

appeal.

FACTS

The Executive Director's decision fully sets forth the stipulated facts underlying this dispute (pp. 595-596) and will not be repeated here.

CONCLUSION

After reviewing the record of this proceeding, it is the decision of the Board to modify the ruling as set forth in the opinion of January 8, 1991. The Board stays the unfair labor practice charge pending the exhaustion of the parties' contractually agreed upon grievance/arbitration procedure. The PERB retains jurisdiction in this matter, however, for the purpose of reconsideration, on application of either party, for the reasons listed at the conclusion of this section.

The record does not warrant a finding that the District unilaterally altered a mandatory subject of bargaining without first bargaining in good faith. Rather, we support the position that the proper forum for the resolution of the disputes which require the interpretation of contract language is the grievance and arbitration provisions contained in the collective bargaining agreement. The PERB stated this position:

While an unfair labor practice is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board, an alleged contract violation is proper subject matter only for the negotiated

grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language.

Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Board of Education, Del.PERB, U.L.P. No. 85-06-05, at p. 142-143.

Article 3 of the Red Clay Agreement contains a grievance and arbitration procedure for the resolution of contractual disputes and, in this Board's opinion, that is the issue in this matter.

Article 18:1 provides for:

The employees' normal in-school work day will be seven (7) continuous hours and will normally fall between the hours of 7:30 a.m. and 4:30 p.m. ...

The parties do not agree on the interpretation of this clause of their agreement and as such, should resolve this dispute in accordance with the grievance procedure contained in Article 3.

There is precedent for this deferral. In F.O.P. Lodge No. 1 v. City of Wilmington (Del.PERB, U.L.P. No. 89-08-040), the PERB stayed an unfair labor practice proceeding, pending exhaustion of the parties' contractually agreed upon grievance procedure, where the issue involved an alleged violation of the employer's obligation to bargain in good faith over a mandatory subject of bargaining, as evidenced by an alleged breach of the parties' collective bargaining agreement. The PERB, in so doing, recognized that "pre-arbitral deferral will require the parties to honor their contractual obligation rather than, by casting their dispute in statutory terms, to ignore their agreed upon procedures". Id. (citing City of Wilmington v. Local 1590, IAFF,

Del.Supr., 385 A.2d 720, 724 (1976)).

In arriving at this decision, the Board is aware of the reasoning for differentiating the F.O.P. case (Supra.) from prior cases as stated by the Executive Director in the January 8, 1991 decision in this case:

... The City of Wilmington and F.O.P. Lodge No. 1 have negotiated a grievance procedure which culminates in the submission of outstanding disputes to final and binding arbitration by an impartial arbitrator.

[F.O.P. Lodge No. 1 (Supra at. p. 51), emphasis added.]

The PERB further supported its adoption of a limited discretionary deferral policy in that case by citing the parties' long standing and well established collective bargaining relationship, the employer's stated willingness to submit the issue to arbitration in accord with the provisions of the collective bargaining agreement, and because any decision in that matter would turn on an interpretation of the specific contractual provision in question...

The Board believes the parameters established for deferral by F.O.P. Lodge No. 1 (Supra.) should be expanded slightly to include the advisory arbitration provision contained in the collective bargaining agreement between these parties. Accordingly, this unfair labor practice charge is stayed pending the exhaustion of the parties' contractually agreed upon grievance/arbitration procedure. The PERB retains jurisdiction in this matter for the express purpose of reconsidering the matter, on application of either party, for any of the following reasons:

1. that an arbitration award is rendered which fails to

- resolve the statutory claim;
2. that either party refuses to abide by the arbitrator's decision;
 3. that the arbitral process has been unfair;
 4. that the dispute is not being resolved by arbitration with reasonable promptness; and/or
 5. that the issue has been satisfactorily settled between the parties in contract negotiations.

WHEREFORE, this unfair labor practice charge is hereby stayed, in accord with the provisions set forth above. The parties are ordered to notify the Public Employment Relations Board of their compliance with this Order.

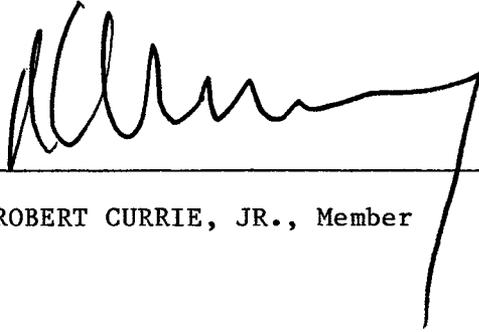
IT IS SO ORDERED.



ARTHUR A. SLOANE, Chair



HENRY E. KRESSMAN, Member



R. ROBERT CURRIE, JR., Member

DATE: February 4, 1991