

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

KENT VOCATIONAL-TECHNICAL TEACHERS	:	
ASSOCIATION,	:	
	:	Request for Declaratory Statement
and	:	<u>D.S. No. 93-06-084</u>
	:	
KENT COUNTY VOCATIONAL-TECHNICAL	:	
SCHOOL DISTRICT.	:	

JURISDICTION

The Public Employment Relations Board (hereinafter "PERB") has been requested to advise the parties concerning the legality of negotiating the following contractual language under the provisions of the Public School Employment Relations Act (14 Del.C. Chapter 40, hereinafter "PSERA"):

All teachers in the bargaining unit including personnel paid using federal funds shall be provided fair dismissal according to Title 14, Chapter 14, Delaware Code.

The Kent County Vocational-Technical School District (hereinafter "District") is a public school employer within the meaning of 14 Del.C. §4002(n). The Kent Vocational-Technical Teachers' Association (hereinafter "KVTA" or "Association") is the exclusive bargaining representative of the public school employer's certificated professional employees within the meaning of 14 Del.C. §4002 (i).

The parties jointly filed a request for declaratory statement on June 11, 1993, asserting that a dispute concerning this language had arisen during the course of their negotiations for a successor agreement. The request further stated that the issuance of a declaratory statement would assist in the resolution of their dispute. This decision is issued in response thereto.

STATUTORY PROVISIONS

14 Del.C. Chapter 40, Public School Employment Relations Act:

§4002. Definitions

(e) "Collective bargaining" means the performance of the mutual obligation of a school employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(r) "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

§4013. Collective bargaining agreements

(e) 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.

14 Del.C. Chapter 14, Procedures for the Termination of Services of Professional Employees:

§1403. Application of the chapter

(a) The provisions set forth in §§1411, 1412, 1413 and 1414 of this title, covering reasons for termination, notice of termination, hearings before a board and judicial review, shall apply to all teachers except those employed temporarily to replace professional personnel on leave of absence, those holding temporary certificates and those not having completed 3 years of service in the State, 2 years of which shall be in the employ of the terminating board and further providing that time spent in military service shall not be counted as years of service for purposes of this chapter.

14 Del.C. Chapter 17, State Appropriations:

§1717. Employment of personnel.

(d) Local school boards of education and the various school

building commissions may employ personnel who are paid wholly or in part from federal and/or school construction funds provided that such personnel shall be classified and paid in accordance with the salary schedules set forth in Chapter 13 of this title. In the event any of the aforementioned boards or commissions shall have a uniform local district salary supplement to the salary schedules set forth in said Chapter 13, such board or commission may also pay employees covered by this subsection an additional amount from federal and/or school construction funds not in excess of that set forth in the uniform local district salary supplement.

(e) Personnel employed pursuant to this section shall not be covered by Chapter 14 of this title.

OPINION

The joint request for a declaratory statement defines the positions of the parties as follows:

The District asserts that the language of Section 1717(e) makes our [KVTA's] proposal an illegal topic of bargaining and prevents the inclusion of the language in the contract. The Association asserts that it is a mandatory subject because the demand prescribes a procedure in the contract for the dismissal of an employee paid with federal funds beyond the guarantees prescribed by law.

In Appoquinimink Education Association v. Board of Education (Del.PERB, U.L.P. No 1-3-84-3-2A (Aug. 14, 1984)), the PERB determined that the exclusionary language of §4002(r) prohibits the bargaining of subject matter which is explicitly and definitively addressed by the PSERA or other statutes.

Chapter 14 of Title 14 confers tenure rights upon teachers who have completed 3 years of service in the State of Delaware, of which two years were in the service of one school board, whereby those employees can only be terminated at certain times, for certain specified reasons, and according to procedures established by the statute. Eligible teachers who are so terminated have a statutory right of appeal first to the terminating board of education and secondly into Superior Court. The action of the terminating board of education must meet a substantial evidence test in order to be sustained by the Court, where the Delaware Supreme Court has defined "substantial

evidence" to mean such relevant evidence as will convince reasonable men and on which such reasonable men may not reasonably differ as to whether it establishes the plaintiff's case. Shockley v. Bd. of Education, 115 A.2d 323 (1959).

Application of the tenure law of 14 Del.C. Chapter 14 is limited, however, by subsection (e) of 14 Del.C. §1717. Interpreting this specific section of the Code, the Delaware Supreme Court, in Bd. of Education of New Castle County v. Savino (494 A.2d 1258 (1985)), held:

We think that §1717, which provides that personnel employed in programs receiving federal funding 'shall not be covered by Chapter 14 [the tenure law] of this title', must be interpreted as providing that personnel employed in positions not covered by the tenure law simply acquire no tenure eligibility rights while so employed. In short, we are of the opinion that personnel in federally funded teaching positions are precluded by §1717 from counting any such employment toward any tenure eligibility requirements.

... We think it is logical to assume that §1717 was designed to limit the repercussions which might result from withdrawal of federal funds and to give the school boards a free hand in the selection, retention or dismissal of persons who may have previously filled federally funded positions.

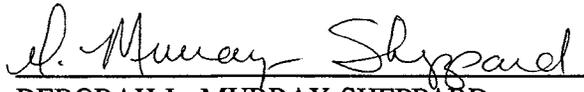
In any event, the General Assembly was free to grant or withhold tenure rights to those holding federally funded positions or to grant limited tenure rights to such persons. We think it is clear that the General Assembly chose to withhold such rights altogether. The courts are not free to grant that which the General Assembly has seen fit to withhold.

The clear language of §1717(e) provides that federally funded employees "shall not" be covered by the tenure law. The literal language of KVTA's proposal is that personnel paid with federal funds "shall be provided" with coverage by the procedures established by Chapter 14. The parties are precluded from agreeing to ignore such an explicit and definitive statutory prohibition. Such a contract provision would be invalid and unenforceable.

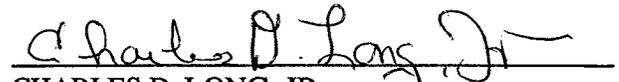
DECISION

The KVTA's proposed contractual language is an illegal subject of bargaining as it

directly contravenes the express prohibition of 14 Del.C. §1717(e).



DEBORAH L. MURRAY-SHEPPARD
Principal Assistant, Del. PERB



CHARLES D. LONG, JR.
Executive Director, Del. PERB

DATED: June 24, 1993