

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

LAUREL EDUCATION ASSOCIATION, DSEA/NEA, :
: **Charging Party,** :
: **v.** : **ULP No. 11-11-835** :
LAUREL SCHOOL DISTRICT, : **Decision on the Pleadings** :
: **Respondent.** :

Appearances

Jeffrey M. Taschner, Esq., General Counsel, Delaware State Education Association/NEA
James D. Griffin, Esq., Griffin & Hackett, PA, for Laurel School District

BACKGROUND

The Laurel School District (“District”) is a public school employer within the meaning of 14 Del.C. §4002(n) of the Public School Employment Relations Act, 14 Del.C. Chapter 40, (“PSERA”).

The Laurel Education Association DSEA/NEA (“LEA”) is an employee organization within the meaning of Section 4002(h) of the PSERA and the exclusive bargaining representative of all certified teachers and school nurses employed by the Laurel Board of Education. The Laurel Education Support Employees Association (“LESEA”) was certified as the exclusive bargaining representative of all full and part time custodians, custodian firefighters, maintenance mechanics, manager/supervisor of

buildings and grounds, secretaries (all classifications) and paraprofessionals (all classifications). Since 2008 LEA and LESEA have operated as a unified local association with LEA functioning as the exclusive bargaining representative for both units.

On November 23, 2011, the LEA filed an unfair labor practice Charge alleging that the District has refused to bargain collectively in good faith with the LEA in violation of 14 Del.C. §4007(a)(5) and (a)(7), which provide:

§4007. Unfair Labor Practices – Enumerated

(a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

(7) Refuse to reduce an agreement, reached as the result of collective bargaining, to writing and sign the resulting contract.

LEA asserts the Board of Education has failed to approve the successor collective bargaining agreement agreed to by the parties during the course of good faith negotiations, which was ratified by the LEA membership on June 10, 2011. It further alleges the Acting Superintendent stated she would not sign the contract because it includes a provision concerning the use of custodial funding units. LEA alleges a binding agreement came into existence when the parties reached an agreement in mediation, reduced that agreement to writing, and submitted that agreement to successful ratification without any timely objections by the District to any portion of the agreement.

On December 20, 2011, the District filed its Answer to the Charge in which it

asserts that the list of unresolved issues requested by and provided to the PERB prior to mediation was in error because it did not include the custodial unit issue. The District also asserts its negotiating team did not have authority to enter into an agreement because the Board of Education has not approved the successor agreement. Consequently, it argues the successor agreement was non-binding until approved by the Board.

As Affirmative Defenses to the Charge, the District asserts the Charge fails to state a claim upon which relief can be granted because the 2005-2010 collective bargaining agreement remains in effect until the Board of Education approves the agreement by a majority vote at a public meeting.

On January 6, 2012, Petitioner filed its Response denying each of the affirmative defenses raised by the District.

The decision set forth below results from a review of the pleadings submitted by the parties.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if

the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The material facts as set forth in the Charge filed by LEA are largely undisputed and are admitted by the District in its Answer. The background facts set forth below are derived from the pleadings.

LESEA and the District were parties to a collective bargaining agreement with a term of July 1, 2005 through June 30, 2009, which was extended following negotiation of a salary reopener through June 30, 2010. *Charge, Exhibit 1*. Article II, Negotiation of Successor Agreement, states, in relevant part:

This Agreement shall be effective as of July 1, 2005 through June 30, 2009, or until a successor Agreement has been ratified. It shall be automatically renewed from year to year thereafter, unless either party shall give the other party written notice of the desire to terminate, amend, alter, or modify this Agreement . . . Any agreement, modification, or amendment concluded as a result of such negotiations shall be reduced to writing, adopted by the Board and

the Association, and signed by their representatives.

On January 9, 2009, DSEA UniServ Director Val Hoffmann wrote to the President of the Laurel Board of Education (Jerry W. White) indicating LEA desired to commence negotiations with the District for a successor agreement for the Laurel Support Employees Association, Inc. *Charge, Exhibit 2.* Ms. Hoffman indicated that LEA and Laurel Support Employees Association, Inc., had merged during the previous year to become one association representing both bargaining units. She stated that since the contract for the LEA bargaining unit did not expire until June 30, 2010, it was willing to agreed to extend the LESEA contract with a one-year (2009-2010) salary reopener in order to allow for single table bargaining for both contracts. The parties reached an agreement on the salary reopener on or about November 13, 2009, and executed a Memorandum of Understanding. *Charge, Exhibit 3.*

The letter dated October 29, 2009, served to notify Mr. White that LEA desired to commence negotiations with the District for successor agreements for both the LEA and LESEA bargaining units. *Charge, Exhibit 4.* A single LEA bargaining team was constituted and included Sue Darnell, Kim Parker, Brad Spicer, Sharon Dolby, Fred Vincent, Pattie Farrell, Jude Evans, and a DSEA UniServ Director, which varied over the period of the negotiations between Val Hoffmann, Charlie Shaffer and Joe Kirk. The District's negotiating team included Dr. John McCoy (Superintendent), Susan Whaley (Laurel Intermediate School Principal), Cristy Greaves (North Laurel Elementary School Principal), Meghan Mitchell (District Business Manager), Jerry White (Board of Education Member who was later replaced by Board Member Lois Hartstein), Dot Hickman (Board of Education Member), Dean Ivory (Laurel High School Principal) and

Monet Whaley Smith (District Director of Human Resources).

LEA submitted its initial negotiation proposal on or about May 11, 2010,¹ which included a new paragraph “K” to be added to Article X, Part 2:

All custodial units earned by the Laurel School District shall be used to custodial positions recognized under §1311 of the School Code.

An explanatory note was appended to the proposed contractual provision which stated, “Custodial units should not be used for tech positions.” During negotiation sessions held on May 24, and July 7, 2010, the parties discussed the use of custodial units for non-custodial positions but did not reach agreement on LEA’s proposal to include language limiting the use of custodial funding.

LEA asserts in its Charge that the parties agreed during the July 17, 2010 negotiation session to include the proposed language for use of custodial funding units as quoted above. The District denies this assertion.

LEA requested mediation from PERB (on or about October 25, 2010) after two additional negotiation sessions. *Charge, Exhibit 6.* PERB requested that each party submit statements indicating the progress made in negotiations and a summary of unresolved issues. The submission provided by LEA dated November 2, 2010, indicated the parties had met six times since May 11, 2010 for a total of 21 hours, and included a complete draft agreement which was characterized by UniServ Director Shaffer as, “a written update of the resolved and unresolved issues at this point in the process based upon my notes.” *Charge, Exhibit 7.* Included in the draft agreement is Article X, Part 2, “K. All custodial units earned by the Laurel School District shall be used for custodial

¹ *Charge, Exhibit 5.*

positions recognized under §1311 of the School Code. Custodial units should not be used for tech positions. T/A.” [*Emphasis in original*] The underlining indicated this provision was new language. The bolded sentence is explanatory and the “T/A” indicates LEA believed tentative agreement had been reached to include this provision in the successor agreement.

The District’s Superintendent submitted the District’s position statement² on November 8, 2010, to which he subsequently attached a list of “Unresolved Contract Issues – November 5, 2010”, which included:

- Salary
- Longevity
- Insurances (Dental & Medical)
- Overtime
- Hiring of substitutes for custodians
- Custodian/Fireman will receive Chief pay during extended leaves
- Calendar vs. Work days throughout the contract
- Layoff dates (notification)

The District admits the November 8 letter from Superintendent McCoy did not include Article X, Part 2, Paragraph 12 as unresolved, but asserts the Superintendent’s list “was in error and should have listed that item as unresolved because the Board of Education had not approved the proposal or agreed to its inclusion in the contract.”

Two mediation sessions were conducted by a PERB appointed mediator. LEA asserts the parties reached agreement on a successor agreement on or about March 24, 2011. The District denies agreement was reached, asserting, “The District negotiating team did not have the authority to enter into an agreement because the Board had not approved the successor agreement.”

LEA President Darnell contacted District team member Susan Whaley by email

² Charge, Exhibit 8.

dated May 31, 2011 to schedule a meeting to review contract language in order to prepare for ratification. *Charge, Exhibit 9.* The parties met on June 8, 2011 “to clean up language in the tentative agreement.” The District was represented at that meeting by Ms. Whaley and two Board of Education members (Ms. Hartstein and Ms. Hickman). Following the meeting, DSEA UniServ Director Joe Kirk provided copies of the finalized agreement to representatives of both teams, including the three members of the District team who participated in the meeting. *Charge, Exhibit 10, 11, 12 and 13.*

LEA conducted a ratification vote among the general membership of its support employee bargaining unit on June 10, 2011. The tentative agreement was ratified. LEA President Darnell notified the Board by letter dated June 29, 2011³, that the union had ratified the agreement, noting,

...It now moves to the Board to vote to ratify the agreement. Once this has occurred we can sign the agreement and start using the new language. Please notify us when the Board vote has occurred. Thank you.

LEA President Darnell sent a second letter to the Board of Education on or about August 4, 2011,⁴

For the last year and a half, the Laurel Education Association has participated in contract negotiations with the Board’s negotiating team. After working with a mediator we finalized our tentative agreement. Representatives from both sides met at the beginning of June to finish the wording of some sections. This agreement was then shared with the Support Staff which voted to ratify the new contract. This information was shared, via a letter, to the Board in late June. To date the Board has not acted on the new contract. In addition, Dr.

³ *Charge, Exhibit 14.*

⁴ *Charge, Exhibit 15.*

Nave shared that she would not “sign” the new contract with the agreed upon language concerning custodial units being used exclusively for custodians. This was one of the first sections that had been agreed upon and many subsequent decisions were made based on that agreement. We are providing you with a decision handed down by Delaware’s Public Employment Relations Board on an Unfair Labor Practice case that is similar in many aspects to where we are now. Please review this and our tentative agreement and inform us of how the Board is choosing to move forward. This matter needs to be settled. Please advise us of your decision by August 19, 2011. This date allows us to discuss the contract at our general LEA meeting on August 22nd. Thank you for your attention to this matter.

By letter dated August 18, 2011⁵, the President of the Laurel Board of Education (Patrick Vanderslice) responded to the LEA’s request as follows:

The Laurel Board of Education has decided to take no action on the proposed agreement between the Laurel Education Association and the Laurel Board of Education. The Board needs time to thoroughly review the proposed contract.

As of close of the pleadings⁶, the District admits LEA’s assertion that “the Board of Education has not taken any action on the proposed agreement for the support employee unit despite the fact that the parties reached an agreement, reduced their agreement to writing and the LEA support employees unit voted to ratify the agreement.”

Charge ¶25.

The Public School Employment Relations Act defines “collective bargaining” to mean:

... 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

⁵ Charge, Exhibit 16.

⁶ The pleadings have not been amended or supplemented as of the date of this decision.

exclude a written agreement incorporating any agreements reached. *14 Del.C. §4002(e)*.

The statute obligates “boards of education and school employee organizations which have been certified as representing their school employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations.” *14 Del.C. §4001(2)*. There is no statutory requirement for ratification or approval by either party after the agreement is reached by the “designated representatives” of the parties.

The District does not dispute that the parties successfully concluded their negotiations in mediation and that three members of the District’s negotiating team (including two Board members) subsequently sat down with members of LEA’s negotiating team on or about June 7, 2011, to review and finalize the terms of the agreement before it was presented to the union membership for ratification. The District admitted in its Answer to the Charge that Exhibit 10 thereto was the final agreement. The Agreement includes the language concerning the use of custodial funding units at Article X, Part 2, ¶2. The District was on notice, through the active participation of its negotiating team in negotiating and finalizing the agreement that this provision was included in the Agreement.

PERB held in *Appoquinimink Education Assn. v. Appoquinimink School District Board of Education*, ULP 98-09-243, III PERB 1785, 1799 (1998),

The statutory duty to “confer and negotiate in good faith” requires that the designated bargaining representatives possess the necessary authority to make timely decisions and commitments inherent in the collective bargaining process envisioned by the Act. The parties are entitled to rely upon reasonable assertions

made and agreements reached at the bargaining table; otherwise, meaningful bargaining could not occur.

The Association was reasonably entitled to rely upon the active participation of the District's team (which included two members of the Board) as evidence of that team's authority to act on behalf of the Board. The District provides no refutation of LEA's assertion that the issue of custodial units was not raised as an issue at any point after the July 17, 2010 negotiation session until the Acting Superintendent conveyed to the LEA that she would not sign a contract with the provision at some point after the June 10, 2011 ratification and before LEA's letter to the Board of August 4, 2011.

The Delaware Court of Chancery held that a binding agreement comes into existence once a tentative agreement is ratified by the membership of the union. *Colonial Food Service Workers Assoc. v. Bd. of Education of Colonial School District*, Del.Ch., 1987 WL 18431 (1987). This Board adopted and applied that holding in *City of Lewes, Delaware v. FOP Lodge No. 2*, ULP 07-06-575, VI PERB 3925 (2008).

Consistent with the holding of the Court, PERB finds a binding agreement came into effect when the tentative agreement was ratified by the LEA membership, and that the District has failed to meet its good faith obligations under the statute.

The District raised concerns about whether the negotiated custodial funding provision is enforceable and asserts that its past practice with respect thereto can continue through the expiration of the agreement. These arguments are beyond the scope of the issue raised by this Charge, namely whether an effective agreement exists between these parties under the PSERA.

CONCLUSIONS OF LAW

1. The Laurel School District (“District”) is a public school employer within the meaning of 14 Del.C. §4002(n) of the Public School Employment Relations Act,

2. The Laurel Education Association DSEA/NEA (“LEA”) is an employee organization within the meaning of Section 4002(h) of the PSERA and the exclusive bargaining representative of all certified teachers and school nurses employed by the Laurel Board of Education. The Laurel Education Support Employees Association was certified as the exclusive bargaining representative of all full and part time custodians, custodian firefighters, maintenance mechanics, manager/supervisor of buildings and grounds, secretaries (all classifications) and paraprofessionals (all classifications). Since 2008, LEA and LESEA have operated as a unified local association with LEA functioning as the exclusive bargaining representative for both units.

3. LEA and the District entered into negotiations for a successor to their collective bargaining agreement and reached a tentative agreement during mediation. The parties reviewed and finalized all provisions of the successor agreement after they reached agreement and prior to LEA submitting the agreement to its membership for ratification.

4. LEA’s membership ratified the agreement on or about June 10, 2011, and so advised the Board.

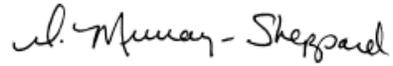
5. The Board has failed or refused to approve the ratified agreement for more than eight months.

6. By failing or refusing to approve the tentative agreement which was ratified by LEA’s membership, the District has violated 14 Del.C. §4007(a)(5) and (a)(7).

WHEREFORE, the District is ordered to immediately implement the provisions of the negotiated agreement.

IT IS SO ORDERED

DATE: March 26, 2012



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Board