

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

INTHEMA'ITEROF
KILLINGLY BOARD OF EDUCATION

DECISION NO. 3358

-AND-

JANUARY 25, 1996

KILLINGLY EDUCATION ASSOCIATION

Case No. TPP-15,950

A P P E A R A N C E S

Attorney Lawrence **Campane**,
For the Board of Education

Attorney Ronald Cordilico,
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On November 8, 1993, the Killingly Education Association (the Union) tiled with the Connecticut State Board of Labor Relations (the Labor Board) a complaint alleging that the Killingly Board of Education (the School Board) had committed a prohibited practice in violation of the School Board-Teacher Negotiation Act, Conn. Gen. Stat. **§ 10-153d(b) (TNA or the Act)**. In its complaint, the Union alleged that **the** School Board had contracted out bargaining unit work when the Superintendent chose and appointed a person from outside the bargaining unit to fill the post of high school basketball coach.

After the requisite preliminary administrative steps had been taken, the matter came before the Labor Board for a hearing on April 4, 1995. All parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses and make argument. Both parties filed briefs, the last of which was received by the Labor Board on June 26, 1995. Based on the entire record before us, we make the following findings of fact, conclusions of law and we dismiss the complaint.

FINDINGS OF FACT

1. The School Board is an employer pursuant to the Act.
2. The Union is an employee organization pursuant to the Act and at all relevant times has represented a bargaining unit consisting of "all those certificated professional employees of the Board of Education in positions requiring a teaching or other certificate and who are not included in the administrators' unit". (Ex. 1)
3. The Union and the School Board were parties to a collective bargaining agreement with effective dates of July 1, 1992 through June 30, 1995, which contained the following clause:

ARTICLE 38 - STIPENDS

- 38.3** In the event of a vacancy in a stipend position, the position shall be posted in each school building. Qualified applicants who are teachers in the Killingly School System shall be preferred over equally qualified applicants from outside the school system. (Ex. 1)
4. Eugene Blain has been a certified teacher in the Killingly School System for nineteen years and teaches Industrial Technology Education.
 5. Throughout his employment in the Killingly School System, Blain has held various coaching positions, including the positions of head football coach, head golf coach and assistant basketball coach. (Ex. 3)
 6. Prior to the 1993-1994 school year, teacher Rich Lebel was the head basketball coach in Killingly High School. Lebel held that position for a total of nine or ten years. In the 1993-1994 school year, the position of head basketball coach became available.
 7. Blain applied for the position of head basketball coach. At the time of his application, Blain was also the head football coach.
 8. Scott Derosier also applied for the position of head basketball coach. Derosier had been the Killingly High School assistant basketball coach for several years and had been recommended by the former head basketball coach as his replacement in that position. Derosier is not a teacher.
 9. Killingly High School Principal Catherine Sampson and Athletic Director John Krot interviewed Blain and Derosier for the position of head basketball coach. Following the

interview process, Sampson sent to Superintendent of Schools David Cressy a letter recommending Blain for the position. In her letter, Sampson stated that, although Krot would go along with her recommendation, he had reservations about Blain's appointment.

(Ex. 4)

10. When **Krot** learned of Sampson's recommendation, he called Superintendent Cressy and told him that he could not support Sampson's recommendation of Blain and instead recommended Derosier.

11. Krot did not recommend Blain for the position because **Krot** believed that Derosier was more qualified based on his years as assistant coach. **Krot** also believed that it would be a conflict for Blain to coach football and basketball based on the fact that both the coaching positions require work throughout the year and there is a chance that the playing seasons of the two sports will overlap.

12. **Krot** has had experience serving as head football coach and trying to coach another sport in the winter.

13. Based on the conflicting recommendations, Superintendent Cressy interviewed Blain and Derosier. Following Cressy's interviews, he met with Sampson and Krot. After the meeting, Cressy, Sampson and Krot all agreed that Derosier should be appointed as head basketball coach.

14. Cressy concluded that Blain was not qualified for the position of head basketball coach because of the conflict with his position as head football coach.

15. Blain was thereafter informed that he would not be appointed to the position of head basketball coach. Derosier was appointed to the position.

16. Blain applied again in 1994 for the position of head basketball coach and Derosier was reappointed to the position.

17. In 1975, an individual who was not a Killingly teacher was chosen for the position of head football coach over a Killingly teacher applying for the same position.

CONCLUSIONS OF LAW

1. The School Board did not violate the Act when the Superintendent appointed a **non-**bargaining unit individual to the position of head basketball coach.

DISCUSSION

In this case the Union claims that the School Board unlawfully contracted out the bargaining unit work of basketball coaching. While it is undisputed that coaching positions do not require a teaching certificate and that non-certified individuals also hold coaching positions within the school system, the Union's argument rests on its contention that there is an established past practice of keeping such work in the bargaining unit if a bargaining unit individual wants the position. Thus, the Union claims that, by appointing Scott Derosier to the head basketball coach position at a time when Eugene Blain also applied for the position, the School Board violated the past practice and unlawfully transferred bargaining unit work to a non-bargaining unit individual.

The School Board argues that there is no violation because the Union has failed to establish a past practice of always giving the work in question to a bargaining unit member and also because Section 38.3 of the contract allows the School Board's actions.

It has long been a rule in cases involving contracting out and unilateral change that a valid defense to such claims is that the contract allows the employer's actions. This is still the rule today even in the face of other changes in our analysis of subcontracting cases.

See *City of New Britain*, Decision No. 3290 (1995).

In this case, the Union cannot make out a valid claim that the Act has been violated because Section 38.3 of the collective bargaining agreement clearly places with the employer the right and responsibility for choosing a coaching candidate. In this regard, Section 38.3 only restricts the employer's choice in that the School Board must give "preference" to an internal candidate whose qualifications are equal to those of an outside candidate. However, there is no limitation on the employer's right to decide whether two candidates are otherwise "equal" nor is there any established weight that must be given to an internal candidate's status when the two candidates are decided to be unequal. Thus, the School Board clearly has the right to decide who is the more qualified candidate for a coaching position.

Even if the Union had shown that the internal candidate had always been chosen over the external candidate (a fact that we specifically do not find based on this record), such a fact would make no difference in our analysis. The contract allows the employer to decide who is more qualified. Even if hundreds of internal candidates had been chosen over outsiders in the past, it would not restrict the employer from deciding, in this matter, that Derosier was more qualified than Blain.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the School Board-Teacher Negotiation Act, it **is** hereby ORDERED that the complaint filed herein be and the same hereby is DISMISSED

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/Anthony Sbona

Anthony Sbona,
Board Member

s/Patricia V. Low

Patricia V. Low,
Alternate Board Member

OPINION OF CHAIRMAN LAREAU

I conclude that there is no prohibited practice here on any legal theory advanced, and accordingly, the complaint should be dismissed.

Even if the majority were to analyze this case under a contracting out theory, I would not apply the New *Britain* analysis to this case. Generally I would not apply the New *Britain* analysis retroactively to events that preceded the issuance of that decision, although I leave room for the possibility that there might be some exceptional circumstances where retroactive application was appropriate. This case does not present such exceptional circumstances. I base my conclusion on fundamental principles of fairness, and several component considerations, including especially reliance on our prior doctrine, the nature of the change in doctrine, and the statutory interest in stability in collective bargaining relationships. While our discussion in New *Britain* makes it clear that there have been problems with the consistency of application and distortions within that doctrine and that there were fact patterns not previously dealt with, I believe that there were general principles of the “exclusivity/shared work” doctrine on which the community has reasonably relied and on which they have based their conduct.*

s/Margaret A. Lareau 7/30/95

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 will not be available to review that document.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 25th day of January, 1996 to the following:

Dr. David A. Cressy
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Killingly Board of Education
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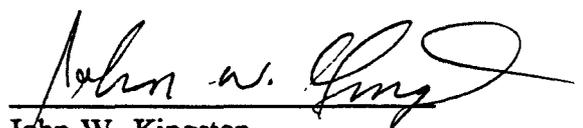
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