In the Matter of Hartford Board of Education
-and-
Hartford Principals and Supervisors Association
-and-
Hartford Federation of Teachers, Local 1018
Case Nos. TPP-16,705 & TPP-16,706

Appealed to Hartford Superior Court
on 8/22/97
Docket No. CV96-563733

Memorandum of Decision filed on 1/7/98
Appeal dismissed as moot

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
HARTFORD BOARD OF EDUCATION

DECISION NO. 3423

-and-

JULY 24, 1996

HARTFORD PRINCIPALS AND
SUPERVISORS ASSOCIATION

-and-

HARTFORD FEDERATION OF TEACHERS,
LOCAL 1018

Case Nos. TPP-16,705
TPP- 16,706

APPEARANCES:

Attorney Ann Bird,
For the Hartford Board of Education

Attorney William Zeman,
For the Hartford Principals and
Supervisors Association

Attorney Brian Doyle,
For the Hartford Federation of Teachers

DECISION AND DISMISSAL OF COMPLAINT

On October 12, 1994, the Hartford Federation of Teachers, Local 1018, CSFT, AFT, AFL-CIO (HFT) filed a complaint (TPP-16,706) with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Hartford Board of Education (the School Board) had engaged in practices prohibited by §10-153e of the Teacher Negotiation Act (TNA or the Act). Specifically, HFT alleged that, by entering into a contract with Education Alternatives Inc. (EAI), the School Board had unilaterally changed conditions of employment, subcontracted bargaining unit work and repudiated the collective bargaining agreement between the School Board and HFT.

On October 12, 1994, the Hartford Principals and Supervisors Association (HPSA) filed a complaint (TPP-16,705) with the Labor Board, amended on or about November 17, 1994, also alleging that by executing a contract with EAI, the School Board violated the Act by unilaterally changing conditions of employment, subcontracting bargaining unit work and repudiating the collective bargaining agreement between the School Board and HPSA.

After the requisite preliminary steps had been taken, this matter came before the Labor Board for a hearing on March 3, March 15, July 26, August 2 and September 18, 1995. All parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses and make argument. All parties filed briefs and reply briefs the last of which was received by the Labor Board on December 19, 1995.[1] Based on the entire record before us, we make the following findings of fact and conclusions of law and we dismiss the complaints.

FINDINGS OF FACT

The following facts are based on the parties' stipulation and the record testimony and evidence.

1. The Hartford Principals and Supervisors Association is an exclusive collective bargaining agent and organization for professional and economic improvement within the meaning of the Act, representing the bargaining unit of certified school administrators employed by the Hartford Board of Education.

2. The Hartford Federation of Teachers is an exclusive collective bargaining agent and an organization for professional and economic improvement within the meaning of the Act, representing the teachers bargaining unit of the Hartford Board of Education.

3. The Hartford Board of Education is a Board of Education and Employer within the meaning of the Act.

4. There is a collective bargaining agreement in effect between the Board of Education and the HPSA with effective dates of July 1, 1994 through June 30, 1996. (Ex. A). There was also a collective bargaining agreement in effect between the Board and the HFT with effective dates of July 1, 1992 through June 30, 1995. (Ex. 1P)

5. Both the HPSA and the HFT continue to be recognized as the collective bargaining agents of their respective bargaining units.

---

[1] The Connecticut Education Association also filed an amicus curiae brief on February 22, 1996.

6. On or about November 1, 1994 and thereafter, the Board of Education, the City of Hartford and a private company known as Education Alternatives Inc. (EAI) signed an Agreement. (Exs. B1, B2, B3, B4 and C)

7. On July 14, 1994, the HPSA, by its attorney William Zeman, sent a letter to the President of the Hartford Board of Education, requesting collective bargaining prior to the Hartford Board of Education's entering into any agreement for the hiring of a private company. (Ex. D)

8. On the same date, an identical letter was sent to the Acting Superintendent of Schools. (Ex. E)

9. The Hartford Board of Education entered into the Agreement with EAI (Ex. B) without responding to the requests made in Exhibits D or E and without any prior or subsequent bargaining with HPSA.

10. The contract between EAI and the Hartford Board of Education provides in part:

1.2 Authority and Relationships of the Parties.

(a) Pursuant to and as required by the Connecticut General Statutes ("C.G.S."), the Board of Education shall continue to have ultimate decision-making authority over the School System and shall be responsible for establishing all policies and procedures, and otherwise exercising all non-delegable powers granted to it pursuant to said statutes. . . . the Superintendent shall continue to be the chief executive officer of the School System.

(b) In order to facilitate performance of this engagement, and consistent with Section 1.2(a) above, the Board and EAI agree that EAI shall work directly with and subject to the authority of the Superintendent (and other appropriate members of the administration as may be determined from time to time by mutual agreement between EAI or its agent and the Superintendent or his designee). . . .

***

2.1 Management Operating Services.

(a) The management operating services to be provided by EAI under this Agreement shall consist of EAI's assuming responsibility for managing the operation of the entire School System subject to and in a manner consistent with all current and future federal, state and local laws and regulations and the terms and conditions set forth in Section 2.3 below. In this regard, and without limiting the generality of the foregoing, EAI shall perform those tasks set forth in Section 2.2 below and such other matters as may be mutually agreed upon by the parties.

Subject to the above provisions of this paragraph 2.1(a) and all other provisions of this Agreement, EAI shall have such power and authority as is necessary to perform its obligations under this Agreement.

2.2 Specific Tasks.

The specific functions to be performed by EAI are delineated in the Statement of Work set forth in Exhibit A. EAI shall perform those functions in accordance with the Plan of Implementation set forth in Exhibit B. . . .

2.3 Parameters of Oneration.

In performing the functions referenced in Section 2.2, EAI and the Board, their respective employees and (where and to the extent applicable) their agents and subcontractors, shall be subject in all cases to the terms and conditions set forth in Sections 2.3.1 through 2.3.5 below, which terms and conditions shall be controlling in the event of any conflict between any of those sections and any provisions contained in Exhibits A and B.

2.3.1 Personnel.

2.3.1.1 Except as otherwise set forth in this section, all current employees of the Board who continue to work in the School System shall remain employees of the Board. However, subject to any applicable contractual, statutory, administrative, regulatory or other legal prohibitions or requirements (including without limitation those relating to subcontracting or reassigning bargaining unit work), nothing in this Agreement restricts EAI's right to hire or retain its own employees or subcontractors to assist it in providing the services contemplated under this Agreement.

2.3.1.2 Board Employees.

(a) All decisions concerning the hiring, (including but not limited to determining the number and types of positions to be filled and timing of the same) assignment, duties, compensation, discipline or discharge of Board employees shall remain the right and responsibility of the Superintendent or the Board, as provided by law. All employees of the Board shall be subject to removal only pursuant to the terms of their respective collective bargaining agreements, employment contract, the Board's policies and Procedures . . . and all applicable laws and regulations including, but not limited to, the Teacher Negotiation Act (Conn. Gen. Stat. §10-153a et seq.), the Teacher Tenure Act (Conn. Gen. Stat. § 10-151) and the Municipal Employees Relations Act (Conn. Gen. Stat. § 7-467 et seq.), as they may be amended from time to time. . . .

***

2.3.1.4 Collective Bargaining. The parties acknowledge that the Board has the statutory responsibility for the conduct of collective bargaining and contract administration with labor organizations representing Board employees, pursuant to the provisions of the Teacher Negotiations Act and the Municipal Employee Relations Act. However, the Board agrees to request and EAI agrees to provide advice, suggestions and support in the negotiation and contract administration process, including but not limited to participation of EAI personnel in strategy, negotiation, grievance and arbitration sessions. The provisions of this Agreement shall not be implemented in a manner which violates the terms and conditions of any applicable collective bargaining agreement.

***

(Ex. 1B)

11. The Hartford Board of Education has adopted and maintains a publication entitled "Policy and Administrative Manual". Exhibit F and Exhibit R are excerpts from the same. Included in the policy is a description of the duties of the School Superintendent, which provides in part:

The Superintendent of Schools shall be the chief executive officer of the Board. In conformity with the policies of the Board, state laws, and State Board of Education regulations, the Superintendent shall have executive authority over the school system and responsibility for its supervision.

***

In addition to all statutory duties, the Superintendent shall have the following responsibilities and duties:

1. To direct and supervise the work of all the schools and employees of the Board.

2. To implement the educational program and policies established by the Board.

3. To present to the Board an annual report on the development and application of the educational program and policies of the Board and such other matters as may be requested by the Board. . . .

4. To prepare an annual budget together with a program of work to be accomplished and the estimated costs by divisions and functions of the school system.

***

7. To maintain adequate financial, scholastic, personnel and other educational records and act as custodian thereof.

8. To assign the duties of all employees and to establish an administrative chart detailing line and staff functions.

9. To report to the Board, when deemed necessary from time to time, the progress and effectiveness of all supervisory and administrative personnel during the first three years of incumbency.

10. To present to the Board such reports as may be desirable or requested from time to time concerning the achievements and progress of the school system.

***

12. In paragraph 1 of the "Statement of Work" contained in the EAI contract, under the title, "School Sites and Programs", there is a reference to a Strategic Plan. (Ex. G). The Strategic Plan constituted the conclusions of a group of educators, parents and community leaders in Hartford after many months of study concerning the problems facing the Hartford school system.

13. The following is a current list of the positions in the HPSA bargaining unit. Exhibit H consists of job postings for some, but not all of the positions listed below:

Assistant Coordinator, YETED
Center Manager, Automotive
Assistant Coordinator, Evaluation/Research & Testing
Assistant Coordinator Bilingual Education
Chair, Magnet School/Gifted & Talented
Chair, Art and Music
Chair, Health Services
Assistant Coordinator, Migratory Childrens' Program'
Elementary Vice Principal
District Chairperson, Guidance
Chair, Social Studies
Chair, Science
Chair, English
Coordinator, Special Education
Coordinator, Speech, Language & Hearing
Coordinator, Psychological Services
Middle School Vice Principal
Coordinator, Social Work Services

Coordinator, Project Concern
Program Development Specialist
High School Vice Principal/Scheduler
Administrator, Special Ed. Learning Center
Chair, Language
Chair, Reading/Language
Coordinator, YETED
Site Supv., Early Childhood/Montessori Program
Chair, Early Childhood Education
Coordinator, Bilingual Education
Chair, Physical Education and Athletics
Elementary Principal
Director, Special Education/Pupil Personnel Services
Coordinator, Adult Education and Alternative Education Centers
School Development Specialist
Director, Curriculum & Staff Development
Middle School Principal
High School Exec. Vice Principal
High School Principal

14. Exhibit K consists of the "Hartford Public Schools Administrators' Evaluation Handbook". (Ex. K)

15. HPSA was not notified by the Hartford Board of Education at least 48 hours in advance, of plans by a member or members of the Hartford Board of Education to recommend to the Hartford Board of Education adoption of the EAI Agreement, pursuant to the terms of Collective Bargaining Agreement Article III. C which provides:

> C. The HPSA shall be notified at least 48 hours in advance, excluding weekends and holidays, whenever the Superintendent or a member of the Board plans to recommend to the Board any amendments, subtractions, or modifications of the Board Policy Manual. The HPSA 'shall be allowed to present its position on the suggested changes at the Board meeting at which the recommendation is to be a topic, provided that it notifies the Board or the Superintendent of its desire to be heard and, when possible, state its position on the issue(s) in writing. However, no action shall be taken which would alter the language of the contract. (Ex. la)

16. The collective bargaining agreement in effect between the Hartford Board of Education and the HPSA contains the following provision:

ARTICLE II
BOARD PREROGATIVES

It is recognized that the Board has and will continue to retain whether exercised or

not, the sole and, unquestioned right, responsibility and prerogative to direct the operation of the public schools in the City of Hartford in all its aspects . . . . These rights, responsibilities and prerogatives are not subject to delegation in whole or in part, . . . (Ex. la)

17. The collective bargaining agreement in effect between the Hartford Board of Education and the HFT contains identical language to that found in the HPSA contract and quoted above. (Ex. 1P)

18. In each school in the Hartford school district, the Principal is responsible for the entire operation of the school. The duties of Principals are delegated to them from the Hartford Board of Education and the Superintendent and Assistant Superintendents. The Principals sometimes share disciplinary responsibility for employees with other individuals employed by the Hartford Board of Education such as the Food Service Director. Principals are involved in the budget making process and in developing curriculum with other bargaining unit and non-bargaining unit personnel.

19. Coordinators of various programs work in the School Board central office and report to the Assistant Superintendents and the school principals. The Coordinators are members of the HPSA bargaining unit and participate in formulating curriculum and are responsible for ensuring that the curriculum policy of the School Board is implemented in each school. The Coordinators also work with teachers to accomplish the same goal. "Chairs" perform much the same function as coordinators but receive less salary and have less responsibility.

CONCLUSIONS OF LAW

1. The Hartford Board of Education did not unlawfully subcontract bargaining unit work by the execution of the contract with Education Alternatives, Inc.

2. The Hartford Board of Education did not make an unlawful unilateral change in conditions of employment of members of the HPSA or HFT bargaining units by the execution of the contract with Education Alternatives, Inc.

3. The Hartford Board of Education did not repudiate the collective bargaining agreements with the HPSA or HFT by the execution of the contract with Education Alternatives, Inc.

DISCUSSION

Both Unions have complained that the School Board's act of signing the contract with EAI constitutes an unlawful unilateral change in conditions of employment, unlawful subcontracting of bargaining unit work and repudiation of the individual collective bargaining

agreements.' There is no dispute that the School Board did not negotiate with the Unions prior to entering into the contract with EAI. However, the School Board defends, on the grounds that the complaints are premature, the Unions failure to establish that bargaining unit work was subcontracted to EAI, there was no forbidden delegation of power and public policy allows the School Board's actions.

Because the complained of action occurred prior to April 6, 1995, we will use the Labor Board's "shared work" doctrine in analyzing the Unions' claims of unlawful subcontracting. See *Town of Wethersfield*, Decision No. 3337 (1995); *City of Tonington*, Decision No. 3344 (1995).[3] We do note, however, that the Unions in these cases have also made a "unilateral change" allegation concerning the assignment of work to EAI. Thus, although this Board's prior doctrine concerning "shared work" was not based on a true unilateral change analysis, we must also analyze this case from a unilateral change perspective because the Unions have separately and specifically alleged this type of violation.

REPUDIATION CLAIMS

We take first the allegation that the execution of the EAI contract constituted a prohibited delegation of authority from the School Board to EAI and was, therefore, a repudiation of the management rights clauses of the collective bargaining agreements with these Unions. The claim is based on identical language in each Union's collective bargaining agreement listing the authority of the Board of Education and stating that "[the] rights, responsibilities and prerogatives [of the Board of Education] are not subject to delegation in whole or in part".

This Board has recognized three ways in which repudiation of contract may occur. Repudiation may be found where a party has taken an action based upon an interpretation of the contract, which is asserted in subjective bad faith; where a party's action is based on a wholly frivolous or implausible interpretation of the contract; or where a party does not challenge the interpretation of the contract but, instead, seeks to justify its actions on some collateral ground, which does not rest upon an interpretation of the contract; e.g. financial

---

[2] During the third day of hearing in this case, the HPSA and HFT moved to amend their complaints to include the allegation that the implementation (as well as the signing) of the EAI contract violated the Act. The Labor Board sustained the Board of Education's objection to the amendment on the grounds that the entire case had thus far proceeded on the allegations concerning only execution of the contract and that to allow the amendment would unreasonably expand the scope of the hearing and prejudice the Respondent. The Unions were, of course, free to file additional prohibited practice complaints concerning the implementation of the EAI contract, which complaints could benefit from the pre-hearing informal investigation and mediation processes of this Board.

[3] We reject HPSA's contention in its brief that the "shared work" doctrine cannot be applied so as to consider the work done by the Superintendent of Schools. Further, we do not agree with the Union's interpretation of *Naugatuck Board of Education*, Decision No. 3340 (1995) in which the Union claims that the shared work doctrine can never be used to analyze the work performed by "supervisors".

hardship or administrative difficulties. *Norwich Board of Education,* Decision No. 2508 (1986); *New Haven Board of Education,* Decision No. 3356 (1996). Here, the Board of Education does dispute the Union's interpretation of the contract and, therefore, the Unions must show either that the Board of Education is acting in bad faith or that its interpretation of the contract is wholly frivolous or implausible in order to prove the repudiation claim.

We agree with the Board of Education that the collective bargaining agreements have not been repudiated by the execution of the EAI contract. First, we believe that the Board of Education's interpretation of the term "delegate" as used in the contract is plausible and in fact, makes sense given the structure of this system. In this regard, the Board of Education argues that the prohibition against delegation of authority in the contract is a prohibition against delegation of ultimate decision making authority but does not forbid the assignment of the individual duties and responsibilities necessary to run the school system. The Board of Education points out that the duties necessary to effectively run the school system have always been delegated to the Superintendent and others, and, in fact, a school system could not operate if its Board of Education was unable to rely on its educators to perform these tasks. Thus, the Board of Education argues that, since the EAI contract specifically reserves ultimate decision-making authority to the School Board in Section 1.2, there is no repudiation of the contract even though EAI was assigned certain responsibilities in operating the schools.

We believe that the Board of Education's interpretation is plausible in light of the testimony of the Unions' witnesses who described in detail the way in which the Board of Education's responsibilities are delegated to the Superintendent, Assistant Superintendents and other administrators in order to operate the schools. Clearly, the Unions do not believe this kind of delegation is forbidden by the contract. Thus, it makes sense that the type of forbidden delegation of authority referred to in the collective bargaining agreements is delegation of ultimate decision making power of the Board of Education. Since the EAI contract clearly reserves such power to the Board of Education, we find no repudiation of either management rights clause in the signing of the EAI contract.

HPSA also claims that the Board of Education repudiated Article III, C. of its collective bargaining agreement because the Union was not given 48 hours advance notice of the Superintendent's or Board member's intention to recommend to the Board of Education "any amendments, subtractions or modifications of the Board Policy Manual". (Ex. la). Excerpts of the policy manual are in the record as Exhibits 1F and 1R. We find that there is no repudiation of this contract clause because there is no clear evidence that an amendment, subtraction or modification of the policy manual was proposed.

SUBCONTRACTING CLAIMS

Prior to our decision in *City of New Britain,* Decision No. 3290 (1995), this Board's case law contained several significant decisions in the area of education concerning subcontracting/transfer of bargaining unit work.[4] In *City of Waterbury,* Decision No. 1436 (1976) the work of laid off teachers' aides was assigned to teachers. Reviewing the history of the assignment of work and the job descriptions of the involved positions, the Labor Board determined that there was no violation of the Act because many of the duties of the laid off aides and the teachers necessarily "overlapped" and that such overlap was critical to the functioning of the educational process. In 1980, the Labor Board discussed the shared work doctrine extensively in ***Hartford*** *Board* ***of*** *Education,* Decision No. 1938 (1980) in dismissing a claim that the work of a bargaining unit position had been transferred to another position. In *Berlin Board of Education,* Decision No. 2375 (1985) the Labor Board determined that the Act had not been violated when administrators performed work that required only a teaching certificate because the administrators had performed this work on a limited basis in the past and because the Labor Board determined that the statutory and regulatory scheme involving teachers and administrators supported a public policy giving increased latitude to school systems to assign teachers' work to administrators. In *Hartford Board of Education,* Decision No. 2573 (1987), the Labor Board applied the shared work analysis in dismissing a complaint filed by the paraprofessionals unit complaining that the School Board unlawfully transferred bargaining unit work by creating a teachers unit position of certified special education monitor. The Labor Board found that, although the duties performed by the certified monitor were very similar to the duties performed by the bargaining unit non-certified monitor, the School Board had not violated the Act because the certified and non-certified personnel had both performed the work in the past. In *Norwich Board of Education,* Decision No. 2579 (1987), the Labor Board again dismissed a complaint filed by the paraprofessional unit claiming that the work of library catalogers had been unlawfully subcontracted to librarians after the elimination of the cataloger position. The Labor Board again said that the work was shared and acknowledged that, in the usual situation, an education paraprofessional shares some duties with a professional employee in order to fulfill the educational functions of the school system.

The above cases show that the Labor Board has consistently acknowledged that much of the work performed in an educational setting is performed by more than one group of employees and, indeed, the educational mission of a school system is not amenable to strict rules regarding the jurisdiction of work. In this context, we must analyze the contract between Hartford Board of Education and EAI.

---

[4] We have consistently declined to retroactively apply the standard set forth in *City* ***of*** *New Britain,* ***supra,*** *to cases in* which *the* facts *occurred* prior to April 6, 1995, the date of the *New Britain* decision. See *Naugatuck Board* ***of*** *Education,* Decision No. 3340 (1995); *Town* ***of Wethersfield,*** Decision No. 3337 (1995); *City* ***of*** *Torrington,* Decision No. 3344 (1995). Consistent with those decisions, we also decline to apply *New Britain* to this case.

We find that the execution of the EAI contract does not clearly subcontract bargaining unit work. First, the list of duties to be performed by EAI, as described in the "Statement of Work" section of the contract, is so general as to make it impossible to tell whether EAI will be performing very high level administration of such tasks, similar to the oversight provided by the Superintendent, or will be performing a more "hands on" performance of the actual work described. In this regard, the description of the various tasks is not unlike the description of the Superintendent's duties in his job description. Thus, it is certainly feasible that the function of EAI, in relation to the tasks listed in the Statement of Work, will be to have high level administrative oversight of the implementation of such tasks; a function that would not be considered subcontracting bargaining unit work. This interpretation of the EAI contract is certainly reasonable because, as a whole, the EAI contract makes clear that EAI's role is at a level much closer to that of the Superintendent. Further, as pointed out by several witnesses, in order to perform "hands on" implementation of some of the work listed, an individual would require a special certification by the Connecticut Department of Education. Thus, EAI personnel could not simply come into the school and start teaching a class without a certification. Therefore, the language of the contract can be reasonably interpreted to define EAI's function as a type of "super administrator" rather than a hands on administrator or teacher.

The same language problem plagues the Unions in their efforts to establish that the work listed should be considered to be the exclusive work of either bargaining unit. Witnesses from three different bargaining units all claimed certain tasks as their own and a witness for the administrators unit described in detail how the School Principals are "ultimately" responsible for everything that happens in the schools. For example, under the heading "Evaluation and Testing Services" both the HFT and HPSA claim as their own work, all the duties under "Program Evaluation" and "Student Testing". Additionally, the Hartford School Support Supervisory Association (HSSSA), a Union not involved in these complaints, claims that at least two of the tasks listed under the same headings belong to that bargaining unit. Likewise, under the heading "Educational Services", both HPSA and HSSSA claim all the work listed under "Instructional Technology" and the HFT claims at least three of the same tasks. In the area of psychological services, one witness admitted that psychological agencies outside the school system currently perform certain tasks listed. There are numerous other examples of similar contradiction in testimony.

These differing views of the evidence by the very people who are claiming jurisdiction of the work prevents us from drawing a conclusion that the EAI contract, on its face, subcontracts bargaining unit work. It seems that everyone who looks at the list of duties interprets the language differently. Thus, the Unions cannot even show that the work described is work performed by these bargaining units, let alone overcome any problems that are presented by the evidence that much of this work is arguably "shared". Added to the complexity of the testimony is the case law in this area in which we have acknowledged that jurisdictional claims to work are often difficult to prove in an educational setting because the work is often performed by more than one group of employees or participants. Thus, we find that the Unions have not proven that the contract unlawfully subcontracts bargaining unit

work, and we dismiss this allegation.

UNILATERAL CHANGE

The Unions also claim that the contract with EAI changes the terms and conditions of employees in the units. This claim by the Unions focuses on the fact that there is no past practice of assigning work to a private company and, therefore, the terms and conditions of the bargaining unit have been altered as a result. While it is undisputed in this record that a venture with a private company has not before been attempted in the Hartford public school system, this fact alone does not establish that the School Board violated the Act by entering into the contract with EAI. The Unions still have to prove that entering into the EAI contract had some effect on a mandatory subject of bargaining in order to prove that the contract violated the Act.

As discussed above, the Unions have failed to prove that exclusive bargaining unit work was subcontracted by the agreement or even that the contract speaks to the kind of work performed by members of the units. Additionally, there is no evidence that the reporting structure of the system has changed in such a way as to impact the bargaining units in a manner requiring negotiation? nor is there evidence that the bargaining unit members have been given different or burdensome duties. In sum, the Unions have not established that the execution of the EAI contract unilaterally changed any terms and conditions of employment of the members of the bargaining units and we dismiss this allegation.[6]

ORDER

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

---

[5] We do not necessarily say that, even if a change in reporting structure occurred, there would be a violation of the Act.

[6] In its brief, HPSA claims that the Labor Board should apply the analysis set forth in *Secondino v.* New *Haven Gas Co.,* 147 Conn. 672, 674-675 (1960) and draw an adverse inference against the Board of Education due to its failure to call as witnesses either the Superintendent of Schools or the Board of Education President to testify about the EAI contract. We believe the *Secondino* rule is not applicable to this case. In this regard, *Secondino* makes clear that the Plaintiff must establish a prima facie case in order for the rule to be applicable. Here we have found that the Unions' own witnesses provided contradictory testimony about their work and their individual interpretations of the EAI contract. Thus, the Unions have failed to establish a prima facie case that the execution of the EAI contract constituted unlawful subcontracting, unilateral change or repudiation of the collective bargaining agreements.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/Antonia C. Moran
Antonia C. Moran,
Acting Chairman

s/Anthony Sbona
Anthony Sbona,
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 24th day of July, 1996 to the following:

Nicholas LaRosa, Acting Superintendent of Schools
Hartford Board of Education
249 High Street
Hartford, Connecticut 06103

Ruben Acosta, Associate Administrator
Hartford Board of Education
249 High Street
Hartford, Connecticut 06103

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 Ronald Cordilico
Connecticut Education Association
Capitol Place
21 Oak Street, Suite 500
Hartford, Connecticut 06106

John W. Kingston
Agent
Connecticut State Board of Labor Relations

NO. CV96 0563733-S	: SUPERIOR COURT
HARTFORD PRINCIPALS AND SUPERVISORS ASSOCIATION	: JUDICIAL DISTRICT OF NEW HAVEN
V.	: AT NEW HAVEN
CONNECTICUT STATE BOARD OF LABOR RELATIONS ET AL.	: JANUARY 6, 1998

MEMORANDUM OF DECISION

Procedural History

This is an appeal pursuant to Conn. Gen. Stat. §4-183 by the Hartford Principals and Supervisors Association (the Union) from a decision of the Connecticut State Board of Labor Relations (the Labor Board).

On October 12, 1994, the Union filed a prohibited practice complaint with the Labor Board alleging that the Hartford Board of Education (the School Board) had engaged in practices prohibited by Conn. Gen. Stat. §10-153e of the Teacher Negotiation Act (TNA or the Act). The Union's complaint was amended on November 17, 1994. In its complaint, the Union alleged that the School Board violated the TNA by executing a contract with the company 'Education Alternatives Inc." (EAI) because that contract repudiated the collective bargaining agreement between the Union and the School Board,

subcontracted bargaining unit work and unlawful changed the working conditions of the members of the Union.'

The parties appeared before the Labor Board for a hearing on March 3, March 15, July 26, August 2, and September 18, 1995. During the third day of hearing, the Unions moved to amend their complaints to include allegations that the implementation (as well as the signing) of the EAI contract violated the TNA. The Labor Board refused to accept the amended complaints, sustaining the School Board's objection, on the grounds that the entire matter had thus far proceeded on the allegations concerning only execution of the contract and that to allow the amendment would unreasonably expand the scope of the hearing and prejudice the School Board. Thus, the hearing before the Labor Board in this matter was confined to the question of whether the EAI contract, on its face, violated the Act.[2]

On July 24, 1996, the Labor Board issued its decision and dismissal of complaints (Hartford Board of Education, Decision No. 3423 (1996)). In its decision, the Labor Board determined that there was no support for the claims that the contract constituted

[1] Another Union, Hartford Federation of Teachers, Local 1018, CSFT, AFT, AFL-CIO filed an identical complaint with the Labor Board on behalf of the teachers in the Hartford school system. The Labor Board's decision in this matter dismisses both the teachers' and the supervisors' complaints. The teachers' Union did not appeal the dismissal and this ruling of the Labor Board is not before the Court.

[2] At a hearing in this Court of December 15, 1997, the plaintiff confirmed that this was the sole issue in this case before the Labor Board.

unlawful subcontracting of bargaining unit work, repudiation of the collective bargaining agreement or an unlawful unilateral change in working conditions for the bargaining unit members.

The Union filed this administrative appeal from the Labor Board's decision. Subsequently two developments occurred. On November 7, 1996, the School Board negotiated a termination of its contract with EAI, which contract was subject of the complaint to the Labor Board. See affidavit of Ann F. Bird and attachment, November 19, 1997. Secondly by S.A. 97-4, §2, "[t]he Hartford Board of Education in existence on the effective date of this act, [was] dissolve[d] on June 1, 1997." The Board of Education is not to be re-established under the Special Act until either 2000 or (if requested of the State Board of Education) 2002.[3] Id. In light of these developments, the Court asked the parties to brief the issue of the mootness of the administrative appeal.

Mootness

The relief sought here by the Union in its complaint was that the School Board be ordered to negotiate with the Union regarding all mandatory subjects of bargaining effected by the execution of the contract by the Board and EAI prior to the implementation of such sections that effect mandatory subjects of bargaining. The Union

[3] At the hearing held on December 15, 1997, the plaintiff's attorney acknowledged these two developments had occurred, but argued that this did not result in the administrative appeal being moot.

also sought any other relief available under the provisions of C.G.S. § 10-153e(e). Such further relief would include, on finding that the Teacher Negotiation Act had been violated, declaring the EAI contract void, and directing that the School Board not enter into any contract with EAI without prior collective bargaining.

Now that the contract with EAI has terminated and the Special Act has been passed; no practical relief through the Labor Board is available. 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 Corm. 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, 115,635 A.2d 285 (1993). See also MetroMobile CTS v. DPUC, 243 Conn. 235, 237 (1997) (change in statute).

The Union argues that while the contract is not in existence, and the remedy of voiding the contract does not exist, the Labor Board still has the authority to bar the School Board from the entry into new contracts of this nature. Thus it is claimed that there is practical relief available. The answer to this contention is that any new contract will be entered into by a state entity and will not be with EAI.

The Union also argues that this case is subject to the mootness exception of "capable of repetition yet evading review." 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 Corm. 116, 126, 530 A.2d 588 (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, or an exception therefrom, where an appeal concerns a labor dispute. Board of Education v. Board of Labor Relations, 205 Conn. 127 n.8.

The most recent statement of criteria for this doctrine is set forth in Loisel v. Rowe, 233 Corm. 370, 382, 660 A.2d 323 (1995) as follows:

> Our cases reveal that for an otherwise moot question to qualify for review under the "capable of repetition, yet evading review" exception, it must meet three requirements. First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance.

Plaintiff cannot meet at least the first two requirements of this doctrine. First, regarding the "inherently limited duration" requirement, this is not an instance where the

collective bargaining agreement itself forms the basis of the administrative appeal. For the Union objects to a contract executed by the School Board which had a five-year duration. See Exhibit B. The cases of Hartford Principals' & Supervisors' Assn. v. Shedd, 202 Conn. 492,522 A.2d 264 (1986) and Board of Education v. Board of Labor Relations, 201 Conn. 685, 519 A.2d 41 (1986), recognizing the short duration of collective bargaining agreements, are thus distinguishable. To quote Loisel, 233 Conn. at 383-4 "[i]f an action or its effects is not of inherently limited duration, the action can be reviewed the next time it arises, when it will present an ongoing live controversy."

Secondly, and more importantly, the plaintiff has failed to demonstrate that there is "a reasonable likelihood that the question presented in the pending case will arise again in the future...." Loisel at 382 (emphasis added).

Plaintiff claims that the entity created under S.A. 97-4, §3, the State Board of Trustees for the Hartford Public Schools, is contemplating privatization in the nature of the EAI contract. This is said to meet the second prong of the Loisel test.

First, the State Board is not a mere substitute for the abolished Hartford School Board. Where the Hartford School Board was elected, the new State Board is, under S.A. 97-4, §3, a seven-member appointed board. In addition under section 4, specific instances are set forth where the new Board is bound by the actions of the old board, such as collective bargaining agreements in effect at the time of creation of the State

Board. In all other respects this is a new entity, entitled to take original action as it deems appropriate.

Nothing in the Hartford Improvement Plan (attached to the plaintiffs supplemental brief and referred to in S. A. 97-4, §4(3)) sets forth that EAI or a similar entity will be selected to enter into a contract with the State Board of Trustees. At most there is a reference to a partnershin with private groups. See page 11, November 6, 1996 report.

On December 17, 1997, and December 30, 1997, the plaintiff, with the permission of the Court, tendered three newspaper articles and a Coopers & Lybrand audit of the Hartford Public School System to argue that there was a "reasonable likelihood that the question presented will arise again in the future.. . . " These materials do not establish the plaintiffs contention. The Coopers & Lybrand audit recommends renegotiation of collective bargaining agreements and implementation of fiscal controls. This does not indicate privatization. Commissioner Sergi's comments on the Hamden schools are not at all relevant to Hartford's situation. Finally the statements made by Chairman Furek in response to the Coopers & Lybrand audit indicate no more than that the corporate community of Hartford will be involved in solving the problems of Hartford schools.

There has been no showing that the question presented in the pending case, namely the School Board's entry into a contract with EAI, will arise again in the future. The plaintiff has therefore failed to meet the second requirement of the exception from mootness.

Since the plaintiff has not met at least two criteria of the exception, the exception does not apply and the case must be found moot. Loisel at 382-3. The appeal is dismissed as moot.

Henry S. Cohn
Judge of the Superior Court