STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

ELAINE ALVINI, et al.,	:	
Charging Party,	:	
v.	:	ULP No. 92-03-073
COLONIAL SCHOOL DISTRICT, COLONIAL PARAPROFESSIONAL ASSOCIATION, and COLONIAL FOOD SERVICE WORKERS ASSOCIATION,	:	
Respondent.	:	

BACKGROUND

The Charging Parties are "public school employees" within the meaning of section 4002(m) of the Public School Employment Relations Act (hereinafter "Act" or "PSERA"), 14 Del.C. Chapter 40. Although included in bargaining units represented by either respondent Colonial Food Service Workers Association or respondent Colonial Paraprofessional Association, the Charging Parties are not members these labor organizations.

The Colonial School District ("District" or "employer") is a "public school employer" within the meaning of 14 Del.C. section 4002(n). The Colonial Food Service Workers Association ("CFSWA" or "Association") and the Colonial Paraprofessional Association ("CPA" or "Association") are each "exclusive bargaining representatives" within the meaning of 14 Del.C. section 4002(i).

On June 6, 1992, the Charging Parties filed an unfair labor practice complaint with the Public Employment Relations Board (hereinafter "PERB"). The complaint

charges the Respondents with entering into illegal agreements which attempt to compel bargaining unit members who choose not to become members of the labor organization to pay a "fair share" representation fee. The Charging Parties allege that by and through these agreement the District has violated sections 4007(a)(1), (2) and (3), which provide:

> (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
>
> > (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
> >
> > (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
> >
> > (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

The complaint further charges the Respondent Associations with violating section 4007 (b)(1), which provides:

> (b) It is an unfair labor practice for a public school employee or for an employee organization or its designated representative to do any of the following:
>
> > (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

On June 3, 1992, the District filed its Answer to the charge declining to participate further in the proceedings based upon the "hold harmless clause" contained in the disputed contractual provisions. [See Article 3, section 3.7 below]

On June 16, 1992, the respondent Associations filed an Answer denying the allegations set forth in the complaint. On June 25, 1992, the Charging Parties' Reply was filed with the Board.

On August 19, 1992, the parties submitted a Stipulation of Facts and requested that a limited hearing be convened for the purpose of addressing the remaining factual issues. A hearing was held on November 11, 1992.

The parties filed post-hearing briefs in support of their respective legal positions. The final brief was received from the Charging Parties on January 26, 1993.

STIPULATED FACTS [1]

1. Charging Parties Elaine Alvini, Susan Cannon, Delores W. Chappell, Beverly Clark, Hilda A. Craig, June E. Dixon, Emma L. Fowler, Elizabeth Grier, Rose M. Henderson, Connie Hicks, Margaret A. Hinson, Joanne M. Hopkins, Shirley A. Hurd, Roberta Kreig, Carol A. Lopez, Mary Rae Mahoney, Elvinia Moody, Mary M. Pollard, Cathy L. Reese, Majorie Rodriguez, irene Schorah, Gladys Skrzec, Lubomira Szeremeta, Patricia A. Till, Doris Wilmer, Rosalie Wilson, and Catherine J. Zimmerman are represented by the Colonial Food Service Workers Association.

2. Charging Parties Peggy A. Beers, Blair Benson, Eleanor S. Bentz, Lorraine E. Hand, Joyce Hatfield, Laura H. Mathis, and Janet M. Reed are represented by the Colonial Paraprofessional Association.

3. Charging Parties are in bargaining units represented by, but are not members of, either respondent Colonial Paraprofessional Association or respondent Colonial Food Service Workers Association.

4. Effective on or about September 1, 1990, the respondent District entered into collective bargaining agreements with each of the respondent Associations which contained the following language:

ARTICLE 3

Association Fees

3:1 The Board and Association agree that there shall be no obligation for bargaining unit employees to join the Union or to pay a representative fee as a condition of employment or continued

1 The Stipulated Facts included herein are those stipulated and agreed to by the parties and submitted to the PERB on August 19, 1992.

employment. However, the Board does recognize the Association's claim that all members of the bargaining unit, even those that are not members of the Association, have a responsibility to pay fair value for service rendered on their behalf by the Association, and by the National Education Association, for their proportionate part of the cost of collective bargaining, contract administration, grievance adjustment, and other duties and services related to being the exclusive representative.

3.2 The Board considers it the proper authority of the Association to establish dues and to assess a service charge to non-members of the Association who are also included in the bargaining unit. It is understood that the determination of such a fee shall be the sole responsibility of the Association and to be consistent with services rendered and costs incurred on behalf of all bargaining unit members. Allocation of such representation fee is as appropriately determined by the Association for allocation among the Association, the Delaware State Education Association, and the National Education Association.

3.3 On or before October 10 of each year, the Association shall provide the district with a list of bargaining unit members who are not also Association members and the district shall send a letter to each such member that if he/she intends to authorize payroll deduction for Association dues or service fees that within two (2) weeks, a payroll deduction authorization form should be submitted to the District Office. Upon receipt of such authorization, the district shall then deduct the representation fee in ten (10) equal payments from the payroll of each person who submits an authorization. The district shall inform the Association of all members of the bargaining unit who do not sign such an authorization form or who revoke an executed form.

3.4 Any action taken by the Association to collect a representation fee from those bargaining unit members who do not authorize payroll deductions or who otherwise refuse to pay the representative fee is understood to be an Association action and not on behalf of the Board.

3.5 Each employee who, on the effective date of this agreement, is a member of the Association, and each employee who becomes a member after that date, shall maintain his/her membership in the Association, provided that such employee may resign from the Association during each calendar period August 15 through August 31. Request must be made in writing to the employer.

3.6 <u>Deduction of Association Dues or Service Fees:</u> The employer agrees to deduct the monthly Association membership dues or service fee from the earned wages of each employee covered by this agreement. Such deductions shall be made after the employee executes the appropriate written form. On or before the 20th of each month, the Association shall deliver to the District

additional executed authorization forms under which the Association membership dues or service fees for the next month are to be deducted. Dues or service fees deductions shall be made from the semi-monthly payroll. Such deductions for Association dues or service fees are to be transmitted each month by the District, with a list of those from whom such deductions have been made, to the duly elected Treasurer of the Association not later than the tenth of the following month. The Association will notify the employer thirty days prior to any change in dues or service fees.

3.7 The Association shall indemnify and hold the employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of any action taken or not taken by the employer for the purpose of complying with any of the provisions of this Article. [2]

5. On April 1, 1992 the respondent Associations filed suit against the charging parties and others seeking to collect fees from them for the 1990-91 school year. Copies of the complaints were served on the charging parties on or about April 16, 1992.

6. Charging parties filed an answer to the complaint and they have also file a motion with the Superior Court to hold further proceedings in abeyance pending the disposition by the Board of this unfair practice complaint. The Court denied this motion and the case is still pending in the Superior Court.

7. Each of the parties represented by the Colonial Paraprofessional Association received from the State a certificate in the form attached hereto. [DPI Permit for Classroom Aide].

8. To date the charging parties have not paid any fee to the respondent Associations for the 1990-91 or 1991-92 school years.

9. The Board is requested to take judicial notice of the following:

Colonial Food Service Workers Association v. Board of Education of the Colonial School District, Del. Ch., C.A. No. 8269 (October 8, 1987).

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2 The quoted language is from the agreement with the Food Service Workers. The agreement with the Paraprofessionals contains identical language in Article II but it also contains additional language that is not material to this complaint.

Colonial Food Service Workers v. Hicks, Del. Super., C.A. No. 90C-FE-63 (February 19, 1992).

Smyrna Education Association v. Bd. of Education of the Smyrna School District, Del. PERB, A.D.S. No. 89-10-046 (July 11, 1990).

ISSUE

Does the Public School Employment Relations Act prohibit an employer and an exclusive bargaining representative from negotiating a contractual provision which requires that members of the bargaining unit who choose not to become members of the representative labor organization pay a fair share representation fee for their proportionate share of the costs of collective bargaining, contract administration, grievance adjustment and other duties and services related to these processes?

PRINCIPAL POSITIONS OF THE PARTIES

Charging Parties:

The Charging Parties assert that this issue is controlled by 14 Del.C. §4003(1), which provides:

> School employees shall have the right to:
>
> (1) Organize, join, form or assist any employee organization, provided that membership in, or an obligation resulting from collective bargaining negotiations to pay any dues, fees, assessments or other charges to an employee organization shall not be required as a condition of employment for certified professional school employees.

The Charging Parties argue that the right to impose agency shop agreements should not be inferred under the language of the PSERA. They assert that the statutory grant of the right to organize, join, form or assist a labor organization necessarily includes the right to refrain from such activity. Section 4003(1), they

argue, clearly includes a "right to work" provision which has not been previously adjudicated by the Delaware courts.

The Petitioners argue that school aides who interact with children and who are permitted by the Department of Public Instruction are certified professional employees. They also argue if as a result of working for the school district, an employee is obligated to pay a fair share fee to a labor organization, payment of that fee constitutes a condition of employment, as prohibited in §4003(1).

Further, the Charging Parties argue that the collection of the fair share fees is prohibited by the unfair labor provisions of the PSERA. Specifically, they assert that the agreement authorizing the union to collect fees encourages membership in the union in violation of 14 Del.C. §4007(a)(3) and illegally assists the labor organization by providing it with a source of financial support to which it would otherwise not be entitled in violation of §4007(a)(2). They argue that by committing these unfair labor practices, the employer and the employee organizations have interfered with the rights of employee as guaranteed under the PSERA.

Respondents:

The Respondent Associations dispute the Charging Parties' contention that paraprofessionals or "aides" are certified professional school employees within the meaning of the PSERA.

They argue that because the Act does not expressly grant to public school employees the right to refrain from organizing, joining, forming or assisting an employee organization, the charging parties are not entitled to do so.

Further, they assert that the collective bargaining agreement provision which requires non-member employees to pay a service fee does not constitute a

condition of employment as proscribed by 14 Del.C. §4003(1) because the provision is enforced through a debt action and not by mandatory discharge.

Finally, the Associations argue that the collection of a service fee from non-member employees does not violate the unfair labor practice prohibitions of the PSERA. They assert that the District's compliance with the contractual provisions does not assist or encourage membership in the labor organizations, under the established meaning of those terms.

OPINION

This case presents for the first time a question as to whether a fair share agreement which impacts public school support staff is legal under the Public School Employment Relations Act. The contractual language in question provides that the employer and the Association(s) agree that no bargaining unit member is required to join the Association or pay a representation fee *as a condition of employment*, i.e., the contract does not create either a "union shop" or an "agency shop". The employer has simply recognized that the association is entitled to assess a fair value fee for the services it is legally required to provide as the exclusive representative of all bargaining unit members. The employer has agreed to deduct dues or representation fees from the wages of those employees who sign express written authorizations for such deductions and to transmit this money to the associations on a monthly basis. The employer incurs no obligation to enforce the collection of the representation or "fair share" fee from those bargaining unit members who do not authorize a wage deduction.

While this is a case of first impression before the PERB, these parties, this issue and the specific contractual language involved have an extensive history in the Delaware Courts. In December of 1981, the negotiating teams of the Colonial School

District and the CFSWA reached impasse in their negotiations because the Association insisted that bargaining unit members who were not members of the Association be required to pay a fee to the Association for services rendered as the exclusive bargaining representative. The District refused to make the payment of such a fee a condition of employment such that failure to pay would result in an employee's discharge. The impasse continued until the fall of 1984 when the Association offered a compromise to which the District agreed in February 1985. This language agreed to by the parties in 1985 is identical to the contractual language found in Article 3 of the current CFSWA agreement and which is in dispute in this matter. During the ratification meeting, an Association representative stated that if a bargaining unit member refused to pay the representation fee, the Association would seek enforcement by bringing suit in court. The contract was ratified unanimously by all members of the Association present. The following day several food service workers met with the Assistant Superintendent to express their concern over the specific terms of Article 3. As a result, the District refused to sign the contract at that time. Subsequently, the parties did enter into an agreement which prohibited the Association from bringing suit to collect its representation fees but permitted the Association to continue its litigation to enforce the original agreement, notwithstanding the later contract. The suit was filed in Chancery Court and asserted that the original agreement, because its terms were not ambiguous and had been agreed to by both parties, was binding upon all parties at the time it was ratified by the Association.

In ruling in Colonial Food Service Workers Assn. v. Bd. of Education (Del.Ch., C.A. No. 8269 (Oct. 8. 1987)), Vice-Chancellor Hartnett found the disputed language was not ambiguous and clearly included the filing of a suit to collect the unpaid fee. Because the essential terms of the disputed provisions, "representation fee" and

"condition of employment", have well recognized meanings in labor law, the Vice-Chancellor reasoned they would not have been misunderstood by the negotiators. Consequently, he held that because a meeting of the minds had occurred, a binding agreement came into existence when the original agreement was ratified by the Association.

These same contractual provisions were again litigated when the Colonial Food Service Workers Association brought suit against eleven bargaining unit members who had not joined the Association and who had failed to pay the required representation fee. The Justice of the Peace Court entered a judgment in favor of the Association and in April 1991, the defendants appealed for a trial de novo in Superior Court. Colonial Food Service Workers Association v. Hicks, et al., Del. Super. C.A. No. 90C-FE-63 (Feb. 19, 1992). Judge Babiarz found that the then applicable law, 19 Del.C. Chapter 13, did not prohibit agency shop arrangements. He further found that the defendants were precluded from again arguing that the contractual provisions did not allow the Association bring suit to collect unpaid fees from non-members because the identical issue had been decided by Chancery Court in CFSWA v. Bd. of Ed. (Supra.). The Court also determined the notice given to non-members detailing the computation of the fair share fee was constitutionally inadequate because the Association failed to provide sufficient information concerning its major categories of expenditure.

The Charging Parties argue that these prior cases have no direct impact on this matter because they were decided under a different bargaining law. Prior to July 18, 1990, collective bargaining involving public school employees other than certificated professionals was governed by the terms of 19 Del.C. Chapter 13, *Right of Public Employees to Organize.* The decision in Hicks (Supra.) rests on the premise that "agency shop" agreements do not violate Title 19, Chapter 13 because that law does not

contain an express prohibition against agency shop agreements. Judge Babiarz held that if the Delaware Legislature intended to ban such agreements it could have easily done so, as the New Jersey Legislature did by expressly providing to employees the right to *refrain* from forming, joining or assisting an employee organization. [3]

Unlike Hicks, the decision in this matter is governed by the terms of the Public School Employment Relations Act. The PSERA grants to public school employees the right to organize, join, form or assist labor organizations at section 4003 (1):

> School employees shall have the right to:
>
> (1) Organize, join, form or assist any employee organization, provided that membership in, or an obligation resulting from collective bargaining negotiations to pay any dues, fees, assessments or other charges to an employee organization shall not be required as a condition of employment for certified professional school employees.

Contrary to the New Jersey statute but parallel to 19 Del.C. Chapter 13, the PSERA does not expressly grant the right to all public school employees to refrain from these protected activities. It does, however, create a limited and express exception. Certified professional employees are protected from agreements which require them to either join or financially support employee organizations as a condition of their employment. Because this exception is so clearly and narrowly crafted, it is apparent that the Legislature's intention was that all employees other than certified professionals could be subject to agreements which required either membership or financial support of an employee organization as a condition of employment. Further, when the PSERA was amended on July 18, 1990, the synopsis of the amendment as it related to §4003(1) read:

> Section 4 of this Act maintains the status quo for locally bargaining union security and fair share provisions. [HS1 for HB541]

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[3] The N.J. statute provides: "Public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join or assist any employee organization, ***or to refrain from any such activity.***" N.J. Stat. Ann. §34:13A-5.3

Consistent with the decision in Hicks (Supra.), the status quo which was preserved was that certificated professional employees could not bargain union security or fair share provisions as a condition of employment, while all other support employees could.

The Charging Parties argue, however, this point was settled under the PSERA by the decision in Smyrna Educators' Association v. Bd. of Education (Del.PERB, D.S. No. 89-10-046 (1/25/90); affirmed, Del. PERB, A.D.S. No. 89-10-046 (7/11/90)). That decision included the following passage:

> Section 4003, Employee rights, of the Public School Employment Relations Act confers upon public school teachers the right to "organize, form, join or assist any employee organization provided, however, that membership in, or an obligation to pay dues, fees, assessments or other charges does not constitute a condition of employment". Although there is no express right for employees to refrain from the specified conduct, the statutory creation of the right, itself, implies the existence of the contrary right to refrain from participating; otherwise, the statute would impose a legal duty or obligation rather than create a right.

Where the Delaware Courts have interpreted statutory language which parallels that of the PSERA, this Board will look to their logic for guidance. Despite the discussion in Smyrna (Supra.), the 1991 Superior Court decision in Hicks (Supra.) establishes that the Court does not interpret the Legislature's silence as creating a contrary right.

The exception contained in §4003(1) provides that certified professional employees are exempt from any provision of a negotiated agreement which requires bargaining unit members to be members of or to financially support their representative as a condition of employment. "Certified professional employee" is not defined in the Act. The Charging Parties assert that aides who interact with children are certified professional employees within the meaning of the act because the Delaware Department of Public Instruction ("DPI") issues permits to these employees. They further support this contention by noting that the permits are issued pursuant to the provisions of the Manual for Certification of Professional School Personnel, a

DPI generated manual. The Respondents presented testimony from Joyce Budna, the DPI employee responsible for issuing these permits to aides. Ms. Budna testified that there is no state certification procedure for aides and that the permits are routinely issued upon submission by the individual districts of a list which includes all persons employed as aides. The certification procedure for teachers and other professionals, on the other hand, is extensive and involves DPI's independent verification of each applicant's training, education and experience as required by law. Regardless of the wording of the permit issued to aides, aides do not constitute certified professional employees and are not, therefore, subject to the exception of §4003(1).

Further, the §4003(1) exception covers only those agreements which would subject certified professional employees to membership or financial support of the bargaining representative ***as a condition of employment.*** Having rejected the Charging Parties' contention that paraprofessional employees are certified professional employees, it is unnecessary to address whether the fair share language in question constitutes a condition of employment. However, because the Charging Parties have cited a prior PERB decision in support of their position, this argument will be considered. In Smyrna Educators Assn. v. Bd. of Education (Del.PERB, A.D.S. No. 89-10-046, on appeal of the Executive Director's decision (7/11/90)), the full PERB found that a contractual clause which required the mandatory deduction of a service fee from non-members by the employer, without the employees' express authorization, was illegal under the Act. In rejecting the mandatory deduction language, the PERB stated:

> To be more precise, to accept the Petitioner's argument would permit the Petitioner to avoid the prohibition contained in section 4003(1) of the PSERA, which states that dues, fees or assessments of any kind may not be made a condition of employment. [4] If the proposed language were

[4] This case involved only teachers and other certificated professional employees of the Smyrna School District and was litigated before the PSERA was amended and expanded to cover all public school employees.

> made a part of a collective bargaining agreement, the only way an employee could avoid its reach would be to quit his or her job. That would amount to a "de facto" condition of employment. Stated differently, it would become a condition of employment in that it would be a fixed obligation/duty over which an employee would have no control and which would affect the compensation paid to that employee for services rendered.

The present matter is distinguishable on several important points. The proposed language questioned in Smyrna related only to certificated professional employees, whereas in Colonial the language does not relate to any professionals. The Smyrna decision was based upon language which required the involuntary deduction of a service fee from non-members' wages. The Colonial language does not affect the compensation paid to any employee and requires the Association to seek enforcement through a debt action outside of the employment relationship.

The term "condition of employment" as used in this context is commonly understood in labor law, as noted by Vice Chancellor Hartnett in CFSWA v. Bd. of Education (Supra.). In finding that the Colonial contractual language was not ambiguous, Vice-Chancellor Hartnett held:

> When the language of the Agreement as a whole is read, it can have only one reasonable interpretation - that a food service employee would not have to join the union or pay the representation fee as a condition of employment. He, therefore, could not be fired for failing to join the union or pay the representation fee, but that [*sic*] the Association had the authority to establish a service charge to non-members (a representation fee) and that the Association could use any lawful methods to collect the fee but that the Board would have no part in the collection of it. CFSWA v. Bd. of Ed. (Supra., at p. 8).

The Vice-Chancellor's interpretation of the contractual language was not dependent upon the provisions of 19 Del.C. Chapter 13, the statute under which its terms were negotiated. It is clear that he understood the term "condition of employment" to mean that failure to meet the condition (i.e., payment of the fair share fee) constituted a basis for summary discharge. This understanding of the phrase "condition of employment" as it relates to agency fees or fair share fees is consistent with

interpretations by the U.S. Supreme Court and other state and appellate courts. Retail Clerks International Assn. v. Schermerhorn, 373 U.S. 746 (1963); NLRB v. General Motors 373. U.S. 743 (1963); Fort Wayne Education Assn., Inc., Ind.Ct.App., 443 N.E.2d 364 (1983); Eastern Michigan University v. Morgan, Mich.Ct.App., 298 N.W. 2d 886 (1980). The Chancery Court's definition of a "condition of employment" in this context is compelling and, therefore, adopted by the PERB.

The Charging Parties argue that the fair share provisions violate the statutory prohibitions against an employer encouraging membership in an employee organization (14 Del.C. §4007(a)(3)), an employer assisting in the administration of a labor organization (14 Del.C. §4007(a)(2)), and an employer and/or employee organization interfering with, restraining or coercing any employee in the exercise of a right guaranteed under the PSERA (14 Del.C. §§4007(a)(1) and (b)(1)).

The Charging Parties argue that to require the payment of a fair share fee encourages membership in the association because it requires that non-members provide financial support to the organization. Relying on the testimony of their witness, Dr. Schneier, the Charging Parties assert that "membership" should be viewed as a continuum concept, of which financial support is a key component. Therefore, even though employees may not become formal members of the organization, by providing financial support they are, in fact, "financial core" members. Broadly construing the term "membership", however, is inconsistent with the statutory language of §4003(1). As previously discussed, this section establishes an exception for certified professional employees from both membership or the obligation to provide financial support. If the term "membership" were intended to denote the full continuum of support there would be no need to define the exception in the alternative.

The Charging Parties also assert that the imposition of a service fee encourages membership because an agency shop is the equivalent of a union shop, where employees are required to join the union. Citing Smigel v. Southgate Community School District, Mich.Supr., 202 N.W. 2d 305 (1972). It is important to distinguish that the cited case involved a service fee equal to the dues paid by full and voluntary members of the labor organization. There is a significant difference between a service fee which is equal to the dues paid by full members and one which is assessed only for providing the required collective bargaining responsibilities. It is difficult to imagine how the assessment of a fee which is less than the full cost of dues would encourage an employee to join the association. It would be in the economic best interest of non-members to remain fair share contributors rather than incur the additional costs of full membership in the labor organization.

The Charging Parties further allege that the District is in violation of the prohibition against assisting in the administration of a labor organization found at §4007(a)(2). They argue that because the collective bargaining agreements between the employer and the labor organizations require non-members to pay fees to the Associations, the employer necessarily assists the associations because they have a source of funds they would not otherwise enjoy. This argument is not consistent with the generally understood meaning of unlawful assistance in labor law. The language of §4007(a)(2) is patterned after the NLRA prohibition found at §8(a)(2) of that federal legislation, which states, in relevant part:

> Section 8: (a) It shall be an unfair labor practice for an employer -
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it...

Where the Delaware legislature has fashioned statutory language which reflects the provisions of the federal labor statutes, this Board will look to the interpretations given those federal statutes for guidance. Appoquinimink Ed. Assn. v. Board of

Education (Del.PERB, ULP No. 1-3-84-3-2A (August, 1984). The federal courts have long interpreted unlawful interference and assistance to be activity which has the effect of inhibiting employees independence in choosing an exclusive representative and freely bargaining with the employer. The distinction between unlawful assistance and employer cooperation was clearly enunciated in Federal Mogul Corp. v. NLRB (6th Cir., 394 F.2d 915, 68 LRRM 2332 (1968)):

> The Act does not prohibit cooperation between management and a labor organization; on the contrary it encourages it. [Cites omitted] The difficult task is to distinguish between unlawful domination, interference and support, and permissible cooperation. Cooperation and support are not synonymous. It is only when management's activities actually undermine the integrity of the employees' freedom of choice and independence in dealing with the employer that such activities fall within the proscriptions of the Act. Managerial cooperation with a labor organization which does not have the effect of inhibiting self-organization and free collective bargaining is encouraged under the Act.

Where the employer agrees only to withhold service fees from non-members upon their written authorization, there is no interference with the right of employees to freely organize or bargain. The District's acknowledgment of the Association's right to assess a fair share fee which is legal under the statute and which the District has no part in collecting from employees who do not authorize its deduction does not illegally assist the associations.

Finally, the Charging Parties allege that because the agreement between the employer and the associations violate the statute, they also are in violation §§4007 (a)(1) and (b)(1), which prohibit an employer or labor organization from interfering with, restraining or coercing any employee in or because of the exercise of any right under the PSERA. Having concluded that the contractual acknowledgment of the associations' right to assess a fair share fee against non-members does not violate either §4007(a)(2) or (a)(3), it cannot violate either §4007(a)(1) or (b)(1) as alleged.

For the reasons stated above, this unfair labor practice charge is determined to be without merit and is hereby dismissed.

CONCLUSIONS OF LAW

1. The Colonial School District is a public school employer within the meaning of 14 Del.C. §4002(n).

2. The Colonial Food Service Workers Association and the Colonial Paraprofessional Association are each exclusive bargaining representatives within the meaning of §4002(i) of the Act.

3. The Charging Parties are public school employees within the meaning of §4002(m) of the Act.

4. Section 4003(1) of the PSERA provides:

> School employees shall have the right to:
> (1) Organize, join, form or assist any employee organization, provided that membership in, or an obligation resulting from collective bargaining negotiations to pay any dues, fees, assessments or other charges to an employee organization shall not be required as a condition of employment for certified professional school employees.

Paraprofessionals, which the Charging Parties have defined as "aides who interact with children" are not certified professional employees as that term is used in the exception created by §4003(1).

5. The assessment of fair share fees against bargaining unit members who have chosen not to join the associations, where their continued employment is not dependent upon the payment of the fee, is not a condition of employment as that term is used in §4003(1).

6. By entering into collective bargaining agreements with the labor organizations which acknowledge the right of the associations to assess a service charge to non-members and which obligates the employer to withhold this service fee from non-members only upon their written authorization does not violate the

prohibition against employer encouragement of union membership found at §4007(a)(3), nor the prohibition against assisting a labor organization found at §4007(a)(2), nor the prohibition against interfering with the rights of employees under the PSERA found at §4007(a)(1).

7. The respondent labor organizations did not interfere with, restrain or coerce any employee in the exercise of any rights under the PSERA when it entered into a collective bargaining agreement with the employer which acknowledges the right of the associations to assess fair share fees against non-members.

8. For the reasons set forth above, this unfair labor practice charge is dismissed.

IT IS SO ORDERED.

D. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Principal Assistant
Delaware Public Employment Relations Bd.

Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment Relations Bd.

DATE: March 3, 1993