STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
HARTFORD BOARD OF EDUCATION

DECISION NO. 3357

-and-

JANUARY 22, 1996

HARTFORD PRINCIPALS AND
SUPERVISORS ASSOCIATION
(Case No. TPP-15,477) -and-

HARTFORD FEDERATION OF TEACHERS
(Case No. TPP-15,487) -and-

HARTFORD FEDERATION OF HEALTH PROFESSIONALS
(Case No. MPP-15,505) **-and-**

HARTFORD FEDERATION OF SPECIAL POLICE
(Case No. MPP-15,506) -and-

HARTFORD FEDERATION OF SECRETARIES
(Case No. MPP-15,507) -and-

HARTFORD FEDERATION OF SUBSTITUTE TEACHERS
(Case No. MPP-15,508)

APPEARANCES:

Attorney Ann F. Bird
for the Hartford Board of Education

Attorney Brian A. Doyle
for the Connecticut State Federation of Teachers

Attorney William S. **Zeman**
for the Hartford Principals and Supervisors Association

Attorney Helen Apostolidis
for the Hartford Board of Education

DECISION AND DISMISSAL OF COMPLAINT

On April 26, 1993 the Hartford Principals and Supervisors Association (**HPSA** or the Association) filed with the Connecticut State Board of Labor Relations (the Labor Board) a complaint alleging that the Hartford Board of Education (the School Board) had engaged in

practices prohibited by § 10-153e(e) of the Act Concerning School Board-Teacher Negotiations (the TNA) in that the School Board interfered with the Association and bargained directly with its membership by the mailing of a letter dated April 12, 1993 to all Association members.

On April 29, 1993, the Hartford Federation of Teachers (HFT) filed a complaint with the Labor Board alleging that the School Board violated the TNA by interfering with the HFT and bargaining directly with its membership by the mailing of a letter dated April 12, 1993.

On May 7, 1993 the Hartford Federation of Health Professionals, the Hartford Federation of Special Police, the Hartford Federation of Secretaries, and the Hartford Federation of Substitute Teachers filed a complaint identical to that of the HFT, pursuant to Conn. Gen. Stat. § 7-470 of the Municipal Employee Relations Act (MERA).

These cases were consolidated during the investigatory stages of the complaints.

After the preliminary administrative steps had been taken, the parties, on August 6, 1993, reached a full stipulation of facts and exhibits relevant to the complaints and agreed to waive their right to an evidentiary hearing. Briefs were filed by all parties, the last of which was received by the Labor Board on October 17, 1994.

On the basis of the record before us, we make the following findings of fact, conclusions of law and we dismiss the complaints.

FINDINGS OF FACT

The parties stipulated to findings of fact 1-8.

1. The Hartford Principals and Supervisors Association is a collective bargaining agent within the meaning of the Act Concerning School Board Teacher (TNA) negotiations representing certified employees in positions requiring an intermediate or supervisory certificate.

2. The Connecticut State Federation of Teachers is a collective bargaining agent within the meaning of the TNA and the Municipal Employee Relations Act (MERA) and representing both certified and non-certified in five separate bargaining units.

3. The Hartford Board of Education is an employer within the meaning of the TNA and the MERA.

4. None of the bargaining units represented by the complainants were in contract negotiations on or about April 12, 1993.

5. The Board of Education's position is that there is a substantial shortfall in its 1993-1994 budget.

6. On April 12, 1993, Board of Education President Allan Taylor sent a letter to the homes of all Board of Education employees.

7. The Complainant collective bargaining agents did not have prior knowledge of, agree to, or participate in the drafting or sending of the April 12, 1993 letter.

8. The letter of August 12, 1993 signed by Taylor is stated in its entirety below:

"

A MESSAGE FROM
THE HARTFORD BOARD OF EDUCATION

This is an open letter to all HPS employees. It is about the budget and, therefore, about the futures of your jobs and the children for whom we are all responsible. As the budget process progresses and we know more about what we have to work with, we will keep you informed.

The Budget Context

Over the last 4 years, more than 180,000 jobs have been lost in Connecticut. Last year, real family income in the State, while still the highest in the country, fell by $900. In the City, tenants moved out of more than 400,000 square feet of office space, and took their taxable office equipment with them. The Grand List fell for the second straight year. And the end of the local bad news isn't yet in sight.

In Los Angeles, the country's second largest school system, teachers and other employees have been hit with a 10% pay cut over two years. In most school systems around the country and around the state, class sizes have been steadily increased.

The Board's Budget

In this context, the Superintendent has presented a budget that requires a $12.3 million increase just to provide current services with our current staff. Contractual salary increases account for almost $11.9 million of that $12.3 million budget increase. Our salary account increase is almost 9%. And that doesn't count the additional $4 million or more the City will pay in added health insurance costs for our employees. Workers' compensation, unemployment insurance, and social security will also increase. Thus, our true current services general budget increase is somewhere over $16 million.

We have been notified that our federal Chapters 1 and 2 grants will be decreased by just under $1.7 million. To provide current services and honor all

contracts, we would need an increase of $1.1 million. Thus, we are $2.8 million short in the chapter 1 budget. The Governor's budget cuts $1.1 million in priority schools funding. We have been using chapter 1 and priority schools money to fund prekindergarten and extended-day kindergarten classes. To give an accurate accounting of what we need to maintain current services, the Board has increased the Superintendent's proposed budget by $3.5 million, the amount we will have to make up from the chapter 1 and priority schools cuts in order to maintain the early childhood programs.

Thus, the amount of additional spending needed to maintain current staff and provide current services is approximately $15.8 million. Adding in the costs of employee benefits, the City would have to provide more than $19 million in additional education spending.

The Available Resources

The Governor's proposed budget increases education aid to the City by about $6.7 million. Presumably all of that will go to education spending.

The Governor's budget also proposes about $16 million more for the City in general revenues, all derived from the Governor's gambling deal with the Pequots. Based on recent practice, the Manager will recommend spending on education no more than 35 % of that, or $5.6 million. And that assumes the legislature will support giving Hartford such a large share of the Pequot pie, a shaky assumption at best.

The decrease in the City's Grand List, the continuing fall-off in the tax collection rate, and the reality of the municipal political situation make the likelihood of a tax revenue increase from the City close to zero.

Optimistically, then, there may be $12.3 million available to meet over $19 million in increased costs. If the legislature reduces Hartford's share in the gambling windfall, that sum will be lower.

Where We Are

In short, we can expect to come up against a large shortfall. Either you will agree to forego a major portion - but with luck not all - of the scheduled increases or we will be forced to cut large numbers of positions and the programs and services their occupants provide.

If we must make those cuts, a lot of people will lose their jobs immediately. As we all learned last summer, for every position eliminated and person laid off, 3 others will be bumped to different jobs. Everyone will face months of tormenting uncertainty. Everyone will be angry and frightened, and students will again be upset

and bewildered by what is happening to their schools.

The remaining employees will not be able to deliver a quality program. That means that no one will have good - or maybe even tolerable - working conditions, and job satisfaction will be almost non-existent.

In addition, if drastic program cuts are made, support for the system will wither. Over the next few years, no one's job will be safe. No matter how senior you are, your future is at stake.

Some of your unions are telling you to be prepared to fight for your jobs once the City Council sets our budget. You would only be fighting each other. You do not have to tell us how important what you do is; we know that. But the Board cannot spend money we have not been given, no matter how important the services that money would buy.

We do not ask you to think any of this is fair or right. We don't think it is. But it is reality.

Let's start talking now. "

CONCLUSION OF LAW

1. The complainants failed to show that the letter dated August 12, 1993 sent by the School Board to bargaining unit members restrained or coerced them in the exercise of their rights under the Act.

DISCUSSION

The sole issue before us is whether the School Board bypassed the exclusive bargaining representatives of its employees and engaged in individual bargaining in violation of both the TNA and the MERA. Both the HSPA and the HFT and its subchapters contend that the letter signed by Board Chairman Taylor was an attempt to directly renegotiate wages and benefits for its members and bypass the bargaining representative of these employees.

The School Board argues that the April 12, 1993 letter in no way interfered with the employees' rights to bargain collectively or restrained them in the exercise of their rights. In this regard, the School Board notes that the parties, at the time of the letter's dissemination, were not engaged in collective bargaining and, therefore, the letter could not have affected any negotiations in a coercive way. It also stresses the fact that the communication itself was not delivered in a "captive audience" setting where employees were required to attend a meeting with the employer. Bather, the information was communicated to the employees in a letter, sent to their homes, which could be read or disregarded without management ever

knowing the employees' response to it. Finally, the School Board argues that the Labor Board's decision ***in Town of Fannington,*** Decision No. 3237 (1994) is dispositive here.

It is well-settled that once an exclusive bargaining agent has been chosen, an employer must bargain through that agent concerning wages, hours and conditions of employment. The employer may not circumvent the bargaining agent and negotiate directly with the employees. This is a requirement of the duty to bargain under the National Labor Relations Act and under our state labor relations statutes. ***University of Connecticut,*** Decision No. 1846 (1979); ***Winchester Board of Education,*** Decision No. 1785 (1979); ***Board of Education of City of Hartford,*** Decision No. 1576 (1977), ***aff'd in Hartford Board of Education v. Connecticut State Board of Labor Relations,*** Dkt. No. 144984, Superior Court, Hartford/New Britain (July ***20,*** 1978); ***New Haven Board of Education,*** Decision No. 1359 (1976). In this regard, our Connecticut Supreme Court has stated:

> The National Labor Relations Act makes it an employer's duty to bargain collectively with the chosen representatives of his employees, and since this obligation is exclusive, it exacts the negative duty to treat with no other. ***Medo Photo Supply Corporation v. N.L.R.B.,*** 321 U.S. 678, 64 S.Ct. ***830, 88*** L.Ed. ***1007; International Ladies' Garment Workers' Union v. N.L.R.B., 280*** F.2d 616 (D.C. Cir.), ***aff'd 366*** U.S. 731, 81 S.Ct. 1603, 6 L.Ed.2d 762. After a duly authorized collective bargaining representative has been selected, the employer cannot negotiate wages or other terms of employment with individual workers. ***Medo Photo Supply Corporation v. N.L.R.B., supra*** at ***684; N.L.R.B. v. U.S. Sonics Corporation,*** 312 F.2d 610 (1st Cir.).
>
> ***West Hartford Board of Education v. DeCourcy,*** 162 Conn. 566, 592 (1972)

The employer's obligation to negotiate solely with the exclusive bargaining representative does not mean that an employer is forbidden to communicate directly with his employees during negotiations or otherwise. ***Metropolitan District Commission,*** Decision ***No. 3063*** (1992). In ***DeCourcy, supra*** the School Board, during contract negotiations, proposed a new work schedule for department chairman, coordinating teachers, and subject area specialists. Before presenting this schedule change to the exclusive bargaining representative in negotiations, the School Board called a special meeting and discussed the plan with staff members who would be affected. The Court did not find this manner of communication coercive stating:

> " It is proper for an employer to discuss his proposals with his employees and to defend his position. ***Tobasco Prestressed Concrete*** Co., 177 N.L.R.B. No. 101, 71 L.R.R.M. 1565. Moreover, it is permissible for an employer to discuss certain items with his employees before he presents them to the union. In ***Little Rock Downtowner, Inc.,*** 168 N.L.R.B., No. 107, 66 L.R.R.M. 1267, an employer had discussed with two employees the possibility of giving

them additional duties and additional compensation before any proposal had been made at the bargaining table. The board found that the communication was for the purpose of exchanging ideas and did not constitute negotiation or a violation of the act where the employees understood that the matter would be determined between the employer and the union at the bargaining table.

The law as to attempts to negotiate with employees for the purpose of bypassing or denigrating the union is clear. On this very limited stipulation of facts, however, we cannot conclude that communicating to these special employees some of the details of a new program was unlawful. There is nothing to indicate that the defendant Richter was engaged in negotiations with the teachers nor that this was an attempt to bypass or subvert the union. The proposed new program was discussed later at the bargaining table with the union. " ***DeCourcy, supm*** at ___

In ***Town of Farmington***, Decision No. 3237 **(1994),** relying on ***DeCourcy, supra, we*** found that an employer's letter, distributed to employees, announcing its intent to furlough bargaining unit members and reiterating its position that furloughs could be avoided if the union were to accept the employer's insurance proposal, was not an attempt to bypass the bargaining representative.

In the present case, the complainants emphasize the fact that they, as bargaining agents, did not have any prior knowledge, agree to the drafting of, or the sending of the letter. But this argument misses the mark. There is no support in our case law for the proposition that an employer must either have the union's agreement or, at the very least, give it advance notice before sending a letter to bargaining unit members. In fact, as ***DeCourcy*** makes clear, an employer does not have to make a proposal to a union in negotiations before directly informing employees of its position. Thus, the sending of a letter to employees about a proposal before it is brought to the union in negotiations, standing alone, is not unlawful. The question remains, however, whether the School Board's letter was coercive in that it was an attempt to deal with the complainants through the employees and, thus, circumvent the exclusive bargaining representatives.

We conclude that the letter neither interfered with nor bypassed the exclusive bargaining representatives. The letter begins by describing the rather bleak state of the Connecticut economy. It then addresses the School Board's budget: the dollar amount needed to maintain current services; the reduction in state funding; and the potential funding available from the City. The letter then concludes with the suggestion that massive layoffs can only be avoided if employees agree to forgo scheduled pay increases. In this regard, we note that there has been no contention that the School Board's description of its financial situation was inaccurate. Accordingly, we view the letter as containing substantially truthful comments designed to inform employees of the economic crisis facing the School Board. Thus, in terms of its content, the letter is no different from what we found to be permissible in ***Farmington, supra.***

We also note that the complainants' recitation of our case law regarding bypassing the bargaining representative does not aid their argument. In each of the cases cited by the complainants in which we have found the employer to have violated its duty to bargain with the exclusive bargaining representative, the facts revealed that there had been face to face negotiations between the employer and individual employees without the knowledge or presence of ***the*** union. ***Winchester Board of Education,*** Decision No. 1785 (1979); ***Hartford Board of Education***, Decision No. ***1675 (1977); New Haven Board of Education,*** Decision No. 1359 (1975). In some of these cases, agreements were reached between the employer and individual employees that were in violation of the express terms of the contract. State ***of Connecticut,*** Decision No. 2368 (1985). In the present case, there is no evidence in the record that the School Board actually began a dialogue with bargaining unit members. Nor is there any suggestion that this letter somehow breaches the contract. The only evidence we have before us is a letter, mailed to bargaining unit members, describing the School Board's financial condition; a letter which did not require or suggest a response.

Finally, the letter does not denigrate the unions' role or its obligations to its members. While the letter does criticize the decision of some unions informing their members to "be prepared to fight for your jobs once the School Board sets [the] budget", we do not find this communication to be coercive. Accordingly, based upon this limited record, we dismiss these complaints.

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 and by the Municipal Employee Relations Act, it is hereby ORDERED that the complaints filed herein be, and the same hereby are, DISMISSED.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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

s/Anthony Sbona
Anthony Sbona,
Board Member

OPINION OF CHAIRMAN LAREAU

Based on the evidence before us, I conclude that the Board of Education committed no prohibited practice when it sent employees in these bargaining units the letter of April 12, 1993. The case should be dismissed.*

s/Margaret A. Lareau 7/27/95
Margaret A. Lareau

* I participated in the deliberation of this case, and this represents my conclusion. I resigned prior to drafting of the Board's opinion, and was not available to review that document.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 22nd day of January, **1996** to the following:

Attorney Ann Bird, Assistant Corporation Counsel
City of Hartford
550 Main Street
Hartford, Connecticut 06103

RRR

Attorney Brian Doyle
Ferguson & Doyle
35 Marshall Road
Rocky Hill, Connecticut 06067-1400

RRR

Attorney William S. Zeman
P.O. Box 270067
West Hartford, Connecticut 06127-0067

RRR

Attorney Helen Apostolidis, Assistant Corporation Counsel
City of Hartford
550 Main Street
Hartford, Connecticut 06103

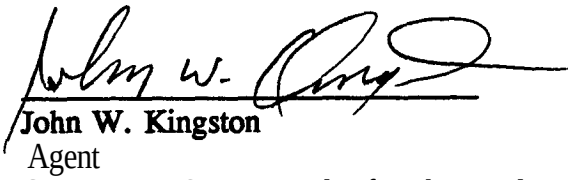
RRR

Eddie Davis, Superintendent of Schools
Hartford Board of Education
249 High Street
Hartford, Connecticut 06103

Elizabeth Ceriello, Administrator for Human Resources
Hartford Board of Education
249 High Street
Hartford, Connecticut 06103

Ruben Acosta, Associate Administrator
Hartford Board of Education
249 High Street
Hartford, Connecticut 06 103

Pat **Fitton**
Staff Representative
CSFT
35 Marshall Road
Rocky Hill, Connecticut 06067



John W. Kingston
Agent
Connecticut State Board of Labor Relations