STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
SOMERS BOARD OF EDUCATION

DECISION NO. 3597

-and-

MAY 7, 1998

SOMERS EDUCATION ASSOCIATION

Case Nos. TPP-18,670 and TEPP-18,698

A P P E A R A N C E S:

Attorney Howard Steinman
For the Board of Education

Attorney William Dolan
For the Somers Education Association

DECISION AND DISMISSAL OF COMPLAINTS

On or about November 22, 1996, the Somers Education Association (the SEA) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Somers Board of Education (the Board of Education) had refused to bargain in good faith in violation of § 10-153e(b) of the Teacher Negotiation Act (the Act). On December 2, 1996, the Board of Education filed a complaint against the SEA alleging that it had failed to bargain in good faith.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for hearing on October 23, 1997 at which both parties appeared, were represented by counsel and were given full opportunity to adduce evidence, to examine and cross-examine witnesses and to make argument. Both parties filed post-hearing briefs on December 3, 1997.

Based upon the entire record before us, we make the following findings of fact and conclusions of law, and we dismiss both complaints.

FINDINGS OF FACT

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

2. The SEA is the certified bargaining representative of certified professional employees employed by the Board of Education.

3. On August 6, 1996, the parties commenced negotiations for a collective bargaining agreement to succeed the agreement which was to expire on June 30, 1997.

4. At the August 6 meeting, the SEA proposed ground rules similar to those agreed upon in the last two contract negotiations which provided in part:

> Negotiations shall be conducted in closed sessions. There will be no unilateral press releases, reports, or comments to the public or representatives of the news media concerning the negotiations by either party or its representatives. Any communication to the public, press, or news media shall be by prior agreement in written language agreed upon beforehand by both parties. Both the SEA and BOE reserve the right to keep their respective members informed of the progress of negotiations. (Ex. 2).

5. The Board of Education objected to this ground rule and refused to agree to it based upon its view that negotiations should not take place outside the public domain.

6. On August 23, 1996, the SEA proposed another set of ground rules which stated in part:

> Negotiations shall be conducted in closed session, start and end promptly based on an agreed upon time. There will be no unilateral press releases, reports or comments to the public or representatives of the news media concerning negotiations. Joint communications may be made when agreed on, and only when written language is agreed upon beforehand by both parties. (Ex. 3).

7. The Board of Education rejected this ground rule for the same reason it had refused to agree to the previous one.

8. The discussions at the negotiation sessions held on September 5 and 17 were limited exclusively to the dispute over the publicity ground rule.

9. The negotiation meeting scheduled for October 1 was cancelled that day for personal reasons by the Chairman of the Board of Education's negotiating committee, Andrew Rockett.

10. The Board of Education proposed a meeting on October 8. After a delay of several days, the SEA responded that it could not meet on that date because several members of its negotiating committee were scheduled to attend a parents open house that evening.

11. On October 7, just prior to the end of the 50-day negotiating period, the Board of Education delivered its contract proposal to the SEA. This proposal did not address several

issues such as salaries, insurance or duration. (Ex. 9).

12. The SEA made no substantive contract proposals during the negotiation phase of the process.

13. After the end of the period for negotiations, the parties participated in a mediation session held on October 23, 1996.

14. The parties stipulated at the hearing that each had made a good faith effort in the mediation.

15. The mediation was unsuccessful and the parties proceeded to interest arbitration. An award was rendered on December 27, 1996. (Ex. 13).

16. Subsequent to the mediation session and prior to the arbitration, representatives of the SEA met several times with the Superintendent of Schools to discuss contract issues. The Superintendent conveyed to the Board of Education his view of the contract provisions the SEA would accept.

CONCLUSIONS OF LAW

1. A negotiation ground rule is a mandatory subject of bargaining. A party may insist upon its position on a mandatory subject to the point of impasse without violating the obligation to bargain in good faith.

2. A ground rule restricting publicity of the negotiations which is limited in scope to the communications between the parties at the bargaining table itself and to statements about what a party intends to propose at the bargaining table is lawful.

3. Considering all the evidence, the publicity ground rules proposed by the SEA did not exceed the permissible scope of such rules.

4. Whether or not a party has bargained in good faith is determined by the totality of the circumstances. Neither party violated the obligation to bargain in good faith in the 1996 negotiations.

DISCUSSION

This case presents a failure of the negotiation phase of the TNA process, resulting in resort to the subsequent steps of mediation and interest arbitration. Since the parties devoted all the time available to them for negotiations to fruitless discussions of the threshold issue of ground rules, no time was available for discussion of substantive issues.

Ground rules for negotiations are a mandatory subject of bargaining. As such, either party may properly insist upon its position to the point of impasse without violating the obligation to bargain in good faith. Since ground rules, unlike others, are a threshold issue in the

negotiation process, going to impasse on this subject is very likely to preclude the parties from reaching agreement, as was the case here. Since both parties lawfully insisted on their respective positions on the publicity ground rule issue, a resort to mediation and arbitration was required.

The substance of the SEA's claim is that the Board of Education refused to bargain by insisting that negotiations not take place outside the public domain and by cancelling one negotiating session and proposing to reschedule it at a time when some of the members of the SEA committee could not be present.

The Board of Education claims that the SEA failed to bargain in good faith by insisting on the publicity limitations and by failing to make any contract proposals.

Ground rules regarding publicity during negotiations raise a direct conflict between the public's right to information regarding negotiations and the need for confidentiality of the negotiating process to permit it to operate effectively. In §§ 1-18a(b) and 1-19(b)(9) of the Freedom of Information Act (FOIA), the General Assembly has tipped the balance in favor of confidentiality of the collective bargaining process. The Connecticut Supreme Court has confirmed this with resolution of the competing interests. See ***Glastonbury Education Ass'n. v. Freedom of Information Commission***, 234 Conn. 714 (1995); ***Waterbury Teachers Ass'n. v. Freedom of Information Commission***, 240 Conn. 835 (1997).

However, the permissible scope of a ground rule regarding confidentiality of the bargaining process is not unlimited. Our view on this subject is as follows:

> Although we believe the need for confidentiality in collective bargaining to be critical, we have sought to give an appropriately narrow construction to ground rules prohibiting public release of information so that such ground rules do not unnecessarily impede the need for the public to know about "matters which bear on the decisions an individual may need to make in a free society". Thus, in ***City of Hartford, supra***, we held that to avoid collision with the First Amendment of the United States Constitution, such ground rules must be construed as limited to communications between the parties at the bargaining table itself and statements about what a party intends to propose at the bargaining table[.] ***Killingly Board of Education***, Decision No. 2118 (1982). (Footnote omitted).

The issue is whether the SEA's ground rule proposals meet this test. The portion of the ground rule in question here regarding press releases or statements is virtually identical to the one involved in ***Killingly***. Obviously, a party may not insist to impasse upon an overly-broad ground rule in this area. The SEA's two proposals on this subject were substantially identical. They provided: (1) that negotiations would be conducted in closed sessions; and (2) that there would be no unilateral comments to the public or the media; rather, any communications would be joint, with the language mutually agreed upon in advance. There can be no question that a party may insist that negotiations be conducted in closed sessions. This is permitted by the FOIA, and the Supreme Court has held this exception to the open meeting requirements of that

Act to be proper. ***Waterbury Teachers Ass'n***..

The propriety of the SEA's proposal that there be no unilateral prior releases, reports or comments to the public or the media concerning negotiations is more difficult to determine. Although it is not entirely clear that the SEA intended this language to be limited to "communications between the parties at the bargaining table itself and statements about what a party intends to propose at the bargaining table," the evidence is insufficient to form a basis for concluding that the proposed ground rule was intended to exceed the permissible scope. The Board of Education is charged with knowledge of our rule as to the permissible scope of publicity ground rules. Any constraint it felt it was under as to communications beyond what is legally permitted was self-imposed.

This brings us to the SEA's charge that the Board of Education violated its bargaining obligation by cancelling the October 1 meeting and rescheduling it to a date inconvenient to several members of the SEA's negotiating committee. While one can question the judgment of the Board of Education's negotiating committee in cancelling a meeting for personal reasons so close to the end of the 50-day negotiating period, this is not in itself conclusive evidence of bad faith bargaining. There is no evidence that the Board of Education knew that the alternate date it proposed would be inconvenient for the SEA. Had the SEA responded promptly after the notice of cancellation, instead of waiting several days, it is at least possible, and probably likely, that another date could have been arranged for the meeting.

The failure of the Board of Education to make a comprehensive contract proposal prior to the end of the negotiation period does not establish bad faith under the circumstances. It is obvious that the parties devoted so much of their time and effort to the dispute over the ground rules that they simply ran out of time.

In his meetings with representatives of the SEA, the Superintendent of Schools acted merely as an informal facilitator to help end the impasse without authority to bind the Board of Education. There is no evidence that he engaged in negotiations with the SEA.

Considering the totality of the circumstances surrounding these negotiations, we do not believe that the SEA's failure to submit any substantive proposals during the negotiation period establishes bad faith on its part. The time and energy devoted to the dispute over the ground rules prevented the SEA, as it prevented the Board of Education, from presenting proposals in the normal manner.

Having found no violation of the Act by either party, we dismiss both complaints.

ORDER

By virtue of and pursuant to the powers 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**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

C. Raymond Grebey
C. Raymond Grebey
Chairman

Patricia V. Low
Patricia V. Low
Alternate Board Member

David C. Anderson
David C. Anderson
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 7th day of May, 1998 to the following:

Attorney William J. Dolan
Connecticut Education Association RRR
Capitol Place
21 Oak Place, Suite 500
Hartford, Connecticut 06106

Attorney Howard A. Steinman
Siegel, O'Connor, Schiff & Zangari RRR
150 Trumbull Street
Hartford, Connecticut 06103

Margaret Mahland, CEA UniServ.
860 Prospect Hill Road
Windsor, Connecticut 06905

Attorney Donald W. Strickland
Siegel, O'Connor, Schiff & Zangari
150 Trumbull Street
Hartford, Connecticut 06103

Dr. Paul C. Gagliarducci
Superintendent of Schools
Somers Board of Education
Mabelle B. Avery School
Ninth District Road
Somers, Connecticut 06071

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Ronald A. Napoli, Acting Agent
CONNECTICUT STATE BOARD OF LABOR RELATIONS