STATE OF CONNECTICUT
LABOR DEPARTMENT
CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

BLOOMFIELD'BOARD OF EDUCATION

and

BLOOMFIELD ADMINISTRATORS ASSOCIATION

CASE NO: **TPP-13,308**

DECISION NO. 3 130

AUGUST 10, 1993

APPEARANCES:

Neil **Macy,** Ed. D.
for the Bloomfield Board of Education

and

William S. Zeman, Esq.
for the Bloomfield Administrators Association

DECISION AND DISMISSAL OF COMPLAINT

On October 23, 1990, the Bloomfield Administrators Association (the Association) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Bloomfield Board of Education had engaged and was engaging in practices prohibited by **§10-153e(b)** of the Act Concerning School Board-Teacher Negotiations (the Act). The Association charged that "under color of elimination" of one of three **Vice-**Principal positions, the Board of Education "has made substantial unilateral changes in established conditions of employment resulting, inter **alia,** in the wrongful termination of Ronald E. Theriault, a Vice-Principal at the High School" and, that as a result "the remaining two (2) Vice-Principals are now required on a daily basis to perform tasks formerly performed by Mr. Theriault". Also, the Association charges that the Board of Education repudiated various provisions of the collective bargaining agreement.

After the requisite preliminary administrative steps had been taken, the parties appeared before the Labor Board for hearings on February 6, 1992, June 3, 1992, and July 1, 1992. Both parties appeared and were given full opportunity to adduce evidence, examine and cross-examine witnesses, and make argument. Both parties filed briefs, the last of which was received on August 24, 1992.

On the basis of the entire record before us, we make the following findings of fact, conclusions of law, and dismissal of complaint.

FINDINGS OF FACT

1. The Bloomfield Board of Education is an employer within the meaning of the Act.

2. The Association is the exclusive bargaining agent and the representative for all certified personnel in the "administrators" bargaining unit as defined by the Act.

3. The parties have a collective bargaining agreement for the term July 1, 1990 - June 30, 1993, which contains the following provisions:

ARTICLE I

RECOGNITION AND TERM AND SCOPE OF CONTRACT

1.1 This Agreement is negotiated under Section 10-153 a-n of the Connecticut General Statutes, in order to fix for its term the salaries, hours, and other conditions of employment provided herein.

1.2 The Board recognizes the BAA as the exclusive bargaining representative for the entire unit consisting of all administrative and supervisory certified employees receiving salaries established for their respective positions, excluding those employees excluded from such unit by virtue of 10-153(b) of the General Statutes.

1.3 Those in the administrative and supervisory positions described above included employees in the following titles and in similar titles established hereafter during the term of this Agreement and who devote at least fifty (50) percent of their time in positions requiring the holding of an administrative certificate or its equivalent:

High School Principal
Junior High School Principal
Carmen Arace School Principal
Elementary School Principal
High School Vice-Principal/Scheduler
High School Vice-Principal

ARTICLE III

FAIR PRACTICES

3.2 The Board agrees to continue its policy of not engaging in unlawful discrimination against any employee on the basis of race, creed, color, national origin, sex, marital status, or other applicable unlawful discriminatory standard, or because of membership or participation in, or association with the activities of the BAA.

ARTICLE V

5.2 Reduction in Force

a. For the purposes of this provision, a Reduction in Force (RIF) occurs when the Board eliminates an administrative position and/or reduces the number of administrators in the bargaining unit.

b. Upon elimination of a position(s), no present member(s) of the Administrators Bargaining Unit who is qualified as noted in (c) below shall be removed from said Unit if the substance of the essential duties of the eliminated position(s) continues to be assigned to a new position(s), if said position(s) represents a lateral or lower placement on the salary schedule, within the scope of Article I, Recognition.

c. The determination of whether an administrator is qualified for the purposes of this provision shall be based upon the administrator's certification, performance (as determined from written evaluations prepared in accordance with established staff evaluation procedures), training, experience, and academic background. As between two equally qualified administrators, the senior administrator

shall be given preference. Seniority for the purposes of this provision shall be based on administrative service in the Bloomfield Public Schools.

(Ex. 2)

4. From 1984 until September 1990, there were three vice-principals at the Bloomfield High School.

5. Ronald Theriault, Vaughn Ramseur and Paul Ryan were all employed as vice-principals at the High School during, and prior to, the 1989-90 year.

6. Ramseur held the position of vice-principal/scheduler which is compensated at a level above that of the regular vice-principals. He also performed duties within the "generic" job description of vice-principal. (Ex. 4)

7. The "generic" job description for vice-principal is a document applicable to all High School vice-principals, including Theriault, Ramseur and Ryan during their tenure. It sets forth the general duties of the position.

8. During the 1989-90 school year, each vice-principal also worked pursuant to a "Job Sheet" describing his own particular duties. (Ex. 3, 7, 11). These individual job sheets thus represented a subdivision of all duties that fell within the broad wording of the vice-principal job description. Thus, numerous duties were unique to an individual vice-principal, i.e were not performed by the other vice-principals in a given year.

9. These individual job sheets were drawn up as a result of consultation between former High School Principal Howard and the individual vice-principals.

10. Prior to the existence of these written job sheets, the division of duties and individual assignments of vice-principals was drawn up orally, although certain aspects may have been noted in writing. From year to year individual vice-principal's duties varied.

11. On March 6, 1990, the Board of Education voted to delete one of the High School vice-principal positions from the budget for the 1990-91 school year, despite the Superintendent's budget recommendation to the contrary. The action was based on the Board of Education's assessment of population figures, which it concluded could not justify the maintenance of three (3) vice-principal positions.

12. As a result of the budget cut, Theriault was removed as vice-principal at the High School as of the second day of school in the 1990-91 school year, and was then terminated. (Ibis removal thus occurred in late August or early September, 1990.)

13. A grievance was filed challenging Theriault's termination, but that has been held in abeyance due to the pendency of the instant prohibited practice complaint.

14. In August, 1991, **Belinda Carberry,** who succeeded Howard as High School principal, met with Ryan and Ramseur, the vice-principals who were slated to remain. In consultation with them, she worked from Theriault's job sheet and split most of his duties between Ryan and Ramseur, assigning them their specific duties for the 1990-91 school year.

15. During the 1990-91 and 1991-92 school years, Ramseur and Ryan, in fact, performed many of the duties **formerly** performed by Theriault.

16. All of the assumed duties fell within the general parameters of the generic job description for vice-principal.

17. Some of the duties assumed by Ramseur and Ryan constituted the same type of work that they had performed prior to Theriault's termination. However, the volume of work increased in some of these categories due to Theriault's absence. In other instances, the duties, while reassigned on paper, did not represent an increase in volume or workload. Some tasks constituted new duties which they had not previously performed, at least in 1989-90, because the duties were unique to Theriault as a result of Howard's "division of labor" as established by the job sheets.

18. The work load of the remaining vice-principals increased, and in some instances required a vice-principal to work longer hours. The vice-principals increased their work hours without any express directive from their superiors.

19. The population of Bloomfield high school dropped steadily from 951 in 1985 to 733 in 198990. Then it increased slightly to 737 in 1990-91 and 761 in 1991-92. **(Ex.** 14a)

20. The Board of Education never proposed collective bargaining regarding this matter either before voting to eliminate one of the vice-principal positions or before the assignment of Theriault's duties to the other two vice-principals.

CONCLUSIONS OF LAW

1. The Board of Education did not violate the Act by voting to eliminate one of the vice-principal positions at the Bloomfield High School, while requiring the continued performance of the duties of that position by the remaining vice-principals.

DISCUSSION

In the spring of 1990, in anticipation of the 1990-1991 school year, the Board of Education voted to eliminate one of three existing vice-principal positions at the high school. As a result, one vice-principal was terminated and beginning in the fall of 1990, most of his duties were reassigned to the remaining two vice-principals. The Association seeks a determination of "whether or not the Board of Education is in violation of the Act by its unilateral act of voting to delete one position of vice-principal at the High School from the budget . . . while not abolishing any of the duties and requiring their continued performance by other vice-principals during the aforesaid and subsequent school years". (Union brief at page 1). The Association claims that there is a violation in the action of eliminating one position because the elimination resulted in the shifting of work within the bargaining unit. Drawing from our existing rule barring the unilateral transfer of bargaining unit work to non-unit employees, the Union advocates a new doctrine that would bar the unilateral transfer of duties within a bargaining unit where it results from the purported "elimination" of a position.

Squarely addressing the issue as framed by the Association, we conclude that the Board of Education did not violate the Act by voting to eliminate one of the vice-principal positions while requiring the continued performance of the duties by the remaining vice-principals. Rather, as the Board of Education argues, we see the vote to eliminate the position as falling within our well-established doctrine that management has the right to eliminate positions without bargaining with the collective bargaining representative unless its action repudiates the contract or is illegally motivated. Town of ***Stratford***, Decision No. 999 (1971); ***City of Waterbury***, Decision No. 1436 (1976); ***West Hartford Board of Education,*** Decision No. 1363 (1976).

There are at least two types of eliminations of positions -- 1) those where duties are no longer performed at all--e.g. where an employer ceases to perform some function and, therefore, eliminates the position associated with that function, and 2) those where duties of an eliminated position are parceled out among remaining employees, as was the case with many of the duties herein. Our doctrine, deeming the elimination of positions a non-mandatory subject of bargaining, has never distinguished between the two, and we decline to change the doctrine to do so now. Rather, we believe our case-law provides adequate protection of the bargaining unit and employees' rights to collective bargaining within the doctrine which established a duty to bargain concerning substantial increases in workload of those remaining in a bargaining unit. ***City of Hartford***, Decision No. 1810 (1979); State ***of Connecticut, Department of Public Safety***, Decision No. 2466 (1986); ***West Hartford Education Association, Inc. v. DeCourcy, 162*** Conn. ***566,582 (1972); Town of East Haven,*** Decision No. 1279 (1975); ***City of Bridgeport,*** Decision No. 1485 (1977); ***Redding Board of Education***, Decision No. 1922 (1980).

The Union has not argued the instant case based on the latter well-established doctrine, but seeks to break new ground with its expansive theory that management must bargain concerning any elimination that entails transfer of duties to the remaining employees within the bargaining unit.[1] We retain our belief that, in the absence of a manning clause or some other restrictive clause, safety considerations, anti-union animus or some other unusual factor, it is the sole province of management to determine how many employees to retain to perform the functions selected by its policy-makers. The existence of certain management prerogatives is an important component of our collective bargaining structure. In this setting, we do not believe that the balance of power necessary to the collective bargaining system is skewed by our reaffirmation of this management right to choose which positions will exist within the educational system. Even when employees are laid off and the remaining unit employees perform the residual work, the collective bargaining process and the bargaining unit itself is protected because at the point where the added work load becomes substantial, the employer must bargain with the Union over the work load increases, absent some other valid defense. ***Hartford, supra, State of Connecticut, supra, West Hartford Education*** Association, ***supra,*** and other cases cited above. Thus, an employer is not free to make substantive changes in terms and conditions of employment of the remaining employees without being subject to the counterbalancing rights of the union.[2]

We also conclude that the decision to eliminate the vice-principal position was not transformed into a bargainable subject by the fact that the remaining vice-principals were assigned specific duties which they individually had not performed during the previous year (or perhaps had never performed). First, these "added" duties clearly fell within their generic job descriptions. Thus, shifting these duties among vice-principals was not a mandatory subject of bargaining. ***City of Bridgeport,*** Decision No. 1485 (1977), citing ***West Hartford v. DeCourcy, supra.*** Further, if the vice-principals had been assigned duties not falling within the job description of a vice-principal, this would not negate management's right in the first instance to eliminate Theriault's position; if any duty to bargain existed it

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[1] It is clear that the Union carefully crafted the question it posed to the Labor Board. In this regard, the Union admits that it did not request impact bargaining and does not request a determination from this Board on that subject.

[2] The Association seeks the same bargaining requirement as exists where an employer seeks to transfer to non-unit employee work which has been performed exclusively by unit employees. There, absent a valid defense, we require bargaining with an incumbent union regarding the decision to transfer the work. ***Plainville Board of Education,*** Decision *No.* 1192 (1974); ***City of Milford, Decision*** No. 1849; *Town* ***of East Haven, Decision*** No. 2020 (1981); ***City of Waterbury,*** Decision No. 1436 (1976); ***City of Watertown,*** Decision No. 2515 (1986). That bargaining requirement represents a necessary limit on what otherwise would be management's sole control over the employment of unit employees who are beii replaced by the contractor's employeea, who will do the same work. Sole control in that setting is contrary to the principles of collective bargaining. Iu contrast where the work remains within the unit, bargaining will continue and may focus on workload issues. Also, part of the reason for the bar on unilateral transfer of work out of the bargaining unit is to preclude the employer from distorting the balance of the negotiation process by holding over negotiations the specter of transfer of the work at the sole discretion of the employer. No such specter can hover where the employer who eliminates a position is still constrained by his duty to bargain over substantial changes in work load or job duties of the remaining employees.

would involve the workload and/or the new duties, not the decision to eliminate a position. Once again, we note that the Association has not framed its case as the failure to bargain concerning the separate issues of increased work load or job duties, but rather has challenged the elimination of one position where it is accompanied by transfer of duties or work load to remaining bargaining unit positions.[3]

Since we base our decision on management's inherent right to take the action, we need not address the Board of Education's alternative defense that the transfer of duties was permitted by Article V, Section 5.2. (In the Board of Education's view, Section 5.2 acknowledges the management right, when implementing a layoff, to transfer duties among remaining vice-principals since Section 5.2 only limits transfers where they are made to newly-created positions below the rank of the laid off position.) Even if we decide the merits of the defense, it certainly involves a plausible interpretation of the clause, and thereby defeats the Association's claim that the Board of Education has here repudiated that clause. We also reject the Association's claim that the Board of Education's mere invocation of Article 5.2(b) and (c), as involved in the third vice-principal's termination, constituted a repudiation of that provision. A repudiation will only be found to exist where a respondent takes an action 1) based upon an interpretation of the contract which is asserted in subjective bad faith; 2) based upon an interpretation which is wholly frivolous and implausible or 3) where the action is contrary to a clear contractual provision but is defended upon some collateral, noncontractual ground (e.g. financial hardship, administrative difficulty) which does not excuse its actions. Hartford Board of Education, Decision No. 2141 (1982) and cases cited therein. We find none of these grounds to exist -- the contractual interpretations are plausible, there is no evidence that they were asserted in subjective bad faith, and no collateral defenses were raised.

For the same reasons, neither do we find a repudiation of other contractual provisions cited by the Association. We do not see any way to call management's action here a repudiation of Article I, Section 1.1 , the recognition clause. Simply put, the elimination/transfer of duties does not entail a rejection of the representative status of the Association. Nor do we find the case cited by the Association, *Local 818 of Counsel 4, AFSCME, AFL-CIO, et al v. Town of East Haven,* Superior Court, Judicial District of New Haven, Docket No. CV92-0325979, January 3, 1992, to be applicable here. The instant case does not involve, as *East Haven* did, an effort to eliminate some positions from the full protection of the contract or a disregard of contract provisions concerning the termination of employees. Neither can the action be considered a repudiation of Section 1.2, which simply

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[3] We have considered *Christopher Street Owners Corp., 294 NLRB No.* 18, (1989), cited by the Association. We take no issue with the holdings in Christopher Street which state that au employer must bargain with the Union concerning the assignment of new duties to a position. In fact, we too have held that there's a duty to bargain concerning the additions of new duties not within a job description, *City of* New *London, Decision* No. 1322 (1975); City *of Bristol, Decision No.* 1305 (1975); *City of Bridgeport,* Decision *No.* 1485 (1977). But that holding does not support the Association's challenge to the decision to eliminate a position from which the duties were removed.

states the purposes of the contract. Similarly the action does not repudiate Article III, Section 3.2, as that clause bars discrimination for any of the listed unlawful reasons, and none of those unlawful bases has been alleged or proven.

Finally, we turn to the Association's challenge to the Board of Education's claim that the elimination was prompted by a decline in population. The Association's challenge appears related primarily to its argument that the Board of Education may not eliminate the vice-principal position where it reassigns his work to the remaining vice-principals. We have already rejected that argument. However, if the Association challenge goes beyond that theory, we note that it is not within our province to determine the wisdom or justification for the Board of Education's action. There is no contractual clause specifying staffing levels which has been alleged to have been repudiated and the Board has not raised the population issue as a collateral defense to any admitted contract breach or repudiation. Neither do we find that the Board's reliance on the population trend over a period of years, rather than the Association's focus on shorter term changes, represents bad faith which would have bearing on any other aspects of the Association's complaint.

In sum, we reject the Association's creative legal argument that management has a duty to bargain concerning the elimination of a position where it takes the duties of the eliminated position and parcels them out to employees who remain in the bargaining unit.[4]

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Act Concerning School Board Teacher Negotiations, it is hereby ORDERED, that the complaint herein be and the same hereby is dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/Margaret A. Lareau
Margaret A. Lareau,
Chairman

[4] Without addressing procedural setting of the Board of Education's claim for expenses, we reject it. While the Association's claim was novel, it was not frivolous and nondebatable.

s/Patricia V. Low
Patricia V. Low,
Board Member

s/Antonia C. Moran
Antonia C. Moran,
Board Member

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NO. CV 93-0529303-S	:	SUPERIOR COURT
BLOOMFIELD ADMINISTRATORS ASSN.	:	JUDICIAL DISTRICT HARTFORD/ NEW BRITAIN
v.	:	AT HARTFORD
CONNECTICUT STATE BOARD OF LABOR RELATIONS, ET AL	:	MAY 5, 1994

MEMORANDUM OF DECISION

The Bloomfield Administrators Association ("Association") has filed this administrative appeal from the decision of the Connecticut State Board of Labor Relations ("State Board") dismissing its charge that the Bloomfield Board of Education ("board of education") engaged in an unfair labor practice when it eliminated one of the three vice-principalships at Bloomfield High School in 1990.

Procedural History

The Association, which is the collective bargaining representative for the administrators employed in the public schools of Bloomfield, filed a complaint with the State Board on October 22, 1990, alleging that the board of education committed

practices prohibited by §10-153e(e) C.G.S., specifically that "[u]nder color of elimination of one of the [three] positions [vice-principal at Bloomfield High School], the Respondent has made substantial unilateral changes in established conditions of employment resulting, inter alia, in the wrongful termination of Ronald E. Theriault, a Vice Principal at the High School."

The State Board heard evidence and argument on February 6, 1992, June 3, 1992, and July 1, 1992. In his opening statement, counsel for the Association stated that because its position was that it was illegal for the Board of Education to eliminate one of the positions and redistribute Theriault's duties to the remaining vice-principals, the Association's complaint was not based on a failure to bargain concerning impact. He explained that the duty to bargain as to impact arises only if the change that caused the impact was legal and that the Association's view was that the elimination of the position was itself a violation of the statute requiring collective bargaining.

The State Board issued a decision dated August 10, 1993 dismissing the complaint, and the Association filed a timely appeal from that ruling.

During the pendency of this appeal, Theriault, the vice-principal whose employment was terminated as a result of elimination of one of the three positions in the high school vice-

principal classification, pursued an action arising under §10-151(f) C.G,S., the Teacher Tenure Act. On June 7, 1993, the Appellate Court, reversing the trial court, ruled in Theriault's favor and ordered his reinstatement with back pay. Theriault v. Board of Education, 31 Conn. App. 690, cert. denied, 227 Conn. 911 (1994).

Mootness

The relief sought here by the bargaining unit that represents Theriault is the reversal of the decision of the State Board, and, implicitly, the granting of the relief sought in the Association's prohibited practices complaint, namely, restoration of Theriault's position and employment, with back pay.

At oral argument, the Association conceded that Theriault has been reinstated and that back pay has either'been awarded or is in the process of being calculated. The Association did not claim that any of the relief sought in the complaint which gives rise to this appeal has not been achieved; however, it expressed the hope for a ruling to provide guidance for future situations.

It is not the province of the courts to decide moot questions disconnected from the granting of actual relief or from the determination of which no practical relief can follow. Garcia v. Brooks Street Associates, 209 Conn. 15, 22, 546 A.2d 275 (1988); Bowen v. Heintz, 206 Conn. 636, 642, 539 A.2d 122 (1988); State v.

Macri, 189 Conn. 568, 569, 456 A.2d 1203 (1983). "The courts of this state may not be used as a vehicle to obtain judicial opinions upon points of law.. .and where the question presented is purely academic, we must refuse to entertain the [suit]." Goodson v. State, 228 Conn. 105, 115 (1993).

The Association claims that despite the granting of full relief concerning the elimination of Theriault's position, its appeal should be decided because the situation is capable of repetition yet evades review, a situation recognized by the Supreme Court in Goodson v. State, 228 Conn. 105, 115, as a reason to rule on an issue even where no actual relief remains at issue.

Pursuant to this doctrine, courts will examine questions that are moot under circumstances in which 1) the challenged action was too short in duration to be fully litigated prior to its cessation or expiration, and 2) there is a reasonable expectation that the same complaining party will be subject to the same action again. Weinstein v. Bradford, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975); Board of Education v. Board of Labor Relations, 205 Conn. 116, 126 (1987); Hartford Principals' & Supervisors' Assn. v. Shedd, 202 Conn. 492, 496, 522 A.2d 264 (1987).

There is no separate or different standard for determining mootness where an appeal concerns a labor dispute. Board of Education v. Board of Labor Relations, 205 Conn. 127 n.8. In such cases, as in other cases, the Court has ruled that in determining whether a situation is "capable of repetition, yet evading review,"

the following factors should be considered: "(1) the public importance of the question presented; (2) the potential effect of the ruling on an ongoing program of the state's penal or civil system; and 3) the possibility of a similar effect on the complainant in the future." Goodson v. State, 228 Conn. 106, 115; Board of Education v. Board of Labor Relations, 205 Conn. 126, citing Shavs v. Local Grievance Committee, 197 Conn. 566, 572-73, 499 A.2d 1158 (1985).

The dispute that gave rise to this appeal concerns the particular situation in which some of the duties of a position within a job classification remain when one employee in that classification is terminated. In most situations in which the positions of school administrators are eliminated, the elimination of jobs is closely related to an elimination of work, as when a school closes and there is one less building to manage. The issue raised in this appeal concerns a very particular and somewhat unusual fact pattern that cannot be said to be typical of situations in which school administrators are terminated. The court therefore does not find that the issue the Association wishes to present is a "fundamental labor relations issue" of the sort presented in Goodson v. State, 228 Conn. 116.

The Association does not assert that the attempt to reduce the number of positions is likely to be repeated. Since the precise situation at issue in this appeal has been the subject of full relief, it does not appear prudent to decide in the abstract a

principle to apply to future cases that may not arise or that may arise under significantly different factual circumstances. Here, as in Board of Education v. Board of Labor Relations, 205 Conn. 129, the situation that led to the appeal may be obviated as a result of subsequent collective bargaining, so that a similar situation may not arise again between the parties.

The Association, in essence, seeks an opinion on an academic point of law, and "discretionary prudential concerns counsel against [courts] undertaking to render an opinion that would, in effect, be merely advisory." Board of Education v. Board of Labor Relations, 205 Conn. 129; State v. Hope, 203 Conn. 420, 425, 524 A.2d 1148 (1987).

Finding that this dispute does not meet the criteria for a dispute capable of repetition yet evading review, this court hereby dismisses the appeal as moot.

5/5/94

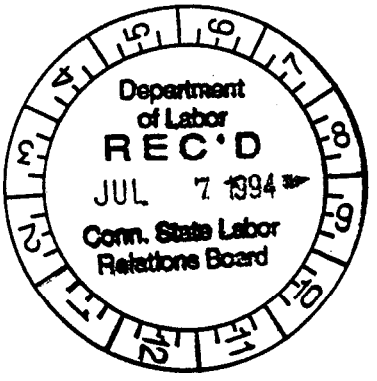
Beverly J. Hodgson
Judge of the Superior Court

NO. CV93 0529303	: SUPERIOR COURT
BLOOMFIELD ADMINISTRATORS ASSOCIATION	: JUDICIAL DISTRICT FOR HARTFORD/NEW BRITAIN
V.	: AT HARTFORD
CONNECTICUT STATE BOARD OF LABOR RELATIONS, ET AL	: JUNE 29, 1994

SUPPLEMENTAL MEMORANDUM OF DECISION

By a memorandum of decision filed on May 11, 1994, this court dismissed as moot the above-captioned appeal from the decision of the Connecticut State Board of Labor Relations ("State Board") dismissing the charge of the Bloomfield Administrators Association ("Association") that the Bloomfield Board of Education had engaged in an unfair labor practice when it eliminated one of three vice-principalships at Bloomfield High School in 1990.

After the court's dismissal of the appeal, the Association filed a motion to reargue, asserting that the case was not moot because all of the relief requested in its complaint to the State



Board had not been achieved by the reinstatement of the vice-principal, Ronald E. Theriault, immediating after a ruling by the Appellate Court in Theriault v. Board of Education, 31 Conn. App. 690, cert. denied, 227 Conn. 911 (1994).

At a hearing on the motion to reargue, the parties stipulated to the admissibility of two affidavits signed by Portia T. Mendez concerning the present situation. In those affidavits, Ms. Mendez states that subsequent to the decision of the Appellate Court on June 7, 1993, Mr. Theriault was reinstated to an administrator's job at the High School (5/18/94 Affidavit, para. 4). The parties further stipulated that the job to which Mr. Theriault was reinstated was that of high school vice principal and that he was, from the time of reinstatement to this date, employed and paid as a high school vice principal.

The parties further stipulated that from the reinstatement of Mr. Theriault to the present date, the Bloomfield Board of Education has employed three high school vice principals but that it has not amended its written budget, which indicates only two vice principal positions at the high school.

The parties stipulated that after the Appellate Court's ruling, the Association and the Board of Education engaged in collective bargaining to amend the contract clause concerning reduction in force/terminations of administrators and that the collective bargaining agreement that is the successor to the 1990-1993 agreement, which was in effect at the time the Association

filed its unfair labor practice complaint, contains the new provision with regard to reduction in force/termination.

The facts set forth above confirm this court's determination that the unfair labor practice complaint that is the subject of this appeal is moot and is not the sort of controversy that is capable of repetition yet evading review.

The complaint to the State Board was that the board of education had eliminated a vice principal's position and terminated a vice principal without engaging in collective bargaining. The employee so terminated was reinstated to a position as a vice principal, and his employment as such brought to three the number of vice principals employed at Bloomfield High School from the date of his reinstatement to the present date.

Whether the budget document for the Bloomfield public schools specifies two vice principals is of no consequence: the fact is that three are now employed, that is, that there are-three high school vice principal positions de facto at this time.

The relief requested by the Association in its complaint of a prohibited practice to the State Board was as follows:

"1. Restoration of a third position of vice principal at Bloomfield High School;

2. Revocation and cancellation by the Bloomfield Board of Education of the termination of Mr. Theriault;

3. Reinstatement of Mr. Theriault as a Vice Principal of Bloomfield High School pursuant to contract requirements;

4. Retroactive adjustment of salary and any and all other contract benefits resulting from the Board of Education's wrongful termination of Mr. Theriault."

Upon reargument, the Associationmade no claim that the final three requests for relief had not been rendered moot by the reinstatement of Theriault in 1993. The Association's only argument is that by reinstating Theriault and employing three high school vice principals from that time to the present date, the board of education did not actually restore the third position of vice principal.

The court finds insupportable the distinction asserted by the Association. The board of education cannot now be characterized as employing three persons in two positions. Where there are three individuals with the title of vice principal drawing the salaries of vice principals this court considers that the Bloomfield board of education has three positions of vice principal, whether or not it has created a revised organizational chart or budget document to reflect this present reality.

Pursuant to the standards stated by the Supreme Court in Hartford Principals' and Supervisors' Assn. v. Shedd, 202 Conn. 492, 497 (1987) and cases cited therein, the controversy concerning the elimination of Theriault's position is moot.

The Association argues, based on other assertions in Ms. Mendez's affidavit, that the Board is likely again to eliminate one of the three vice principal positions for the 1994-95 school year. This prediction does not render the issue one capable of repetition yet evading review. Rather, the Association is asserting that a

new reorganization, pursued under a different collective bargaining agreement than was in effect in 1990-91, may also give rise to complaints of prohibited labor practices. There is no indication that any member of the bargaining unit would be terminated from employment as a result of any contemplated action for the 1994-95 school year.

A controversy is "capable of repetition yet evading review" only if the same complaining party is likely to be subjected to the same action again. Hartford Principals' & Supervisors' Assn. v. Shedd, 202 Conn. 499; Connecticut Foundry Co. v. International Ladies Garment Workers Union, 177 Conn. 17, 19-20 (1979).

The action that the Association complained of in 1990 as a prohibited practice was the combined action of eliminating a position and terminating the employment of a member of the bargaining unit who occupied that position. The affidavits provided by the Association support no finding of a likely repetition of that action but forecast a significantly different possible event, the elimination of a position with no loss of employment to bargaining unit members under the operation of a new contract provision regarding reduction in force.

In reality, the Association is asking this court to decide the abstract issue whether a board of education may unilaterally decide to employ fewer administrators to perform the administrative work of a school system.

The position at issue in the Association's complaint to the State Board was restored de facto by the re-employment of Theriault

in that position. The court continues to find that this case is therefore moot and that the abstract issue that the Association claims to be unresolved is not one that can or should be addressed in the absence of actual facts and a present case and controversy. Board of Education v. Board of Labor Relations, 205 Conn. 116, 129 (1987).

The motion to reargue is granted, and upon the factual record presented at reargument, the appeal is dismissed as moot.

Hodgson 6/29/94

Beverly J. Hodgson
Judge of the Superior Court