

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

GREENWICH BOARD OF EDUCATION

**-AND-**

GREENWICH EDUCATION ASSOCIATION

**Case No. TDR-14,827**

DECISION NO: 3141

APPEARANCES:

SEPTEMBER 28, 1993

William J. Kupinse, Jr., Esq.  
For the Board of Education

William J. **Dolan**, Esq.  
For the Union

**DECISION AND DECLARATORY RULING**

On July 27, 1992, the **Greenwich Education Association** (the Union) filed a petition for a **Declaratory** Ruling with the Connecticut **State** Board of Labor Relations (the Labor Board). The petition **seeks** a ruling from the Labor Board as to whether **certain** portions of Article 13 (C)(1)(c) of the collective **bargaining agreement** between the Union and the Greenwich Board of Education (the Board of Education) concern an illegal subject of bargaining pursuant to the Act concerning School Board - Teacher Negotiations (the Act), and are, therefore, **null** and void.

On October 1, 1992, the parties entered into a **full** stipulation of facts and exhibits for consideration by the Labor Board. Both parties filed briefs, the last of which was received by the Labor Board on December 22, 1992.

Based on the record before us, we **make** the following findings of fact, conclusions of law, and Declaratory Ruling.

### **FINDINGS OF FACT**

1. The Board of Education is a local board of education within the meaning of the Act.

2. The Union is an organization of certified **professional** employees within the meaning of the Act, and at all material times has been the exclusive bargaining representative for the teachers' unit in the Greenwich public school system.

3. **The** Board and the Union are parties to a collective bargaining agreement in effect from July **1, 1990** to June **30, 1993**. (Ex. 1)

4. Article 13 Section (C)(1)(c) of the parties' agreement states as follows:

#### C. Leaves of Absence With Pay:

1. All teachers shall be entitled to leaves for personal reasons as follows:

- c. Jury duty, provided that a teacher who receives notice of jury duty shall notify the Director of Personnel who shall on behalf of the teacher attempt to have the teacher relieved from jury duty or to have the jury duty postponed until a time when the teacher is not required to perform duties for the system. The teacher shall support in writing this request. If the teacher is nevertheless required to take a leave of absence, he/she shall be paid his/her salary less any amount paid by the Court for jury duty, with deduction to be made subsequent to receipt of such amount.  
(emphasis added)

5. The instant petition for Declaratory Ruling seeks a Labor **Board** ruling on whether the underlined portions of Article 13 Section (C)(1)(c) constitute an illegal subject of bargaining.

6. Article 13 Section (C)(1)(c) was contained in collective bargaining agreements negotiated between the parties both prior and subsequent to the change in the Connecticut General Statutes, upon which the Union relies, in its argument that Article 13 Section (C)(1)(c) constitutes an illegal subject of bargaining.

7. The Board of Education has offered to bargain over the provision in question during the current round of negotiations, but the Union has presented no proposal, relying upon the instant petition for Declaratory Ruling.

8. Teachers represented by the Union and subject to the provision in question live in New York as well as Connecticut, and thus are subject to possible calls for jury duty from the State of Connecticut, the State of New York and the Federal Courts in both states.

9. **Conn. Gen. Stat. §51-247a** provides as follows:

**Conn. Gen. Stat. §51-247a. Employer not to discharge employee for jury service. Penalty. Action for recovery of wages and reinstatement. Liability of employer for failure to compensate juror-employee.**

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons in accordance with the provisions of section 51-232, responds thereto, or serves as a juror. Any employer who violates this section shall be guilty of **criminal** contempt, and, upon conviction thereof, may be fined not more than five hundred dollars or imprisoned not more than thirty days or both.

10. **Conn. Gen. Stat. §51-232** provides in relevant part:

Section 51-232. **Summoning of jurors. Reduction of panel.** Co-

(c) (1) The clerk of the court or the jury administrator shall send **to** each juror drawn under the provisions of section 51-231, by first class mail, a notice stating the place where and the time when he is to appear and such notice shall constitute a sufficient **summons unless** a judge of said-court directs that jurors be **summoned** in some other manner.

(2) Such summons or notice shall also state the fact that a juror has a right to one postponement of his term of juror service for not more than one year and may contain any other information and instructions deemed appropriate by the jury administrator. If the date to which the juror has postponed jury service is

improper, unavailable or inconvenient for the court, the jury administrator shall assign a date of service which, if possible, is reasonably close to the postponement date **selected** by the juror. Such notice or summons shall be made available to any party or his attorney in an action to be tried to a jury.

11. **McKinney's** Judiciary Law, Section 519 of the laws of the State of New York provides: **Right of Juror to be absent from employment.**

Any person who is summoned to serve as a juror under the provisions of this article and who notifies his or her employer to that effect prior to the commencement of a term of service, shall not, on account of **absence** from employment by reason of such jury service, be subject to discharge or penalty. An employer may; however, withhold wages of any such employee serving as a juror during the period of such service; provided that an employer who employs more than ten employees shall not **withhold** the first fifteen dollars of such juror's daily wages in **accordance** with this section, shall not be deemed a penalty. Violation of this section shall constitute a criminal contempt of court punishable pursuant to section seven hundred fifty of this chapter.

12. U.S.C. Section 1875 Protection of jurors **employment,** provides as follows:

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the united states.

(b) Any employer who violates the provisions of this section-

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than \$1,000 for each violation as to each employee.

## CONCLUSIONS OF LAW

1. An illegal subject of bargaining is that which, if included as a provision in a collective bargaining agreement, results in that provision being both illegal and **unenforceable** because it is contrary to the provisions of the Act or other State or Federal statutes or controlling laws **and/or** would require the taking of action which is prohibited by the Act or other State or Federal statutes or controlling laws and/or is contrary to important public policy.

2. The underlined portion of Article 13, Section (C)(1)(c) of the parties' collective bargaining agreement (as referred to in Finding of Fact **#4**) involves an illegal subject of bargaining because it creates a form of coercion prohibited by **Conn. Gen. Stat. §52-247a** and because it does not provide for wage payment as specified in **Conn. Gen. Stat. §51-247(b)(1)**.

## DISCUSSION

In this case, **we** must decide whether particular portions of the parties' collective bargaining agreement **pertaining** to jury duty constitute an illegal subject of bargaining.

This Board has traditionally analyzed subjects of bargaining within the three categories which exist under Federal law: mandatory, permissive and illegal. See: **West Hartford Education Association v. DeCourcy**, 162 Conn. 566 (1972); **Cheshire Board of Education**, Decision No. 2153 (1982); **State of Connecticut Ex. Rel. Division of Criminal Justice**, Decision No. 2708 (1989).

Mandatory subjects of bargaining are those about which the Act **requires** both parties to negotiate in good **faith**. **West Hartford Education Association v. DeCourcy, supra; Cheshire Board of Education, supra; Joseph I. Lieberman, Attorney General, Decision No. 2550** (1987).

While a contract provision that concerns a mandatory subject of bargaining will be valid and enforceable, we have distinguished permissive subjects as being those for which the law **creates** no mandatory duty to bargain and are within the area of managerial prerogative. If the parties mutually choose to bargain over such matters a resulting contract provision will be enforceable. **State of Connecticut, supra.**

Illegal subjects of bargaining are those which, if included as a provision in a collective bargaining agreement, result in that provision being both illegal and unenforceable to the extent that the provision involves an illegal subject of bargaining. A subject will be designated as being illegal if it is contrary to the provisions of the Act and/or would require

the taking of action which is prohibited by the Act. A subject may also be found to be an illegal subject of bargaining if it would result in a contract provision which would be contrary to other provisions of State or Federal statutes or other controlling laws. *State of Connecticut, Ex. Rel. Division of Criminal Justice, Dec. No. 2708-A (1989); Cheshire Board of Education*, Dec. No. 2153 (1982) and cases cited therein. A subject may also be illegal to the extent that it is contrary to an important public policy.

The contract provision in question is contained in the section entitled "Leaves of Absence with Pay" and states that teachers shall support an attempt by the administration to have the teacher excused entirely from jury duty or to have the jury duty postponed until a time when the teacher is not required to perform duties for the school system. This is a condition precedent to receiving a paid leave of absence if the teacher is ultimately required to **perform** jury duty in spite of the postponement/relief request. The Union contends that the relevant contractual clause contains an illegal subject of bargaining in contravention of Connecticut, **New** York and Federal jury duty statutes. We will first address the positions of the parties with regard to Connecticut statutes because our analysis of the law of our own state is dispositive **of** this issue.

Before proceeding to our analysis however, we note that we are not discussing, in this decision, the entire **subject** matter of "jury duty" as a topic in collective bargaining. We are only concerned here: with the specific contract provision in question and whether **that** provision constitutes an illegal subject of bargaining as we have defined that term. It is possible that parties in a bargaining relationship might agree on a contract provision regarding jury duty which is not illegal.

We must begin our substantive analysis with an examination of the statutory rights and protections afforded to individuals who are required **to fulfill** a duty to this State by serving as jurors. In this regard, **Conn. Gen. Stat. §51-247a** forbids an employer to discharge, **threaten** or otherwise coerce an employee, with regard to her employment, if the employee is summoned for jury duty. **Conn. Gen. Stat. §51-247(b)(1)** also requires employers to pay wages to full-time employees for the first five (5) days of jury duty.<sup>1</sup>

Further, in an effort to accommodate the individual's needs and schedules, **Conn. Gen. Stat. §51-232** specifically allows individual jurors to request one postponement of jury duty and **to** choose a more convenient time to perform that duty. The above provisions make it clear that the State intends individuals to perform their jury duty to the State, at a time most convenient to the Courts and the individual and free from the worry of losing employment or suffering other employment **repercussions**.

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<sup>1</sup> The relevant portions of **§51-247a** and **§51-232** are set forth in the Findings of Fact.

**Conn. Gen. Stat. §51-247. Compensation of jurors reads in relevant part: (b)(1) Each full time employed juror shall be paid regular wages by his employer for the first five days, or part thereof, of his juror service...**

We find the collective bargaining provision in question to be contrary to the **above-**described statutes in the following ways.

First, we interpret the language of the contract clause to require teachers, as part of their employment with the school system, to abdicate their individual rights to choose whether to request a postponement of jury duty. We believe the contract states that, even aside from any wage payment considerations, teachers must always inform the administration of a jury duty summons and then support the administration's attempt to erase the jury duty or postpone it to a time more convenient to the school system. The unspoken implication of this reading of the contract is that teachers may be subject to discipline or other repercussions if they do not cooperate in the Employer's interference with the jury duty summons. This situation creates a form of coercion prohibited by **§51-247a**. In this regard, the entire Connecticut jury duty statutory scheme places responsibility for **fulfillment** of jury duty on the individual jurors and the Court. It is **the juror** who may request postponement of her service; the juror and the Court are charged with arranging a mutually beneficial time for the individual to perform her duty. Additionally the statute does not provide for **anyone**, including the juror to request total relief from duty. Further, **§51-247a** clearly places limitations on an employer's ability to effect a juror's employment by proscribing certain Employer conduct. The statutes clearly intended individuals to be **free** to **serve** as jurors at a time of their own choosing unhindered by the worry of balancing their obligation to the State with their desire to please an employer. The contract clause in question in this matter cuts against the protections set forth in the statute by obligating teachers, as a condition of employment, to allow the employer to interfere in the jury duty summons. We believe this rises to the level of coercion in employment prohibited by the statute.

Also, the contract clause predicates payment of wages during jury duty on teacher cooperation in requesting relief from, or postponement of, jury duty. The implication is that the employer may refuse to pay any wages during jury duty if the employee has not **first** tried to evade or **delay** the duty. However, **Conn. Gen. Stat. §51-247(b)(1)** clearly requires an employer to pay **five** (5) days wages to full-time employees if an employee is summoned to serve as a juror. The statute does not allow an employer or any other entity to impose conditions upon the payment of five (5) days wages. To the contrary, we **find** the statute to unequivocally require payment to full-time employees for those five (5) days. In the face of such a clear mandate, we find that the parties in a contractual bargaining relationship cannot place conditions upon the employee's statutory right to receive wages for their **fulfillment** of jury duty for the **first** five (5) days.

Based on the above, we find that the contract clause in question is contrary to Connecticut law and is, **therefore**, unenforceable because it involves an illegal subject of bargaining.

## DECLARATORY RULING

By virtue of and pursuant to the provisions vested in the Connecticut State Board of Labor Relations by the Act Concerning School Board • Teacher Negotiations and the Uniform Administrative **Procedures** Act, it is hereby DECLARED THAT:

I. The following portion of Article 13(C)(1)(c) of the Collective Bargaining Agreement between the Union and the Board of **Education** involves an illegal subject of **bargaining** and is illegal and unenforceable:

. . .who shall on behalf of the teacher attempt to have the teacher relieved from jury duty or to have the jury duty postponed until a time when the **teacher** is not required to perform duties for the system. The teacher shall support in writing this request. If the teacher is **nevertheless** required to take a leave of absence...

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/Anthony Sbona

Anthony Sbona,  
Board Member

s/Antonia C. Moran

Antonia C. Moran,  
Board Member

CONCURRING OPINION OF  
CHAIRMAN MARGARETA. LAREAU

I concur with the result reached by the majority, i.e. that the underlined portion of Article 13(C)(1)(c) involves an illegal subject of bargaining and is void. I base this conclusion on the fact that the clause flies in the face of the clear requirement of **Conn. Gen. Stat. §51-247(b)(1)** that employees **be** paid wages for the first five (5) days of jury duty, and I adopt the reasoning of the majority on that point.

However, I must comment further on the majority's conclusion that the contract clause is entirely coercive, in violation of **§51-247a**. I base my decision on the fact that I believe the pertinent contract clause is susceptible to differing interpretations, one of which I might find to be noncoercive under appropriate circumstances.

First, I find that the contract clause in question may be interpreted to require teachers, in all circumstances, to allow the administration to attempt to postpone or erase the teacher's jury duty obligation. I see this interpretation of the contract to mean that, aside from any consideration of the payment of wages, teachers must abdicate their individual rights to choose when and how to fulfill their duty to the state court system. The unspoken implication is that the teacher may be subject to some form of negative impact on her job if she does not cooperate in the administration's effort. I believe this interpretation is **entirely** plausible and, in fact, supported by some of the Employer's own arguments regarding the purpose of the clause. Therefore, in this case, because the contract can reasonably be interpreted in that manner by teachers who read it, it does create coercion which is forbidden by the statute.

However, I also find that the contract can be interpreted to require the indicated cooperation of the teacher only as a predicate to payment of wages. I would **find** that, under appropriate circumstances, predicating wage payment upon the requirements as stated in the contract would not be coercive. In this regard, if it were clear that the contract only spoke to wages beyond **the "5-day requirement"** of the statute, I would not **necessarily** find such a scenario to be coercive because the employer is **free** to decline to pay wages beyond five (5) jury duty days. Therefore, under that circumstance, the contract would involve no penalty for **failure** to cooperate, but rather, would **merely** provide a benefit for the teacher in a contractual setting; an arrangement which would not be illegally coercive even though it might effect the teacher's decision. Thus, I believe there may be circumstances when such a provision in a collective bargaining agreement would not be illegal.

In this case, however, I concur in the ultimate conclusion that the clause in this contract does create **coercion** in violation of the statute because one reasonable interpretation of the clause is that it **requires** teachers, independent of the issue of paid leave, always to attempt to postpone or evade jury duty.

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

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