



STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD
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RE: Seaford Education Association
Request for Mediation

Gentlemen:

The Seaford Education Association (hereinafter "Association") and the Seaford School District (hereinafter "District") are parties to a collective bargaining agreement effective July 1, 1986 through June 30, 1990. Article XV, of that agreement, Local Salary Payments, provides:

15.1 The local supplement schedule for FY1987 will be as provided for in Appendix "A".

15.2 The local supplement schedule for FY1988 will be as provided in Appendix "B", unless the Board passes a current expense tax referendum during FY 1987, in which case Article XV will be automatically reopened for negotiations as of July 1, 1987.

On May 19, 1987, a current expense referendum was passed by the

school board and on June 12, the Association requested that the parties enter into negotiations pursuant to Section 15.2. Between July 8 and September 1, the parties met in negotiations on six occasions; however, they were unable to reach agreement and on September 4, the Association petitioned the Public Employment Relations Board to appoint a mediator to assist the parties in resolving the impasse. On September 18, the District, in response to the PERB's request for a written statement detailing the facts giving rise to the Association's request, objected to the appointment of a mediator claiming that, under the current circumstances, the appointment would be inappropriate, as a matter of law. The District requested permission to submit a brief legal memorandum in support of its position. The request was granted and the parties were given until October 2 to file a written position statement in support of their respective positions.

In its memorandum, The District relies on Section 4014(b) of the Act, which provides:

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 exclusive representative, more than 90 days have elapsed since negotiations have begun, the Board must appoint a mediator if so requested by the public school employer or the exclusive bargaining representative. The mediator shall be chosen from a list of qualified persons maintained by the Board and shall be representative of the public.

The District's position is that the Public School Employment

Relations Act (14 Del.C. Chapter 40) provides for mandatory mediation only where the parties have not voluntarily and mutually agreed to request the assistance of a mediator and less than 30 days remain before the expiration of the existing collective bargaining agreement (14 Del.C. section 4014(b)) (emphasis added). The District maintains that the language of section 4014(b) is clear and that required mediation is inappropriate since the current collective bargaining agreement does not expire until 1990. The District contends that in the absence of ambiguous language the PERB is bound to apply the literal language of the statute which cannot be disregarded under the pretext of pursuing its spirit. Finally, the District maintains that the General Assembly's express mention of mandatory mediation only when no agreement has been reached 30 days prior to the expiration of the existing agreement must be understood as excluding the requirement under all other circumstances.

The Association, in support of mediation, relies on the general policy considerations upon which the Act is based and the fact that nowhere in the statute is there an express prohibition on the use of mediation as an impasse resolution procedure at times other than during the 30 day period immediately preceeding a contract expiration.

The question to be resolved here is whether the requirement of Section 4014(b) is satisfied where a collective bargaining agreement contains a re-opener clause providing for the modification of the contract during its fixed term and, if not, is required mediation under such circumstances appropriate under other provisions of the Act.

The District's reliance on Article 4014, section (b) fails to consider the impact of Article II, Term of Agreement, para. 2.1,

of the current collective bargaining agreement between the parties. It provides:

This agreement shall go into effect the first day of July, 1986 and continue in full force and effect until the last day of June, 1990, except as provided in sections 5.9, 15.2, and 15.6 (emphasis added).

The parties have, by this provision, agreed that certain contractual provisions are subject to modification during the fixed term of the contract. This voluntary agreement creates a separate and distinct expiration date for Article XV matters. The re-opener provision represents a device created by the parties to resolve an area of dispute by permitting them to deal with it at a later time, upon the occurrence of the mutually agreed upon condition. A party cannot avoid impasse by agreeing to a re-opener clause, thereby enjoy the fruits of a negotiated settlement and then claim immunity from the statutory process provided for impasse resolution if, in fact, impasse results from the re-opener becoming operative. Such a position is incompatible with the good-faith bargaining requirement of the Act. By agreeing to stipulate a time, within the fixed term of the contract, when modification of Article XV could occur, the parties impliedly accepted the statutory rights and obligations which normally accompany expiration, including the availability of the impasse resolution procedures.

The Public Employment Relations Board has previously concluded that experience gained in the private sector, while not necessarily providing an infallible basis for decision in the public sector, is nonetheless a valuable source of reference.

Seaford Education Assn. v. Bd. of Ed. of Seaford School District, Del. PERB, No. 2-2-84S (March 19, 1984), Slip Op. at 5.

In Lion Oil Co. and Oil Workers Int'l. Union, CIO (109 NLRB No. 106 (August 5, 1954)) the National Labor Relations Board, interpreting section 8(d) of the National Labor Relations Act, held that "the term 'expiration date' as used in section 8(d)(4) has a twofold meaning: it connotes not only the terminal date of a bargaining contract, but also an agreed date in the course of its existence when the parties can effect changes in its provisions". While the specific issue in the Lion Oil case involved the Union's right to strike following an impasse resulting from negotiations pursuant to a mid-term re-opener clause, the Board concluded that "we think the same rule applies to a contract for a fixed term providing for a wage reopening at a prescribed period." On appeal, the Board's position was sustained by the United States Supreme Court. NLRB v. Lion Oil Co. 352 US 282 (1957). This determination represents sound logic from which there is no valid reason for the PERB to depart.

In another decision involving the interpretation of the National Labor Relations Act, the United States Supreme Court cautioned against an overly narrow and literal construction of certain provisions of the NLRA and against accepting a construction that would produce incongruous results. Mastro Plastics Corp. v. NLRB, 350 US 270 (1956). The High Court has also stated that "in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy". United States v. Boisdore Heirs, 8 How. 113, 112.

In this regard, the Public Employment Relations Act provides at

Article 4001, Statement of Policy, that:

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between reorganized public school districts and their employees and to protect the public by assuring the orderly and uninterrupted operations of the public school system. These policies are best effectuated by:

- (1) Granting to school employees the right of organization and representation;
- (2) Obligating 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; and
- (3) Establishing a public employment relations board to assist in resolving disputes between school employees and boards of education and to administer this chapter.

Based on the foregoing discussion, the term "expiration date" as used in Section 4014(b) Of the Delaware Public Employment Relations Act is determined to include both the termination date of a fixed-term collective bargaining agreement itself and the agreed upon date during the course of its existence when the parties can effect changes in its provisions. This decision represents a logical interpretation of Section 4014(b) which is both consistent with the overriding purpose of the Act and supportive of the parties agreements as set forth in the collective bargaining agreement.

Accordingly, the PERB is proceeding to appoint a mediator to assist the parties in resolving the current impasse. You will receive written confirmation of the appointment within the next few days.

Sincerely,

Charles D. Long, Jr.

Charles D. Long, Jr.
Executive Director,
Delaware Public Employment
Relations Board

cc.

Brian Bushweller, DSEA
Dr. Russell Knorr, Sup't.,
Seaford School District

