.

The District takes the position that inclusion of non-bargaining unit members on the Association negotiating team is inconsistent with the statutory definition of "employee" [2] and with statutory provisions which limit representatives of the exclusive bargaining

[2] "Public school employee" or "employee" means any certificated professional employee of a public school district except public administrators. . 14 Del.C. section 4001(1).

representative authorized to negotiate on behalf of employees [3] to "... officers, representatives, or agents of the employe organization" (14 Del.C. section 4002 (g)). [4] The District argues because custodians, clerical personnel and teachers aides are not members, officers, agents or representatives of the Association within the statutory definitions and are not employees covered by the Act, these persons are statutorily precluded from engaging in collective bargaining on behalf of the members of the teachers bargaining unit.

Further, the District asserts that it is a long standing past practice of the Indian River Education Association to include only bargaining unit members and negotiation professionals on the IREA bargaining team. This practice, the District concludes, "counsels against allowing non-employees to bargain". It argues that, by changing the composition of its bargaining team, the IREA has unilaterally altered the framework under which the parties have successfully negotiated contracts over the history of their relationship.

The District also invokes the parties' current collective bargaining agreement for support. It asserts that because all the contractual provisions remain in effect until the parties reach agree-

[3] 14 Del.C. section 4003, School employee rights, provides in relevant part:

School employees shall have the right to:...

(2) Negotiate collectively or grieve through representatives of their own choosing.

[4] 14 Del.C. section 4002 (g) provides:

"Employee organization" means any organization which admits to membership employees of a public school employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

ment on a successor agreement, there is no affirmative obligation to renegotiate. Therefore, it concludes, the parties are required to maintain the same bargaining structure as previously employed until agreement is reached as to any modifications in the bargaining framework. It also notes that the persons the IREA seeks to include on its committee are not included under the contractual recognition clause.

Finally, the District argues that change such as that proposed by the Association is disruptive and contrary to the goals of the Public School Employment Relations Act. It maintains that the IREA should be bound to negotiate within the framework employed in the past in order to best effectuate the stated purpose of the Act, "... to promote harmonious and cooperative relationships" (14 Del.C. section 4001).

ASSOCIATION:

The Association argues that this dispute is properly before the PERB as it is a matter concerning the rights of the IREA, the exclusive bargaining representative of certificated professional employees covered by the Public School Employment Relations Act. This case, it asserts, involves an internal union matter in which the District is statutorily prohibited from interfering. 14 Del.C. section 4007 (a)(2)

The Association asserts that it has sole and exclusive right to select members of its bargaining committee, free from District influence. In its brief it cites numerous private sector cases under the National Labor Relations Act and public sector cases from other jurisdictions which support its contention that a union may choose

whomever it likes to serve on its negotiating committee. It further avers that the District is statutorily required to bargain in good faith with the employee representative, whomever that may be. 14 Del.C. section 4007(a)(5).

IREA notes that the statute does not include a definition of "representative" or "agent", as those terms are used in the definition of "employee organization" (14 Del.C. section 4002(g)). The PERB should therefore, it argues, look to basic common law rules which allow a party to select any individual it chooses to act as its agent or representative.

Finally, the Association counters that there is nothing in the current collective bargaining agreement which supports the District's interpretation of contractual intent. It notes that the IREA is not seeking to represent the interests of those non-bargaining unit members it has included on its committee in the negotiations by rather has duly authorized these persons to represent the interests of the teachers in the bargaining unit.

OPINION

The Public Employment Relations Board is charged with administering the Public School Employment Relations Act (14 Del.C. Chapter 40), which establishes the rights and obligations of public school employers and their certificated professional employees in collective bargaining. The issue before this Board involves the right of an exclusive bargaining representative to choose members of its negotiating team who will represent the interests of an appropriate bargaining unit under the Act. It is not an issue which requires the

definition of rights of persons outside of the bargaining unit or "non-employees". It is the certificated professional employees who stand to benefit or suffer from a ruling on who may serve in representing their interests on their negotiating team. Accordingly, the PERB accepts jurisdiction in this matter.

This case involves the fundamental right of bargaining unit employees to negotiate through representatives of their choosing. The Act clearly states that its policies are best effectuated by granting this right to employees and obligating board of education to enter into negotiations with such representatives. 14 Del.C. section 4001. In defining "employee organization", the Act clearly establishes that such organizations may have agents or representatives who may act as the organization and are therefore endowed with the same rights and responsibilities under the Act as the parent organization. Nowhere does the Act expressly limit the right of the organization to freely chose its agents or representatives. The right to choose such agents and/or representatives must be the inherent right of the employee organization. The District's interpretation of this language would place a restriction on the rights of an employee organization which the Act does not support. The PERB is obligated to administer the clear language of the Act.

The District has argued that the parties are bound to constitute their respective bargaining committees as they have been constituted throughout the parties' history of negotiations by past practice and by the intent underlying the current collective bargaining agreement. These areas of consideration are outside of this Board's statutory mandate and have no bearing on its application of the Act in this

matter.

The District has further alleged that permitting the inclusion of non-unit persons on the IREA negotiating team will thwart the purpose of the Act, i.e, to promote harmonious and cooperative relationships. While change is, by definition, disruptive, it does not always cause a deterioration in the relationship. The promotion of harmonious and cooperative relationships is a process which involves the best efforts of both parties. There is no evidence here that the persons chosen to sit on the bargaining committee were chosen for the purposes of disruption or harm to the parties' relationship. Having been authorized to represent the best interests of the teachers in the bargaining unit, the employer is now obligated to bargain in good faith with these representatives.

For the reasons stated above, the Indian River Education Association is clearly not required to negotiate the composition of its negotiating team with the District. Accordingly, the District may not insist upon such negotiations as a condition precedent to engaging in bargaining over the substantive provisions of a successor agreement.

Finally the conclusion reached here is consistent with that established under the National Labor Relations Act and as affirmed by the Supreme Court in N.L.R.B. v. Jones and Laughlin Steel Corp. (301 US 1 (1936)).

CONCLUSIONS OF LAW

1. The Board of Education of the Indian River School District is a public employer within the meaning of 14 Del.C. section 4002(m).
2. The Indian River Education Association is an employee organ-

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

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

4. The Public Employment Relations Board has exclusive jurisdiction to determine the rights of exclusive bargaining representatives of certificated professional employees of Delaware public school employers under the Public School Employment Relations Act. 14 Del.C. section 4006.

5. The Indian River Education Association is not prohibited from including on its negotiating committee persons employed by the Indian River School District but who are not certificated professional employees within the meaning of the Act.

6. The Indian River Education Association is not required by the Public School Employment Relations Act to negotiate the composition of its negotiation team.

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DATED: July 28, 1989