

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

SEAFORD EDUCATION ASSOCIATION  
R.D. 2, P.O. Box 52  
Seaford, Delaware 19973

Plaintiff,

BOARD OF EDUCATION OF THE  
SEAFORD SCHOOL DISTRICT  
Administrative Offices  
Delaware Place  
Seaford, Delaware 19973

Respondent.

Case No. 2-2-84S

DECISION

The dispute presented for adjudication results from an alleged violation of §4007 (a)(1) and §4007 (a)(5) of the Public Employment Relations Act, 14 Del.C. §§4401 - 4018 (Supp. 1982), hereinafter referred to as the Act. The charge was filed on February 2, 1984, by the Seaford Education Association, hereinafter plaintiff or union, against Board of Education of Seaford School District, hereinafter the respondent or district.

FACTS

The collective bargaining agreement currently in effect between the parties was effective September 1, 1981, and originally was to expire on August 31, 1983. (Article XIV, Sec. A). There

has been no issue taken by either party that the provisions of Article XIV, B or C of the contract, have not been satisfied.

Negotiations and discussions between the parties commenced approximately one year prior to the February 2, 1984 filing of this unfair labor practice charge. Both economic and non-economic proposals were exchanged and discussed. Early in the negotiation process, the school district proposed a change from the current formula method of determining teacher salary levels to that of a fixed salary schedule. Not only did the union fail to agree but, in fact, took serious issue with the proposed change. Despite this schism, negotiations continued during the months of March, April, and May, 1983. During this period, the union offered a second salary proposal based on a continuation of the formula contained in the current Agreement. During the summer, no negotiations were held. Negotiations did not start again until August 1, 1983, at which time the school district offered an additional salary proposal re-affirming its desire for a fixed salary schedule and thereby rejecting the union's preference for a continuation of the existing formula.

In passing, it should be noted that at the start of the 1983-84 school year, teacher salaries were increased from available local funds resulting from an October, 1982 referendum based on the formula contained in the current contract.

After a summer hiatus, when collective bargaining next resumed on October 19, 1983, the school district presented a comprehensive package for the union to consider; however, this package contained no offer concerning salaries. Subsequent to

October 19, 1983, negotiations continued. Both parties have attested in the pleadings that, during this latter period, there did occur additional communication between the parties concerning the salary issue. Specifically, a union proposal and subsequent discussions concerning a wage reopener were held on or about January 31, 1984. These discussions did not result in any movement by either side.

While the District has apparently not entered into further negotiations concerning salary, it has, on several occasions in January and February, 1984, expressed its intention to make additional proposals concerning the matter and at the same time emphasizing its commitment to a salary schedule. The union has maintained its position regarding the salary formula.

On February 2, 1984, the unfair labor practice charge, which is the subject of this decision, was filed.

#### ISSUE

The issue before us is whether or not, based on the relevant facts as determined from the complaint, the answer, and from the ensuing inquiry, there is reasonable cause to believe that the respondent engaged in an unfair labor practice, a violation of §4007(a)(5) by refusing to bargain in good faith over salaries, resulting in a further violation of §4007(a)(1) of the Public Employment Relations Act.

## OPINION

As the essence of the complaint centers around the allegation charging the school board with failure to bargain in good faith, this issue shall be dealt with first.

§4002(e) of the Act defines collective bargaining as the mutual obligation ... "to confer and negotiate in good faith" ... while §4001(2) of the Act obligates the parties "to reduce to writing any agreement reached..." The reciprocal duty to bargain in good faith is a commonly used phrase in the field of labor law; however, as commonly as the phrase may be used, its definition is, at times, equally elusive. The duty to bargain in good faith is an "obligation... to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement..." NLRB v. Montgomery Ward & Co., 9th Cir., 133 F.2d 676 (1943).

The provisions of §8(d) of the National Labor Relations Act expressly require the parties "to meet at reasonable times and confer in good faith with respect to... the negotiation of an agreement..." It has long been settled that this duty includes the requirement to reduce the negotiated agreement to writing. NLRB v. Highland Park Mfg. Co., 4th Cir., 110 F.2d 632 (1940).

It is readily apparent that the Delaware Public School Employment Relations Act closely parallels, as to the relevant portions of sections of §4002(e) and §4001(2), the wording of the National Labor Relations Act. Other states have intention-

ally adopted similar language so as to incorporate by reference private sector precedent. The basis for applying similar precedent here is not unfounded. While such decisions may provide some guidance, there are distinctions that exist between the public and private sector. Experience gained in the private sector, while valuable, will not however, necessarily provide an infallible basis for decisions in the public sector. This Board agreeing with the Supreme Court of Pennsylvania in Pennsylvania Labor Relations Board v. State College Area School District, (Pa. Supr., 337 A.2d 262 (1975)), recognizes the wisdom of refraining from attempting to fashion broad and general rules that would serve as a panacea. The obviously wiser course is to resolve disputes on a case-by case basis until there is developed, through experience, a sound basis for developing general principles. Pa. L.R.B. v. State College A.S.D., Supra., at p. 265.

Guided by these preliminary observations, we shall now proceed to consider the issues before us. While the duty to bargain in good faith compels meaningful negotiations, it does not require either party to yield from a given position. It should also be emphasized that the "duty to bargain in good faith" extends only to mandatory subjects of bargaining, not obviously to prohibited or to permissive subjects. NLRB v. Wooster Div. of Borg-Warner Corp., US Supr., 356 U.S. 342 (1958). While scope questions affect the duty to bargain, we need not pursue this discussion further as the complaint giving rise to the issue at hand deals exclusively with the subject of salaries, which is clearly a mandatory subject of bargaining under §4002(p)

of the Act.

The facts indicate an extended period of negotiations between the parties from early 1983 until August, 1983. This period of negotiations included both contractual language proposals and salary matters. It should here be noted that Article XIV of the current contract provides for an automatic extension of the Agreement until August 31, 1984, should there be no agreement by the end of the original term on August 31, 1983. The contract was so extended. From August, 1983 until the filing of the complaint on February 2, 1984, negotiations continued. This period of negotiations included at least periodic discussions by the parties as to their differences over the basis for determining teacher salaries. The fact of the matter is that while the parties have been unable to make meaningful progress toward resolving the salary issue, other matters have been discussed, negotiated, and in some cases, tentatively agreed upon. (School Board Exhibit A).

At this point, discussion of the time aspect of this matter is appropriate. When the collective bargaining process first commenced in early 1983, approximately a six month period existed until the expiration of the contract term on August 31, 1983. When no settlement was reached prior to this date, the automatic one-year extension of the original contract occurred. As of the date of the filing of this charge on February 2, 1984, approximately a six month period existed until the expiration of the one-year extension on August 31, 1984. This is a period of time of similar duration to that which existed from the date

negotiations first commenced until the original expiration date of August 31, 1983. This six month period is also double the ninety day period mandated by §4013(a) of the Act for the commencement of collective bargaining prior to the expiration date of any current collective bargaining agreement. Thus, it cannot be concluded that the period of time remaining from the date of the filing of the complaint to the date of expiration is less than that which the parties themselves reasonably believed to be adequate for a successful negotiation when they commenced negotiations in early 1983. Secondly, it is nearly double that period of time which the drafters of the legislation and the General Assembly concluded was a reasonable period for meaningful and successful negotiations to occur.

When deciding failure to bargain in good faith issues, it is necessary to examine the "totality of conduct" of the parties. NLRB v. Montgomery Ward, Supra. The validity of a single position can only be ascertained from the overall record. While a party's posture as it relates to a particular subject, in and of itself, might qualify as an unfair labor practice, viewed in the light of the continuing and evolving negotiations process, it may well prove otherwise. It is the totality of conduct which tests the quality of negotiations. Absent sufficient proof of an unwillingness by the party charged to maintain an open mind and a willingness to sincerely search for common ground upon which settlement can be based, it is not the Board's prerogative to dictate bargaining strategy.

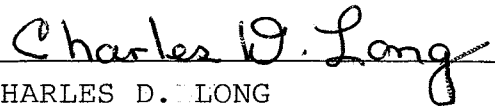
The importance of the parties' willingness to seriously

explore methods to resolve their differences as to salaries cannot be overly stressed; however, negotiations continue, agreement on other issues and visible progress have occurred, an Agreement with a fixed termination date exists to govern the day-to-day relationship of the parties during the negotiation process, and a sufficient time period exists prior to the ultimate expiration of the Agreement on August 31, 1984, for continuing and meaningful negotiations.

DECISION

For the reasons stated above, it is concluded that the charge against the Seaford Board of Education alleging a violation of §4007(a)(5) must be dismissed.

In view of the decision relative to §4007(a)(5), it is unnecessary to consider the charge concerning §4007(a)(1) of the Act as it is a derivative of the former, without which it cannot exist.

  
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CHARLES D. LONG  
Executive Director  
Public Employment Relations Board

DATED: March 19, 1984