STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
HARTFORD BOARD OF EDUCATION

DECISION NO. 3453

-and-

NOVEMBER 15, 1996

HARTFORD FEDERATION OF TEACHERS,
LOCAL 10 18, CSFT AFT, AFL-CIO

Case No. TPP-17,687

APPEARANCES:

Attorney Ann F. Bird
For the Hartford Board of Education

Attorney Brian A. Doyle
For the Hartford Federation of Teachers

DECISION AND DISMISSAL OF COMPLAINT

On October 30, 1995, the Hartford Federation of Teachers, Local 1018, CSFT AFT, AFL-CIO, (the Union) filed a complaint 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(b) of the Act Concerning School Board-Teacher Negotiations (the Act). Specifically, the complaint alleges that the School Board committed a prohibited practice by bargaining in bad faith and repudiating the collective bargaining agreement.

After the requisite preliminary administrative steps had been taken, the case was scheduled for a hearing on June 4, 1996. Prior to the hearing, the parties, on May 3 1, 1996, agreed to a partial stipulation of facts and exhibits. On June 4, 1996, a hearing was held at which time both 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, 1996.

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

The parties stipulated to findings of fact No. 1 - 6 below.

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

2. The Hartford Federation of Teachers is an employee organization within the meaning of the Act and at all times material to this proceeding has been the statutory bargaining representative for teachers.

3. Negotiations for a successor to the 1992-1995 collective bargaining agreement began in September, 1994.

4. The chief negotiator for the School Board was Attorney Donald Strickland and the chief negotiator for the Hartford Federation of Teachers was staff representative, Jill Hurst.

5. Article 6E (Supplementary Part-Pay Accumulation) of the then existing collective bargaining agreement was in issue throughout the negotiations and into binding arbitration.

6. In accordance with the Teacher Negotiations Act, binding interest arbitration hearings began on December 20, 1994 and concluded on January 11, 1995. An award was issued on February 2, 1995.

7. In binding arbitration each side presents its initial last best offer, enters evidence, examines and cross examines witnesses and then makes its last best offer.

8. The binding arbitration hearings in question focused on fifty six issues. Only Issue 7, supplementary part-pay accumulation, is relevant to the instant complaint.

9. Supplementary part pay accumulation is found in Article VI § E of the July, 1992 - June, 1995 collective bargaining agreement between the parties. This benefit permitted bargaining unit members to accumulate up to 175 days of sick leave in addition to their regular accumulation of 175 days of sick leave. These days were to be used only for personal illness and only after the full-salary allowance and accumulation had been exhausted. In addition, bargaining unit members were paid a percentage of pay for these days upon retirement.

10. The School Board's initial last best offer and final last best offer regarding Issue 7 was "to delete current contract language."

11. The Union's proposal was to allow employees hired prior to July 1, 1995 to continue accruing up to 175 days of part-pay sick benefits, while limiting employees hired after July 1, 1995 to accumulating only up to 25 days.

12. At the last day of binding interest arbitration hearings, Ms. Hurst asked Mr. Strickland the following question:

"I'm trying to understand how your proposal on Issue 7 dovetails about the, in essence, grandparenting on Issue 9. Issue 7 being the elimination of the supplementary part pay accumulation. If that were awarded, those people who qualify for severance and have already accrued partial days under the current language supplementary part pay, is it your proposal 8 that that already existing accumulation would be eliminated if the panel awarded Issue 7?"

13. In response to Ms. Hurst's question, Strickland stated, "No, the current change would be a lock in as of the July 1st date and whatever they have toward that extra 175 days they would continue. They wouldn't add anymore."

14. The dialogue continued as follows:

> Ms. Hurst: So in terms of the severance pay, there would be --- there would not be a reduction even if Issue 7 were awarded for you if the days people have who are currently employed.
> Mr. Strickland: That's correct. They just would be allowed anymore..?
> Ms. Hurst: They could use them for sick time.
> Mr. Strickland: And severance.

15. Ms. Hurst's brief to the binding arbitration panel acknowledges: "The Board of Education 's proposal would effectively cap sick leave accumulation at 175 days..."

16. In the binding arbitration award the panel accepted the last best offer of the Board of Education. The panel stated:

> The Board proposes to delete the current language concerning Supplementary Part Pay Accumulation and eliminate any entitlement to Supplementary Part pay under Board policy. The Federation proposes that this benefit be changed to provide for a maximum number of twenty-five part-salary days for those teachers hired after July 1, 1995. Teachers hired prior to that day would receive the current contract benefit which provides an accumulation of 175 part-salary days in addition to the 175 full salary days already available. The rate of pay for such part-salary days is the rate of the teacher's salary minus the cost of a substitute.
> The Board proposes to have this benefit eliminated and, therefore, bears the burden of proving that its elimination is justified. The Board has met it burden. Bargaining unit members tend to use first their accumulated sick leave (potentially 175 days), then the Sick Leave Bank (which, if applicable, provides full pay) for catastrophic illnesses. Given the decision of this panel in Issue 6, *supra*, the panel finds it is in the public interest and more consistent with the financial capability of the city to limit sick leave accruals to 175 (approximately one school year) and access to the Sick

Leave Bank thereafter, and to discontinue this additional Supplementary Part Pay Accumulation.

17. In accordance with the provisions of the Teacher Negotiations Act, the legislative body of the City subsequently voted to accept the contract with Article 6E (Issue 7) deleted.

18. The Union never sought clarification of Issue 7 from the arbitration panel.

19. The Union filed a grievance regarding this issue, which is still pending. During a hearing at one of the steps in the grievance procedure, Attorney Strickland first denied that he made the statement during the arbitration hearing that bargaining members would be able to keep their supplemental part pay accumulations. When confronted with the transcript of the arbitration hearing, Strickland responded, "we will have to repudiate what I said."

20. In subsequent binding arbitration, the Union attempted to reinstate an additional accumulation of sick benefits, but was unsuccessful.

CONCLUSIONS OF LAW

1. Bargaining in bad faith and repudiating a collective bargaining agreement by a Board of Education or its representatives or agents constitute prohibitive practices under Section 10-153c(b) of the Act.

2. Statements made by the representative of the Board of Education did not constitute bad faith bargaining or repudiation of the collective bargaining agreement between the parties by the Board or its representative.

3. Absence a finding of bad faith, fraud or serious misconduct, the acceptance of the arbitrators or single arbitrator of the last best offer pursuant to the provisions of Section 10-l 53f(c)(4) of the Act will not be set aside by the Labor Board.

DISCUSSION

In September 1994, the School Board and the Union began negotiations for a successor collective bargaining agreement. Chief negotiators for the Union and School Board were, respectively, Staff Representative Jill Hurst and Attorney Donald Strickland. Unable to reach agreement on various issues, the parties proceeded to mediation and ultimately to binding arbitration hearings on December 20, 1994, in accordance with Section 10-153f of the Act. At those hearings, fifty-six issues remained unresolved after negotiations and mediation between the parties. Eleven arbitration sessions were held before the hearings were concluded on January 11, 1995. An award was issued on February 2, 1995. Issue 7 before the arbitration panel and the subject of the instant action concerns a benefit described as "supplementary part-pay accumulation". Under the then current contract, bargaining unit members could accumulate up to 175 days of sick leave in addition to their regular accumulation of 175 days of sick leave, to be paid at the rate of the teacher's salary minus the

cost of a substitute. The Union proposed a change in this benefit decreasing the accumulation days for teachers hired after July 1, 1995. The School Board's proposal and its last best offer, which was selected by the arbitration panel, was to delete the current contract provision.

The Union brought this complaint to the Labor Board, alleging that the School Board's last best offer was modified by Attorney Strickland during the arbitration session of January 11, 1995, or that Attorney Strickland's discussion before the panel on that date was, in fact, the School Board's last best offer.

The Union argues that the School Board is prohibited from eliminating the accrued severance benefit which was the subject of Issue 7 by the doctrine of equitable estoppel; that the School Board has repudiated the contract; and that the School Board by virtue of the totality of its conduct has bargained in bad faith.

In its brief, the Union correctly raises the proper standard for making a determination of equitable estoppel but we do not find it applicable here. In order to find equitable estoppel, "[one] party must do or say something that is intended or calculated to induce another into believing in the existence of certain facts and to act upon that belief; and the other party must actually change his position or do some act to his injury that he would not have done. ***Papcun v. Papcun,*** 18 1 Conn. 6 18, 62 1, 436 A 2d. 282 (1980). Estoppel rests upon the misleading conduct of one party which results in the prejudice to the other. In the absence of prejudice, estoppel does not exist. ***Remkiewicz v. Remkiewicz,*** 180 Conn. 114, 119, 429A 2, 833 (1980).

In the present case, at the time Mr. Strickland made his statement to Ms. Hurst, the Union had already filed its last best offer on Issue 7. The Union's proposal was to preserve the benefit of accruing up to 175 days of part-pay sick benefits for bargaining unit members hired prior to July 1, 1996 and to limit the accumulation to 25 days for new hires. Therefore, there was no change in the Union's position as a result of Strickland's statement nor could there be. The Union, however, argues that Mr. Strickland's remarks were also intended to induce the arbitration panel into believing that part sick-day accrual would not be eliminated for existing teachers.

We disagree. First, Mr. Strickland's remarks would never have been a part of the record, had it not been for Ms. Hurst's questions. Thus, it is most difficult for us to believe that Mr. Strickland came to the arbitration hearing with the intent to deceive the panel. Second, the arbitration panel is mandated by statute to make a decision based upon the last best offer of the parties. While testimony explaining the proposal is helpful, the arbitration panel must make its decision based upon the language of the last best offer. In this case, it is clear that the arbitration panel understood that the School Board intended to eliminate the benefit of supplementary part pay accumulation. There is no discussion in its award that the panel thought that these benefits would be grandfathered for existing bargaining unit members. Thus, we hold that the elements of equitable estoppel are not present.

The Union next claims that the School Board repudiated the collective bargaining agreement. In ***Hartford Board of Education,*** Decision No. 2 14 1 (1982) we explained this doctrine at some

length:

> [W]e 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 on an interpretation of the contract and that interpretation is asserted in subjective bad faith by the respondent party. The second is whether 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 which 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 (citations omitted).

In the present case, we have great difficulty finding support for a claim of repudiation. The collective bargaining agreement which was the result of binding interest arbitration has no provision in the contract dealing with the issue of supplementary part pay accumulation. Simply put, if there is no provision dealing with this issue, there can be no argument that a repudiation of the provision occurred.

We now turn to the Union's charge of bad faith bargaining. The Union's allegations are based solely upon the following exchange between Mr. Strickland and Ms. Hurst at the arbitration hearing on January 11, 1995:

> Ms. Hurst: I'm sorry. Before you close, I have a question about one of your last best offers so that we understand what it is. On the severance issue -- I'm sorry to do this. I forgot about it. Your proposal -- I'm trying to understand how your proposal on Issue 7 dovetails about the, in essence, grandparenting on Issue 9. Issue 7 being the elimination of the supplementary part pay accumulation. If that were awarded, those people who qualify for severance and have already accrued partial days under the current language supplementary part pay, is it your proposal that already existing accumulation would be eliminated if the panel awarded Issue 7?
> Mr. Strickland: No. The current change would be a lock in as of the July 1st date and whatever they have toward that extra 175 days they would continue. They wouldn't add anymore.
> Ms. Hurst: So in terms of the severance pay, there would be -- there would not be a reduction even if Issue 7 were awarded for you of the days people already have who are currently employed.

Mr. Strickland: That's correct. They just would be allowed anymore--
Ms. Hurst: They could use them for sick time.
Mr. Strickland: And severance.

Issue 9 referred to by Ms. Hurst in the above discussion concerns accumulated sick pay and severance benefits. Issue 7 deals with the supplementary part-pay accumulations. Both described prospective cut-off dates for new hires at July 1, 1995. Both dealt with accumulated benefits and proposals concerning the loss of those benefits. Similarly, other issues addressed by the parties and presented to the arbitration panel raised proposals of accumulated benefits, grandparenting and grand-parenting dates.

Given the Union's position, it is clear that Mr. Strickland's remarks quoted above could be interpreted to mean that veteran teacher's benefits would remain intact under the School Board's proposal. It is equally clear that those remarks could have been directed to the severance provisions of Issue 9. What is clearer to the Labor Board is that Mr. Strickland's response indicates a confusion between the supplementary part-pay accumulation days (Issue 7) and accumulated sick pay and severance benefits (Issue 9). In fact, both representatives appear to have been confused about the two issues.

During another discussion at the same day's session, Ms. Hurst brought up the Union's proposal on Issue 7:

Ms. Hurst: So the Board would still be part of the joint committee. I don't mean to imply they're out of it. The Federation amended its proposal on number 7. It says current language at the top. It is not -- I apologize again because of the short time line. We added a cap for new hires after July 1, 1995, that this part salary accumulation would only go to 25 days and part salary.
The Chairperson: As opposed to the 175.
Ms. Hurst: Currently exists for current employees.
The Chairperson: How many again?
Ms. Hurst: Twenty-five. Essentially to get a full year.
Mr. Strickland: 175 plus 25.
Ms. Hurst: 175 is what they have under their full time accumulation, and the Board's proposal is the same.
Mr. Strickland: The Board's proposal is the same. The Board's proposal is the same on Issue 8, longevity.

The School Board's proposal on Issue 8 was to delete the current contract language. In this instance it would appear that Mr. Strickland clearly advised the Union of the School Board's position on Issue 7, conforming to what was the School Board's last best written offer.

Charges of bad faith and intentional misconduct are serious and we treat them as such.

Further, those who would bring such charges should base them on firm evidence and be able to demonstrate their basis by a preponderance of the evidence; the burden of proof of such charges is on the complainant, herein, the Union. That there appeared to be some confusion and perhaps careless discourse between the parties as to which of the issues were to be grandparented or even which issues were being discussed cannot be denied. We are also mindful that over the eleven days of hearings a multitude of issues were presented to the arbitration panel many of which had overlapping provisions or were similar in other respects.

In our opinion, basing these serious charges on one incident which is subject to various interpretations falls woefully short of sustaining the burden of proof and convincing this Board that Attorney Strickland or the School Board committed any intentionally misleading conduct. Nor can we derive from the record or from the overall acts of the School Board or its representative a finding of bad faith.

We are also not persuaded that the School Board's failure to call Mr. Strickland as its witness to be an indicia of bad faith. Mr. Strickland's testimony before the arbitration panel is part of the record and the School Board acknowledged in its brief that his testimony did not conform to the actual language of the written proposal. The question before us is whether his testimony in light of the totality of circumstances constitutes bad faith. We do not believe that it does.

Finally, we believe that Section 10-153f(c)(4) of the Act is binding on the parties. This provision gives clear authority and direction to the arbitration panel to accept the last best offer of either of the parties. The selection of the School Board's last best offer is clear in the arbitration panel's award. Implicit in the award is a finding that the School Board's written submission was the last best offer, rather than Mr. Strickland's response to Hurst's questions at the arbitration hearings.

Concurrence of Chairman Sauter

I concur, for the reasons elaborated, that the School Board or its representative have not violated the Act. However, I am concerned about the unrefuted testimony in the record that, in a subsequent grievance meeting, Attorney Strickland admitted that he misled the Union in the interest arbitration hearing. Said remarks, if made, are not the basis for a positive labor relations climate.

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, it is hereby

ORDERED that the complaint filed herein be, and the same hereby is, **DISMISSED.**

CONNECTICUT STATE BOARD OF LABOR RELATIONS

s/John H. Sauter
John H. Sauter
Chairman

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

s/Elaine Ann Hammers
Elaine Ann Hammers
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 15th day of November, 1996 to the following:

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