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. 3722

-and-

AUGUST 19, 1999

SHEPAUG VALLEY EDUCATION
ASSOCIATION

Case Nos. TPP-20,464 and TEPP-20,520

A P P E A R A N C E S

Attorney Michael E. Foley
For the Board of Education

Attorney William J. Dolan
For the Association

DECISION AND DISMISSAL OF COMPLAINTS

On November 30, 1998, the Shepaug Valley Education Association (the Association) filed a complaint (Case No. TPP-20,464) with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Shepaug Valley Regional School District #12 Board of Education (the School Board) violated §10-153e of the School Board Teacher Negotiation Act (TNA or the Act) by refusing to negotiate over salaries.

On December 12, 1998, the School Board filed a complaint with the Labor Board, amended on April 29, 1999 (Case No. TEPP-20,520) alleging that the Association had violated the Act by insisting on bargaining regarding salaries in violation of the parties' ground rules for

negotiations and by refusing to bargain about other subjects unless the School Board agreed to bargain about salaries. The cases were consolidated.[1]

On June 1, 1999 the parties waived their right to an evidentiary hearing and entered into a full stipulation of facts and exhibits for the Labor Board's consideration. Both parties filed post hearing briefs the last of which was received by the Labor Board on July 23, 1999. 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 findings of fact are based on the stipulation of the parties and the record evidence.

1. The Shepaug Valley Regional School District No. 12 Board of Education ("School Board") and the Shepaug Valley Education Association ("Association") are parties to a collective bargaining agreement.

2. On October 5, 1998, the School Board and the Association commenced negotiations for a successor collective bargaining agreement in accordance with the Teacher Negotiation Act ("TNA"), C.G.S. §§ 10-153a. *et seq*.

3. Mr. Robert Namnoun served as the chief spokesperson for the Association in these successor contract negotiations.

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[1]On January 25, 1999 the School Board filed with the Labor Board a Petition for a scope of bargaining determination regarding certain issues raised by the circumstances addressed in this decision. In its scope of bargaining determination which issued on April 1, 1999, the Labor Board determined that the subject of wages is a mandatory subject of bargaining for purposes of §10-153e-28 of the Regulations of Connecticut State Agencies. However, the Labor Board declined to address whether the Association had waived its right to bargain about wages in the current circumstances or whether the Association was required to withdraw the subject of wages from bargaining. The Labor Board determined that those issues were more appropriately addressed in the instant prohibited practice proceedings.

4. Michael E. Foley, Esquire served as the chief spokesperson for the School Board in these successor contact negotiations.

5. In advance of the October 5, 1998 negotiating session, Attorney Foley and Mr. Namnoun communicated through telephone conferences and facsimile exchanges with respect to the ground rules in order to come to an agreement or meeting of the minds on the procedures for such negotiations.

6. During the October 5, 1998 session, the parties signed the ground rules which had been previously agreed upon.

7. Paragraph 9 of the parties' mutually agreed-upon ground rules provides that:

> 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.

8. On October 5, 1998, in accordance with their ground rules, the parties simultaneously exchanged initial contract proposals.

9. Neither the School Board's nor the Association's initial contract proposals contained a provision calling for a general wage increase (a salary increase).

10. After the brief meeting where the parties exchanged proposals, the two negotiating teams left the room where the meeting had occurred. At least several members of each team retired to separate rooms in the same building to review the proposals. (Ex. 7 at 55-56, 167-168).

11. The School Board negotiating team discovered, before it left the building on October 5, 1998 that the Association's proposals did not contain a salary proposal. The School Board's negotiating team had been expecting a salary proposal from the Association and viewed the Association's failure to submit a salary proposal as a "procedural defect". (Ex. 7 at 56, 75, 158). The School Board decided at that time that it would not recognize any salary proposals from the Association after that date. (Ex. 7 at 56, 67-68).

12. A few days after October 5, 1998, Foley called Namnoun and informed him that the Association's proposal package did not contain a wage proposal. Namnoun expressed dismay and surprise that the School Board's copies did not contain the proposal. (Ex. 7 at 105-107). The next negotiating session was scheduled for October 21, 1998.

13. On October 21, 1998, the Association submitted a salary proposal.

14. On January 4, 1999, the parties entered binding interest arbitration.

15. During the interest arbitration proceedings, the School Board argued that the Association's October 21, 1998 salary proposal was non-arbitrable.

16. On January 23, 1999, interest arbitration Panel Chair, Larry Foy, Esq., ruled that the Association's October 21, 1998 salary proposal was arbitrable.

17. Two days later, on January 25, 1999, the School Board filed, with the Connecticut State Board of Labor Relations ("SBLR"), a petition for a scope of bargaining determination pursuant to Regulations of Connecticut State Agencies § 10-153e-28.

18. In its petition, the School Board sought determination of the following issues:

> Whether the Association must withdraw from bargaining and from consideration by the Arbitration Panel the Association's proposals regarding salaries;
>
> Whether the Association 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; and
>
> Whether the issue of salaries is a non-mandatory subject for the term of the parties' successor collective bargaining agreement.

19. On February 18, 1999, interest arbitration Panel Chair Foy awarded the Association's salary proposals at issue. The Board did not file a motion to vacate or modify this arbitration award, but instead decided to pursue its remedies before the State Board of Labor Relations.

20. On April 1, 1999, the SBLR issued its determination on the School Board's Petition (Decision No. 3677) and answered only the School Board's third issue, declaring that the issue of wages is a mandatory subject of bargaining.

21. In its April 1, 1999 Declaratory Ruling, the SBLR did not answer the School Board's first two issues and ruled that they would be addressed in the prohibited practice proceedings in Case Nos. TPP-20,464 and TEPP-20,520.

CONCLUSIONS OF LAW

1. The Association did not commit a prohibited practice by insisting on bargaining the issue of salaries.

2. The Association did not waive its right to bargain about salaries by submitting a salary proposal on October 21, 1998.

3. The Association did not commit a prohibited practice by claiming that it would not negotiate any subject until the School Board agreed to negotiate about salaries.

4. The School Board did not commit a prohibited practice by refusing to negotiate about salaries.

DISCUSSION

All the issues in these cases arise from the Association's failure to submit a salary proposal on October 5, 1998 and its submission of that proposal on October 21, 1998. Since that time the parties have been fighting, in various arenas, about whether the issue of salaries must be negotiated or whether the School Board has the right to unilaterally impose wage rates on employees for the term of the new collective bargaining agreement.

The School Board has taken the firm position that the Association's failure to submit a salary proposal by October 5, 1998 (the date set forth in the parties' ground rules) renders salaries a non-mandatory subject of bargaining for the term of the successor collective bargaining agreement. In support of its position, the School Board argues that a violation of ground rules is a *per se* violation of the Act which must be strictly enforced. As such, the School Board argues that the Association's salary proposal should be disallowed under several theories. First, the School Board claims that, because the parties reached impasse in negotiations and the Association committed a prohibited practice, the School Board may unilaterally implement a salary schedule. Second, the School Board claims that the Association's late submission constitutes a waiver of its right to bargain about salaries. The School Board also claims that the Association bargained in bad faith by stating that it would not negotiate further until the School Board agreed to bargain about salaries. The School Board asks the Labor Board to issue an order rendering the salary provision in the collective bargaining agreement null and void, and awarding fees and costs to the School Board.

The Association has taken the position that the arbitrators' decision regarding the arbitrability of salaries and the subsequent arbitration award containing a salary provision, are binding on the Labor Board under the doctrine of collateral estoppel. In the alternative, the Association argues that its unintentional breach of the ground rule which led to its late submission of a salary proposal does not constitute a prohibited practice and should not effect the validity of the arbitration award. For the same reason, the Association argues that the School Board committed a prohibited practice by refusing to bargain about salaries. The Association also claims that, given the circumstances involved, it was not a prohibited practice for it to state that it would not negotiate further until the School Board agreed to bargain about salaries. Finally, the Association argues that the Labor Board lacks jurisdiction to vacate the arbitration award containing a salary provision.

We begin by finding that the Association did not commit a prohibited practice by insisting on bargaining about salaries after it submitted a late salary proposal pursuant to the

ground rules. In making our decision, we are persuaded by the factual conclusions and legal analysis of the arbitration panel concerning the arbitrability issue. While the issue of whether the Association committed a prohibited practice is not the same as the question of arbitrability presented to the panel, our review of the transcript before that panel and the subsequent decision convinces us that

the relevant facts and law, necessary for our decision, were thoroughly and thoughtfully considered and analyzed.[2]

In their decision, the arbitration panel found that the Association had prepared a salary proposal in advance of the October 5, 1998 negotiating session and had planned to submit that proposal with its entire package of proposals on October 5, 1998. However, due to an error with either the Association's computer or its copy machine, the salary proposal was not included with the package given to the School Board on that date. At the October 5, 1998 meeting, the parties signed off on the ground rules and exchanged proposals. At least some members of each negotiating team then retired to different rooms in the building and reviewed each other's proposals. The School Board's negotiating team discovered that the Association had not included a salary proposal in its package, although they had expected to see one. No one tried to inquire of the Association team why the salary proposal was missing. Instead, several days later, the School Board's chief negotiator called the Association's chief negotiator to inform him that the School Board did not find a salary proposal. The Association's negotiator, Robert Namnoun, expressed surprise and dismay at the information. It is clear that the omission of the salary proposal from the Association's package was inadvertent and caused by some technological error in either printing or copying. At the next negotiation session on October 21, 1998, the Association attempted to introduce a salary proposal as either a direct proposal or a counter proposal which was objected to by the School Board. The School Board took the position that, since the proposal had not been submitted by October 5, 1998, it was no longer a valid proposal and that the issue of salaries was no longer a subject for negotiations. The Association stated that it would not negotiate over other issues until the School Board agreed to negotiate about salaries. Eventually the parties entered interest arbitration where the arbitration panel determined that the issue of salaries was arbitrable.

In analyzing the facts of this matter on the issue of arbitrability, the arbitration panel considered the relevant law from this Board. The panel stated in relevant part:

> The [School Board's] argument rests principally upon the Connecticut State Board of Labor Relations (Labor Board) decision in ***City of Hartford and Local 760 IAFF***, Decision No. 2752 (August 3, 1989). In that case, the Labor Board made the following relevant conclusions of law:

[2]Although we find the Arbitrators' decision to be persuasive, we are not convinced that we are absolutely bound by the findings of fact of the Arbitrators under the doctrine of collateral estoppel.

2. A unilateral breach of ground rules adopted by the parties for negotiations constitutes a per se violation of the duty to bargain in good faith and is a prohibited practice.

3. In the present case, the City's belated proposals were made in contravention of mutually agreed-upon ground rules and constituted a refusal to bargain.

In that case, the Labor Board found that the City violated a mutually agreed negotiations ground rule specifying a certain date by which all new proposals were to be made. The City had raised at least four multi-faceted sets of new proposals five (5) weeks after the agreed deadline for new proposals had passed. In its Discussion in the ***Hartford*** case the Labor Board stated in relevant part:

> ...there are...limited situations in which we have found that certain conduct is a per se violation. For example, where a party takes unilateral action in violation of ground rules, such conduct may constitute a failure to bargain in good faith...
>
> The Union argues that by constantly changing and expanding its proposals and submitting new proposals well after the deadline set forth in the ground rules, the City prevented meaningful negotiations from taking place....
>
> The start of negotiations had already been delayed by several months due to the City's refusal to negotiate with ....the Union's representative...the parties [then] met and negotiated...ground rules which included...the deadline for presentation of initial proposals....
>
> The net effect of this conduct was that the Union was kept in the dark about these four proposals until very late in the negotiations. This was clearly a material violation of the ground rules which were designed to facilitate bargaining.
>
> The delay in presentation placed the Union at a competitive disadvantage since the City knew the Union's proposals, but the Union didn't know the City's. Moreover, by giving itself an extension of time beyond the time that had been agreed to in the ground rules, the City caused more than a minor delay... . Thus negotiations were delayed at a time when every effort should have been made to speed negotiations previously thwarted by the City's refusal to deal with the Union's negotiator. We cannot escape the conclusion that this conduct seriously hindered bargaining.

In finding that the City committed a prohibited practice, the Labor Board ordered inter alia that the City withdraw from interest arbitration any proposals concerning the tardy

proposals in question.

In the instant case, the Board argues that the Association's belated submission of a salary proposal on October 21, 1998 violated negotiations ground rule 9, constitutes a per se failure to bargain in good faith and a prohibited practice, and that such conduct prevents the Association from having a right to submit salary as an issue... .

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...the Board's arguments are unpersuasive in the instant case. In ***Hartford***, the Labor Board was dealing with an intentional act which violated the deadline for submitting proposals. The City never intended to submit the proposals in question before the prescribed deadline. In contradistinction, the Association did not know on October 5, 1998 that it had failed to submit its salary proposal. ... The failure was a wholly unintentional and unknown mistake when Foley raised it in his October 7 or 8, 1998 phone call to Namnoun. Additionally and significantly, the Board does not approach this issue with clean hands. The Board fully expected to see a salary proposal in the Association's October 5, 1998 package and it was very much a surprise for the Board not to find one. Indeed, the absence of a salary proposal was noticed even before the Board reached the conference room for its caucus. During the caucus the absence of a salary proposal was confirmed. At that point, reasonable people acting in good faith would have (1) recognized that the most probable explanation was that this was an unintentional omission and (2) asked the Association why there was no salary proposal. ... Instead, knowing that October 5 was the deadline for making new proposals, the Board intentionally chose to remain silent and let the window for making proposals close.

As the Labor Board pointed out in ***Hartford***, the purpose of a negotiations ground rule establishing a deadline for proposals is to "facilitate bargaining". The Board's action in (1) letting the window close when it had to at least strongly suspect that the absence of a salary proposal was a mistake, and then (2) deciding to take the position that the Association could not make a salary proposal because the window had closed, foreseeably and seriously hindered bargaining far more than did the Association's inadvertent mistake. Indeed, but for the actions by the Board, the Association's mistake would have constituted nothing more than a harmless error.

As the Labor Board pointed out in ***Hartford***, the amount of delay beyond the closing of the window is relevant. In ***Hartford***, the delay was five weeks and that was on top of an earlier lengthy delay in bargaining for which the City has been responsible. In the instant case, if the Board had taken the good faith and reasonable action of sending an emissary down the corridor to find a member of the Association's negotiating committee, there would have been no delay beyond October 5 itself. ...

> It is clear that the Association's unintentional mistake did not prejudice the Board or the negotiations and cannot be considered a material breach of ground rule 9. What prejudiced the negotiations was the Board's decision to sit quietly by and await the foreseeable train wreck despite having reason to know the wreck was coming and having the ability to prevent it. (Ex. 8, pp. 67-81).

We find the reasoning of the arbitration panel to be perfectly suited to the question before us of whether the Association committed a prohibited practice by submitting an admittedly tardy salary proposal and then insisting on bargaining about the proposal. As the arbitrators stated, ***Hartford*** concerned a situation involving an intentional breach of ground rules which resulted in a delay in bargaining and placed one party at a disadvantage. Likewise, we reject the School Board's reliance on other Labor Board cases which present very dissimilar circumstances to the instant matter. In ***Killingly Board of Education***, Decision No. 2118 (1982), the Labor Board found that the School Board had committed a prohibited practice when it intentionally breached a ground rule concerning release of negotiation information to the press. There, the Labor Board stated "We also conclude from the record before us that the School Board's actions of October 23, 1980 were conceived and executed with a knowing and callous disregard for the Act." ***Killingly****, supra* at 15. Likewise, the School Board's reliance on ***Town of Coventry***, Decision No. 1289 (1975); ***State of Connecticut***, Decision No. 2240 (1983); and ***Town of Guilford***, Decision No. 2858 (1990) is misplaced. For all the reasons stated in the arbitration decision, we find that the Association did not commit a prohibited practice under the circumstances.

For similar reasons, we find that the Association did not waive its right to bargain about the issue of salaries when it inadvertently submitted a late salary proposal during the 1998 negotiations.

We now turn to the question of the Association's statement that it would refuse to bargain about any issues until the School Board agreed to bargain about salaries. While we are somewhat bothered by this statement, we do not believe it rises to the level of a prohibited practice given the circumstances in this matter. We ordinarily review a party's bargaining conduct in light of the totality of circumstances. ***West Hartford Education Assn., Inc. v. DeCourcy***, 162 Conn. 566 (1972); ***City of Hartford****, supra* and cases cited therein. Here, the Association's frustration with the salary issue manifested itself in the statement that it would not bargain further about anything. However, the record shows that the parties did indeed bargain and came to agreement on certain issues prior to entering arbitration. Thus, we find that the totality of the circumstances does not justify a finding that the Association bargained in bad faith by its remark.

Finally, we also dismiss the Association's complaint that the School Board committed a prohibited practice by refusing to bargain about salaries after the Association's late submission. Analyzing the totality of the circumstances, we believe the School Board was technically within its legal rights to await the arbitrability decision of the arbitration panel before placing a salary proposal into the mix. However, we must agree again with the arbitration panel in its conclusion that this entire situation could have been avoided if the School Board had simply walked down

the hall on October 5, 1998 and inquired about the missing salary proposal. Although it was within its technical rights not to do so, the School Board's decision to approach its collective bargaining relationship in this manner did nothing to foster productive and peaceful labor relations. We do

not condone this approach and hope that these and other parties will do better to avoid a similar circumstance in the future.[3]

[3]Due to our decision in this matter, it is unnecessary for us to decide whether we have the authority to invalidate an arbitration award.

ORDER

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

ORDERED that the complaints filed herein be and the same hereby are, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John H. Sauter
Chairman

Wendella A. Battey
Wendella A. Battey
Board Member

C. Raymond Grebey
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CERTIFICATION

I hereby certify that a copy of the foregoing was faxed and/or mailed postage prepaid this 19th day of August, 1999 to the following:

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