STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
HAMDEN BOARD OF EDUCATION

-and-

ASSOCIATION OF HAMDEN PUBLIC SCHOOL ADMINISTRATORS

DECISION NO. 3426

JULY 30, 1996

CASE NO. TPP-17,593

APPEARANCES:

Attorney Thomas B. Lynch,
For the Board of Education

Attorney William S. Zeman,
For the Association

DECISION AND ORDER

On September 28, 1995, the Association of Hamden Public School Administrators, AFSA, Local 57 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), amended on December 18, 1995, alleging that the Hamden Board of Education (the Board of Education) had engaged in practices prohibited by § 10-153e (B) or (C) of the Teacher Negotiation Act (TNA or the Act). Specifically, the Union alleged that the School Board repudiated the collective bargaining agreement between the parties by pro rating the pay of administrators after July 1, 1995.

After the requisite administrative steps had been taken, the matter came before the Labor Board for a hearing on March 12, 1996. Both parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses and make argument. The parties entered into a partial stipulation of facts and exhibits. Both parties filed briefs, the last of which was received by the Labor Board on May 6, 1996. Based on the whole record before us, we make the following findings of fact and conclusions of law and we issue the following order.

FINDINGS OF FACT

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

2. The Union is an employee organization within the meaning of the Act.

3. The Union represents a unit of certified administrative employees of the Board of Education, which unit includes the classifications of Principal, Assistant Principal, Associate Principal, and Director.

4. The 1991-93 collective bargaining agreement between the parties contained language in Salary Schedule Appendix A which stated, in pertinent part, "Salaries of administrators assigned to less than 100% administrative duties will be pro-rated". (Ex. 2A)

5. The 1994-95 collective bargaining agreement did not contain any language regarding pro-rated pay. (Ex. 2B)

6. The Board of Education continued to pro-rate the Administrators' salaries during the 1994-95 contract year. The Association President notified the new Superintendent of Schools that pro-rating should cease on July 1, 1995.

7. The Union claims there was an oral agreement to remove the pro-rating language effective July 1, 1995 and produced hand-written notes to that effect. The Employer denies that any such agreement was made.

8. The 1995-1997 collective bargaining agreement does not contain any provision for pro-rating of administrators' salaries. (Ex. 2C)

9. From July 1, 1995 to the time of the hearing in this matter, the Board of Education continued to pro-rate salaries for the six of thirteen Directors who did administrative and non-administrative work.

10. No grievance has been filed over this issue.

CONCLUSIONS OF LAW

1. Repudiation of a collective bargaining agreement constitutes a prohibited practice within the meaning of the Teacher Negotiation Act.

2. The Board of Education has repudiated the clear and unmistakable language of the 1995-1997 collective bargaining agreement.

DISCUSSION

The repudiation of contract doctrine arises from the principle that the duty to bargain in good faith is not limited to only that time when the parties are negotiating a formal contract, but also includes the obligation to carry out the terms of the formal contract in good faith. In these cases, we have found that there are three ways in which repudiation of contract may occur. The first is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith by the respondent party. The second is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type of repudiation of contract does not involve assertion of an interpretation of the contract by the respondent, but instead, the respondent either admits or does not challenge the complainant's interpretation of the contract and seeks to defend its action on some collateral ground that does not rest upon an interpretation of the contract, e.g., financial hardship, administrative difficulties, etc. If the respondent's defense does not excuse its actions, we will find repudiation if the respondent's action was contrary to its clear contractual obligation. ***Norwich Board of Education,*** Decision No. 2508 (1986); New ***Haven Board of Education,*** Decision No. 3356 (1996).

All parties agree that the collective bargaining agreements of 1994-1995 and 1995-1997 do not contain language pro-rating Administrators' pay. The later agreements are unlike the 1991-93 agreement, which contained a specific provision for pro-rating.

The Board of Education avers that it has acted consistently with what it knew to be the accepted practice of compensation for Administrators over many collective bargaining agreements; that the 1994-95 and 1995-97 collective bargaining agreements did not contain language specifying that the pro-rated payments were to discontinue and that there was an honest disagreement over the intent of the collective bargaining agreement and that the Board of Education has acted in good faith.

The Association avers that the 1994-95 and 1995-97 collective bargaining agreements discontinued pro-rata payments; that the parties waived that language for the 1994-95 agreement, allowing pro-rata payments to continue, and that, pursuant to an oral agreement, the parties agreed to discontinue pro-rata payments, effective July 1, 1995, under the new collective bargaining agreement.

Labor contracts generally affirmatively state the terms that the contracting parties agree to; not the practices they agree to discontinue. ***Torrington Co. v Metal Product Workers, 60*** LRRM 2262, 2264 (DC Conn 1965). As in ***Torrington***, where the U.S. District Court determined that an arbitrator erroneously inferred a continuation of past practice in the absence of language in the collective bargaining agreement specifically discontinuing a practice that had existed in prior agreements, we find that the Board of Education, herein, cannot infer a continuation of prior practices where the 1995-1997

collective bargaining agreement specifically eliminated the pro-rata language. The fact that the parties continued, in 1994-1995, to apply the pro-rated provision of the previous contract does not change our decision. Even if the parties agreed to continue the pro-rata system for the 1994-1995 year, the clear language of the 19951997 collective bargaining agreement eliminated the pro-rata provision from that agreement. The arbitration award establishing the 1995-1997 contract was issued in February, 1995. Thus, after being informed by the Association that it wished the pro-rata pay to stop effective July 1, 1995, the Employer had a clear obligation to give effect to the terms of the collective bargaining agreement.

Therefore, we conclude that the Employer's action is contrary to its clear contractual obligation, that its interpretation is implausible and, as such, its actions constitute a repudiation of the agreement in violation of the Act. New ***Haven Board of Education, supra.***

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 **Hamden** Board of Education:

I. Cease and desist from failing to give effect to "Salary Schedule Appendix A" of the 1995-1997 collective bargaining agreement between the parties.

II. Take the following affirmative steps, which the Board finds will effectuate the Act:

A. Give effect to "Salary Schedule Appendix A" of the 1995-1997 collective bargaining agreement between the parties.

B. Make whole any administrator for any losses incurred as a result of pro-rating such as administrators' pay since July 1, 1995.

C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.

D. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the **Hamden** Board of Education to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/John H. Sauter
John H. Sauter,
Chairman

s/C. Raymond Grebey
C. Raymond Grebey ,
Board Member

s/Paul D. Abercrombie
Paul D . Abercrombie,
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 30th day of July, 1996 to the following:

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