

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

SEAFORD EDUCATION ASSOCIATION,	:	
	:	
Petitioner,	:	
	:	
and	:	<u>D.S. No. 93-10-094</u>
	:	
BOARD OF EDUCATION OF THE SEAFORD	:	
SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

JURISDICTION

The Board of Education of the Seaford School District (hereinafter "District") is a public employer within the meaning of 14 Del.C. 4002(m) of the Public School Employment Relations Act, 14 Del.C. §§1401, et seq. (1984), (hereinafter "Act" or "PSERA"). The Seaford Education Association (hereinafter "Association" or "SEA") is the exclusive bargaining representative of the public school employer's professional employees within the meaning of §4002(h) of the Act.

BACKGROUND

The District and the Association were parties to a collective bargaining agreement for the period July 1, 1990, through June 30, 1993. Section 2.3 of that Agreement provides:

If either party desires to have the Agreement modified or changed after the expiration date, it shall give notice in writing, no later than January 15 preceding the expiration date, of the desire to modify or change. Such negotiations shall begin not later than March 1 of the calendar year in which this Agreement expires; otherwise, the parties will renew the Agreement for a two year period. If notice to modify or change is thus given by either party, the Agreement shall be deemed to have been opened for bargaining.

The notice necessary to open the contract for bargaining was not given by either party on or before January 15, 1993, as required by Section 2.3. On or about

January 26, 1993, the District Superintendent, Dr. Russell Knorr, met informally with the SEA President, Sharon Brittingham. Dr. Knorr informed Ms. Brittingham that the school board had authorized him to advise the Association that although the District considered the automatic renewal of the contract until June 30, 1995, to be binding and enforceable, the District was willing to consider a limited reopener concerning salaries and fringe benefits if the Association so requested.

Thereafter, from late January until July of 1993, various written communications were exchanged between the parties concerning the opening of negotiations concerning the salary and benefits sections of the current agreement. ¹

The parties first met in early August, at which time the District advised the Association that while it was prepared to proceed with the negotiations, it was unwilling to submit to the mediation and fact-finding provisions of the Public School Employment Relations Act, should a settlement not be reached.

Mr. Daniel Schreffler, chief spokesperson for the Association, responded to the District's position in a letter dated August 9, 1993, in which he characterized the Association's bargaining team as "angry and professionally insulted" by the District's position. Nonetheless, the Association expressed its willingness to proceed.

The parties next met on August 26, 1993. Alfred J. D'Angelo, Esq., the District's representative, reaffirmed that the District was unwilling to submit to mediation and/or fact-finding should the parties fail to reach a settlement. Mr. D'Angelo also advised the Association that if the parties were unable to reach agreement, it would then be necessary for them to address the question of whether the District had a right to unilaterally implement a change or whether the existing contract clause(s) would bind the parties until its expiration date of June 30, 1995.

¹ For reasons not yet addressed, the specific content of these communications is not relevant to resolving this matter.

Unfortunately, the parties failed to reach agreement. On October 14, 1993, the Association filed a request for mediation with the Public Employment Relations Board under the provisions of §4014, Mediation, of the Act, which provides in relevant part:

(b) If the parties have not voluntarily agreed to enlist the services of a mediator and less than 30 days remain before the expiration date of the existing collective bargaining agreement, or, in the case of a newly certified representative, more than 90 days have elapsed since negotiations began, the Board must appoint a mediator if so requested by the public school employer or the exclusive representative. The mediator shall be chosen from a list of qualified persons maintained by the Board and shall be representative of the public.

By letter dated October 26, 1993, the District notified the PERB of its opposition to the appointment of a mediator for the reason that:

... The collective bargaining agreement remains in effect through June 30, 1995, and the District is not obligated to negotiate any change in wages and benefits. The District has proposed increases in wages which have been rejected by the Association. Therefore, it is the District's position that the current agreement, unchanged, remains in effect through June 30, 1995 and that it cannot be compelled to submit the matter to mediation and/or fact-finding.

On October 28, 1993, the PERB requested that the Association respond to the District's objection. It also advised the parties that because of the dispute, the matter would be processed as a Request for a Declaratory Statement, and a mediator would not be appointed until it was determined whether or not to do so was appropriate under the circumstances presented.

On November 4, 1993, the Association responded to the District's position, claiming that:

1. In response to repeated invitations from the District, the Association agreed on March 12, 1993, to open the contract with respect to salary and benefit provisions of the contract expiring on June 30, 1993;
2. The Association never agreed to exempt the negotiations from the impasse resolution requirements of the PSERA; therefore, the Association maintains that by proceeding with the negotiations without this concession, the District

has waived any right it might have had pursuant to an agreement with the Association;

3. The Association's position is consistent with and supported by Seaford Bd. of Education v. Seaford Education Assn., Del.Chan., C.A. No. 9491, Allen, Ch. (2/4/88);

4. The District opposes the appointment of a mediator only because it wishes to implement its last offer without the bother of further negotiations.

ISSUE

Whether §4014(b) of the Act requires the PERB to order mandatory mediation of the unresolved issues concerning wages and benefits under the circumstances presented?

DISCUSSION

The Association's argument that, through their correspondence, the parties reached agreement in March, 1993, to reopen the contract with respect to salary and benefits, and that consequently the provisions of the contract addressing salaries and benefits expired on June 30, 1993, is not supported by the record. Superintendent Knorr's letter of February 26, 1993, to Association President Brittingham confirming their discussion of January 26, 1993, expresses only the District's willingness to consider a request from the Association to open the contract for the limited purpose of negotiating salary and benefits and to discuss parameters that would apply.

Therefore, Ms. Brittingham's letter of March 12, 1993, accepting the District's offer to open negotiations on the salary and fringe benefits section(s) of the contract for FY'94 and '95 attempts to accept an offer not made. This fact was quickly brought to her attention by Dr. Knorr in his written response of March 19, 1993.

Furthermore, Section 2.3 of the collective bargaining agreement of 1990-93 expressly and unequivocally provides that if no written notice to modify or change the Agreement was given by either party prior to January 15, 1993, the Agreement was automatically renewed for two (2) years. It is undisputed that the required notice was not given. Even had the parties agreed in March to open negotiations, the expiration date of the contract to be modified was June 30, 1995, not June 30, 1993, as the Association claims.

Because the expiration date of the existing agreement was June 30, 1995, the Association's unilateral request for mediation filed with the PERB on October 14, 1993, was not timely filed within the requirements of §4014(b) of the Act. As a result, the Association had no authority to compel mediation. Therefore, the absence of an agreement that the negotiations would be exempt from the mediation and fact-finding provisions of the Act is irrelevant.

The Association's reliance upon a 1988 decision of the Chancery Court (Supra.) involving these parties is misplaced. There, the issue involved a contractual provision requiring the reopening of salaries for the final year of a three (3) year agreement if a referendum was passed in the District. Following a successful referendum, negotiations commenced concerning the salary schedule for the third and final year of the contract. After failing to reach agreement, the Association invoked the statutory impasse resolution procedures of the PSERA by filing for mediation. The District protested the appointment of a mediator for the reason that the reopener was not subject to the impasse resolution procedures since the contract did not expire for another year.

In sustaining the Board's decision that mediation was appropriate, the Chancellor reasoned that:

Thus, even though strikes are prohibited, the state's interest in promoting negotiations toward an agreement becomes more intense when the threat that teachers will be required to work without a contract becomes greater ...[T]he situation presented here involves

risks to that same interest. With respect to a critical aspect of their collective bargaining agreement, the parties [are] now essentially without an agreement ... I thus conclude that when a collective bargaining agreement contains a negotiated "re-opener" clause (either fixing a future date for further negotiation of the subject treated or stating a later condition upon the happening of which the matter treated will be open to further negotiation) the agreement does not have a single expiration date for the purposes of §1404(b); that the date upon which further negotiation is to commence under Article 15.2 of the parties' agreement constitutes an expiration date and that, with respect to the matter that is subject to further negotiation, the Board is obligated under section 4014(b) to appoint a mediator upon the application of either party once that date has passed and the parties have not succeeded in reaching agreement on the point left open by them.

Unlike the issue before the Chancellor the controlling agreement in this matter contains no reopener language. There is but one (1) common expiration date which, by the operation of Section 2.3, is June 30, 1995. In its October 22 memorandum opposing the appointment of a mediator, the District concludes:

The District has proposed increases in wages which have been rejected by the Association. Therefore, it is the District's position that it cannot be compelled to submit the matter to mediation and/or fact-finding.

The District's position is correct. In fact, the parties voluntarily sought to negotiate a mid-term modification of the salary and benefit provisions of a valid and binding collective bargaining agreement. Having failed to do so, they remain bound by the terms of that agreement until its expiration on June 30, 1995.

DECISION

Section 4014(b) of the PSERA does not require the PERB to order mediation of the unresolved issues concerning wages and benefits under the circumstances presented.

IT IS SO ORDERED.

DATED: November 23, 1993

/s/ Charles D. Long, Jr.
Charles D. Long, Jr., Executive Director
Del. Public Employment Relations Bd.