

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
SHEPAUG VALLEY REGIONAL  
SCHOOL DISTRICT #12 BOARD OF  
EDUCATION

DECISION NO. 3677

-and-

APRIL 1, 1999

SHEPAUG VALLEY EDUCATION ASSOCIATION

Case No. TDR-20,649

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

Attorney Lisa Grasso  
Attorney Michael E. Foley  
For the School Board

Attorney William Dolan  
For the Union

**SCOPE OF BARGAINING DETERMINATION**

On January 25, 1999, the Shepaug Valley Regional School District #12 Board of Education (the School Board) filed a petition with the Connecticut State Board of Labor Relations (the Labor Board) for a scope of bargaining determination pursuant to Regulations of Connecticut State Agencies § 10-153e-28.<sup>1</sup> In its request, the School Board seeks determination of the following issues:

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<sup>1</sup>Section 10-153e-28 of the Regulations states: Any employee organization, employer, or arbitrator may request the Board to determine the scope of collective bargaining if

- (1) during the course of collective negotiations one party seeks to negotiate with respect to a matter or matters which the other party contends is not a mandatory subject for collective negotiations or
- (2) one party seeks to submit a matter to a fact finder or binding interest arbitrator which the other party contends is not a mandatory subject for collective negotiations or
- (3) a party alleges that an illegal subject of bargaining is improperly submitted to a grievance arbitrator.

A request for such a determination shall be submitted to the Board in the same form as a request for a declaratory ruling and shall be subject to the same procedure. If such a request has the effect of delaying negotiations or arbitration, the Board shall make every effort to expedite the proceeding.

(1) Whether the Union must withdraw from bargaining and from consideration by the Arbitration Panel the Union's proposals regarding salaries;

(2) Whether the Union has waived its right to negotiate over salaries for the term of the parties' successor agreement because it failed to timely raise the issue of salaries in accordance with the ground rules;

(3) Whether the issue of salaries is a non-mandatory subject of bargaining for the term of the parties' successor collective bargaining agreement.

On January 27, 1999, the Shepaug Valley Education Association (the Union) filed a motion to dismiss the scope of bargaining request on the ground that the Labor Board lacks subject matter jurisdiction over the request because it does not pose an appropriate scope of bargaining question under the regulations.

Based on the documents submitted by the parties and in accordance with the relevant regulations, the Board deems a hearing on this matter unnecessary and issues the following ruling.

### **FINDINGS OF FACT**

1. The School Board is a regional board of education within the meaning of the School Board Teacher Negotiation Act (TNA or the Act).

2. The Union is an organization of certified professional employees.

3. On October 5, 1998 the Union and the School Board agreed to ground rules concerning negotiations for a successor collective bargaining agreement. The ground rules provided in relevant part:

9. The parties hereby agree to a simultaneous exchange of initial contract proposals on October 5, 1998. No new proposals (new issues) shall be presented by either party after the simultaneous exchange of initial proposals. Both parties agree to provide relevant cost estimates for their proposals when requested. (Attachment A).<sup>2</sup>

4. On October 5, 1998, the parties exchanged initial contract proposals at a brief meeting. Neither party submitted a wage proposal in its package. The School Board negotiating team

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<sup>2</sup>All documents referenced in this ruling shall be referred to as "Attachment" with the designation used by the School Board in the attachments to its petition.

discovered, before it left the building on October 5, that the Union's proposals did not contain a salary proposal. The School Board's negotiating team viewed the Union's failure to submit a salary proposal as a "procedural defect". (Attachment G at page 56). The School Board decided at that time that it would not recognize any salary proposals from the Union after that date. (Attachment G).

5. A few days after October 5, 1998, the School Board's chief spokesperson, Michael E. Foley called the Union's chief spokesperson, Robert Namnoun, and informed him that the Union's proposal package did not contain a wage proposal. There is disagreement between the parties as to the substance of that conversation. Namnoun claims that he informed Foley that a salary proposal was contained in the Union's package and expressed surprise that the School Board's copies did not contain the proposal. (Attachment G at pages 105-107 ). Foley claims that Namnoun expressed dismay and surprise to find out the proposal was not contained in the package but did not make any reference to the proposal being in the Union's package. (Attachment G at pages 57-58).

6. At the next negotiating session on October 21, 1998, the Union attempted to introduce a salary proposal either as a direct proposal or a counterproposal to another School Board proposal, stating that the omission of the salary proposal from the initial package of proposals was an inadvertent clerical error. The School Board said it would not recognize the Union's salary proposal. Thereafter, negotiations broke down and the parties entered binding interest arbitration.

7. On November 30, 1998 the Union filed a prohibited practice complaint (TPP-20,464) with the Labor Board alleging that the School Board had bargained in bad faith by failing to negotiate about salary.

8. On December 23, 1998 the School Board filed a prohibited practice complaint (TEPP-20,520) with the Labor Board alleging that the Union had bargained in bad faith by pursuing a salary proposal in breach of the parties' ground rules.

9. During the interest arbitration proceedings, the School Board claimed that the Union's salary proposal was non-arbitrable and the arbitration panel heard argument on the issue. The arbitration panel determined that the salary proposal was arbitrable. (Attachment G).

10. On January 25, 1999, the School Board filed the instant petition.

### **DETERMINATION**

In addition to the instant petition, the parties have also filed cross complaints each alleging that the other has bargained in bad faith or otherwise violated the Act by virtue of the events surrounding the Union's failure to include a wage proposal in the copies of its proposal package distributed to the School Board on October 5, 1998. We have also been administratively informed that the interest arbitration proceedings have concluded and an

arbitration award has issued which we presume includes a wage provision by virtue of the arbitration panel's arbitrability decision on this issue. The petitioner in this case (the School Board) has requested that this petition be considered separately from the prohibited practice complaints referenced above.

The Union urges us to dismiss the petition because it raises issues not appropriate for a scope of bargaining determination. In particular, the Union argues that the subject of wages is clearly a mandatory subject of bargaining and that the School Board's claim is merely a failure to bargain allegation which should be addressed in the proceedings on the prohibited practice complaints already filed by the parties.

This Board has previously had the opportunity to review a petition for a scope of bargaining determination under similar circumstances. In *State of Connecticut*, Decision No. 3173 (1993), the State filed a Petition for Declaratory Ruling seeking a determination as to whether the Union's salary proposals constituted non-mandatory subjects of bargaining pursuant to the State Employee Relations Act and the reopener provision of the parties' contract.<sup>3</sup>

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<sup>3</sup>Section 5-278(g)(1) of the State Employee Relations Act states in relevant part:

(1) Nonmandatory subjects of bargaining shall not be subject to the impasse procedures of section 5-276a. ....Any arbitration award issued on such matters shall be unenforceable.

Section 5-273-41 of the Regulations of Connecticut State Agencies states:

Any employee organization, employer, or arbitrator may request the Board to determine the scope of collective bargaining if

(1) during the course of collective negotiations one party seeks to negotiate with respect to a matter or matters which the other party contends is not a mandatory subject for collective negotiations or

(2) a party alleges that an illegal subject of bargaining is improperly submitted to a grievance arbitrator. A request for such a determination shall be submitted to the Board in the same form as a request for a declaratory ruling and shall be subject to the same procedure. If such a request has the effect of delaying negotiations or arbitration, the Board shall make every effort to expedite the proceeding.

Simultaneously, the State alleged in a prohibited practice complaint that, by offering certain salary proposals, the Union failed to bargain in good faith because the proposals were not in keeping with the terms of the reopener provision of the parties' collective bargaining agreement. In its decision regarding the scope of bargaining determination, the Board stated:

...we continue to adhere to our belief that our obligation under [the scope of bargaining statutory provision] is to determine if bargaining proposals fall under the broad categories of wages, hours and other terms and conditions of employment. If a topic for negotiations falls under one of these categories, it will be considered a mandatory subject of bargaining, subject to the impasse procedures of the Act. Therefore, we conclude that for the purposes of [the scope of bargaining statutory provision], the Union's proposal clearly concerns "wages", a mandatory subject of bargaining subject to the impasse procedures of 5-276a. We believe this analysis fulfills our duty to decide the "scope of bargaining" question before us.

*State of Connecticut*, *supra* at 6, citing *State of Connecticut*, Decision No. 3155 (1993).

The Board went on to find that, although "wages" continued to be a mandatory subject of bargaining for purposes of a scope of bargaining determination, the Union had failed to bargain in good faith by pursuing certain wage proposals to arbitration because the proposals clearly fell outside the scope of the reopener provision of the parties' contract. As a remedy, the Board ordered the Union to cease and desist from pursuing to impasse and arbitration a certain portion of its proposals. Thus, in a situation strikingly similar to the instant case, this Board has determined that the scope of bargaining procedure exists for the narrow purpose of deciding if a certain subject falls within the broad categories of wages, hours and other terms and conditions of employment.<sup>4</sup> If the subject clearly falls within those categories, the Board will declare it a mandatory subject of bargaining for purposes of the scope of bargaining determination. Any determination regarding whether a party has waived its right to bargain about a mandatory subject of bargaining is appropriately addressed through the prohibited practice procedures available under the Act based on consideration of all the factual circumstances.

The cases cited in the School Board's petition do not contradict the above conclusion. In *City of Hartford*, Decision No. 2752 (1989), the Board found that, under the circumstances, the City failed to bargain in good faith because the City's belated contract proposals were in material violation of the ground rules which were designed to facilitate bargaining. *Hartford, supra* at 9.

In *Wallingford Board of Education*, Decision No. 1565 (1977) the Labor Board found that the School Board did not violate the Act by taking certain unilateral actions during the term of a collective bargaining agreement because the union had "bargained away its right to negotiate over permanent substitutes pay during the term of the current contract." *Wallingford, supra* at 7. Neither case stands for the proposition that the mandatory subjects of bargaining at issue

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<sup>4</sup>Pursuant to the TNA, mandatory subjects of bargaining are described as "salaries, hours and other conditions of employment."

were “changed” into non-mandatory subjects of bargaining for the purpose of a scope of bargaining determination.

In this case, the Union’s proposal clearly concerns a mandatory subject of bargaining for purposes of this scope of bargaining analysis. Indeed, it could be argued that wages are the most fundamental of all mandatory subjects. The School Board’s arguments concerning waiver of the Union’s right to bargain about this subject will be considered in the course of the prohibited practice complaints filed by the parties.<sup>5</sup>

In summary, we do not answer the School Board’s first two issues as they are not appropriate for this proceeding and will be addressed in the prohibited practice proceedings in Case Nos. TPP-20,464 and TEPP-20,050. With regard to the School Board’s third issue, we make the following ruling:

**SCOPE OF BARGAINING DETERMINATION**

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 **DECLARED** that:

1. The Union’s wage proposal is a mandatory subject of bargaining.<sup>6</sup>

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John H. Sauter  
John H. Sauter  
Chairman

C. Raymond Grebey  
C. Raymond Grebey

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<sup>5</sup>We note that the testimony from the arbitration proceeding, submitted by the School Board with its petition, indicates a dispute as to the actions of the parties which may be critical to a determination of whether the Union breached the ground rules. Given this dispute, we are quite sure that the appropriate means for determining the issue is through the parties’ prohibited practice complaints.

<sup>6</sup>This determination, pursuant to § 10-153e-28 of the regulations does not address whether the Union breached the ground rules by pursuing a wage proposal to arbitration.

Board Member

Wendella A. Battey  
Wendella A. Battey  
Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed postage prepaid this 1st day of April, 1999 to the following:

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