

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
SEYMOUR BOARD OF
EDUCATION

DECISION NO. 4071

-and-

AUGUST 18, 2005

SEYMOUR EDUCATION
ASSOCIATION

Case No. TPP-21,932

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

Attorney Frederick L. Dorsey
For the School Board

Attorney Ronald Cordilico
For the Association

DECISION AND ORDER

On August 31, 2000, the Seymour Education Association (the Association) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the Seymour Board of Education (the School Board) had violated the School Board Teachers Negotiation Act (the TNA) when it unilaterally eliminated twenty days worked by a school psychologist outside of the regular school year.

After the requisite preliminary steps had been taken, the parties came before the Labor Board for a hearing on December 12, 2001, at which time they submitted a full stipulation of facts and exhibits. Both parties submitted briefs on February 1, 2002. On June 25, 2002 the Labor Board issued Decision No. 3872 dismissing the complaint.

The Association subsequently appealed the Labor Board's decision to Superior Court. On January 15, 2003, the Court entered Judgment By Way of Stipulation that remanded the matter to the Labor Board for further hearing. The stipulation provided that the parties' original stipulation of facts was to remain in effect.

After the requisite preliminary administrative steps had been taken, the parties appeared before the Labor Board for hearing on June 16, 2003. All parties were afforded a full opportunity to adduce evidence, examine and cross-examine witnesses and make argument. All parties filed post-hearing briefs which were received by the Labor Board on September 17, 2003. The Association filed a reply brief received on October 1, 2003.

On the basis of the 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 Association is the exclusive bargaining agent for a bargaining unit of certified teachers employed by the School Board.
2. The School Board is the duly constituted Board of Education of the Town of Seymour and an employer under the TNA.
3. At all material times, the School Board and the Association were parties to a collective bargaining agreement (Ex. 4) which contains the following relevant provisions:

ARTICLE I – GENERAL

- F. Subject to the provisions of this Agreement, the Board and the Superintendent of Schools reserve and retain full rights, authority and discretion in the proper discharge of their duties and responsibilities to control, supervise, and manage the Department of Education and its professional staff under governing law, ordinances, rules and regulations – Municipal, State and Federal. In all matters under this Agreement calling for the exercise of judgment or discretion on the part of the Board (as for example only, the assignment, transfer, or promotion of teachers, the summer programs, or the numbers, categories or priorities of specialists to be employed), the decision of the Board shall be final and binding if made in good faith –i.e., not arbitrarily, capriciously or without rational basis in fact –except where some other standard of grievability or arbitrability is set forth in this Agreement.

ARTICLE XII – WORKING CONDITIONS

C. CONTRACT YEAR

1. a. The Board shall establish a school calendar not to exceed 185 days (183 student contact days).

- c. In the event the Board establishes a work day or work year which exceeds that set forth in Section B.1 and C.1.a., the Board will make pro rata adjustments to the salary rates in effect at the time the increase takes place.

G. TEACHER ASSIGNMENT

1. The assignment of teachers is the responsibility of the Superintendent of Schools and/or Principal of each school. Such assignments shall be based on the abilities and desires, whenever possible, of the teacher involved, as well as on the requirements of the school system.
2. Under normal circumstances, teachers will be notified of assignments by the end of the school year.
3. To the extent possible, changes in assignments shall be voluntary, but may be effected for the best interests of the school system as determined by the Superintendent of Schools.

4. In 1985, Ron Benner (Benner) was hired by the School Board as its only school psychologist and was assigned to cover all students in the system, grades pre-school through age 21.

5. From 1985 until August 31, 1988, Benner was the only school psychologist employed by the School Board. On August 31, 1988, the Board hired Sara Morgatto, as a second psychologist assigned to service children in grades 7 to 12. Benner was then assigned to service students in grades pre-school to 6.
6. On September 1, 1999, Jennifer Rumbin (Rumbin) was hired by the School Board as a third school psychologist and was assigned to the elementary level. Rumbin and Benner continue to share the elementary assignment as school psychologists for the School Board.
7. From approximately 1985 through and including 1999, Benner was assigned, worked and was paid for 20 extra days during July and August beyond the regular school year. None of the other school psychologists worked extra days beyond the regular school year. During July and August of 2000, Benner was assigned and worked 10 extra days beyond the regular school year, but was paid for 20 extra days. The School Board and the Association did not negotiate over the assignment of extra days to Benner, or school psychologists in general, or the pay for such days.
8. For these extra days, Benner was paid on a per diem rate based upon his regular base salary.
9. Benner's regular base salary for school year 1998-1999 was \$63,626. In addition, he received \$6,878.49 for the extra 20 days worked ($\$63,626 \text{ regular base salary} / 185 \text{ teacher contract days} \times 20 \text{ extra days}$) and a \$300 special education stipend for a total of \$70,804.49.
10. Benner's regular base salary for school year 1999-2000 was \$64,600. In addition, he received \$7,060.00 for the extra 20 days worked ($\$64,600 \text{ regular base salary} / 185 \text{ teacher contract days} \times 20 \text{ extra days}$) and a \$300 special education stipend for a total of \$71,960.
11. Benner's salary for the 2000-20001 was \$65,485, plus a special education stipend for a total of \$65,785. He did not work any extra days in the 2000-2001 contract year.
12. In November of 1999, Benner's supervisor, Dr. Renie Castelluci (Castelluci), informed him that the extra days beyond the regular school year would no longer be needed and were not to be budgeted for the summer of 2000. However, Castellucci indicated that she would honor ten (10) days in July of 2000. The School Board unilaterally eliminated the remaining ten (10) extra days of summer work for school psychologists for the summer of 2000 by not providing funding for the extra days in the 2000-2001 budget approved in the spring of 2000.

13. On July 1, 2000, Patricia J. Humeniuk sent a letter to Eugene Coppolas, the Seymour Superintendent of Schools, demanding to bargain over the elimination of the twenty work days. (Ex. 3A).

14. On August 29, 2000, the Association filed the instant prohibited practice complaint.

15. It is the School Board's position that it has no obligation to bargain with the Association regarding the elimination of the extra days of summer work for school psychologists and the School Board has not in fact bargained with the Association.

16. The additional twenty days of work performed by Benner consisted of: evaluating students; writing reports; helping to develop a special education policy and procedure manual; creating a database to track special education student services; working on budget issues; reordering testing material; and participating in planning and placement team meetings for outside placements.

17. This work was the same as and an extension of the work performed by Benner during the 185-day school year.

CONCLUSIONS OF LAW

1. An employer's unilateral change to an established past practice in a condition of employment that is a mandatory subject of bargaining is a refusal to bargain in good faith in violation of §10-153e of the Act, unless an adequate defense is established.

2. The Association established a unilateral change to a past practice involving a mandatory subject of bargaining, and the School Board failed to provide an adequate defense.

3. The School Board violated § 10-153e of the Act when it unilaterally eliminated the additional twenty days of work.

DISCUSSION

The Association alleges the School Board instituted a unilateral change in a condition of employment that is a mandatory subject of bargaining, namely the elimination of the extra 20 days of work performed by Benner outside the normal 185 day school year. The School Board argues that the elimination of the extra 20 days of work was actually an elimination of a position for which the School Board has no obligation to bargain with the Association. The School Board then argues that the Association failed to properly request impact bargaining over the elimination of the position, but, notwithstanding this failure, the Board satisfied its obligation to bargain over the impact of the elimination via the collective bargaining agreement. Finally, the

School Board argues that it was within its managerial prerogative to reduce the hours of Benner. In this case, we agree with the Association that the School Board instituted a unilateral change in a condition of employment that is a mandatory subject of bargaining.

As discussed in our original decision, *Seymour Board of Education and Seymour Education Association*, Decision No. 3872 (2002),

In order to establish a violation of the TNA on the ground that there has been a unilateral change to an established past practice, the complainant must prove both the existence of the practice and also show that the practice concerns a mandatory subject of bargaining. *Norwalk Third Taxing District*, Decision No. 3695 (1999).

In determining whether a practice concerns a mandatory subject of bargaining, we look first to Connecticut General Statute §10-153d (b) which imposes a “duty to negotiate with respect to salaries, hours and other conditions of employment about which either party wishes to negotiate.” Expressly exempted from the definition of hours are: “the length of the student school year, the length of the student school day, the length and number of parent-teacher conferences and the scheduling of the student school day, except for the length and the scheduling of teacher lunch periods and teacher preparation periods.” Conn. Gen. Stat. § 10-153d (b)(1). Further, “[B]oards of education have the right to determine educational policy and unilaterally implement such policy decisions...”. *West Hartford Education Association v. Decourcy*, 162 Conn. 566, 295 A.2d 526 (1972); *Bloomfield Board of Education and Bloomfield Education Association*, Decision No. 2821 (1990).

In our original decision, *Seymour Board of Education and Seymour Education Association*, Decision No. 3872 (2002), we found: “that Mr. Benner was assigned an additional twenty days of work per year for the past fifteen years, so there is no dispute regarding the existence of the practice.” In that case, however, the Association failed to sustain its burden in that the record was devoid of any evidence as to the nature of the work. Without such knowledge, we could not determine whether the additional 20 days of work performed by Benner implicated a mandatory subject of bargaining.

On the basis of the record now before us, we find that the practice of assigning Benner an additional 20 days of work per year is a mandatory subject of bargaining. The nature of the work performed during the twenty days outside of the 185 day school year is an extension of the duties Benner performs during the 185 day school year. Benner’s work is not part of a separate summer program and does not impact the School Board’s right to determine educational policy. The School Board does not assert nor does the record establish that this practice falls within any of the statutory exceptions listed above. The established practice of the additional 20 days concerns Benner’s hours of work over the course of the year and, as such, is a mandatory subject of bargaining, not falling within any exception.

The School Board argues that the work performed during these additional 20 days constituted a separate position from the 185 day school psychologist position occupied by Benner during the contract year; and that the elimination of the 20 day position is akin to a reduction in force. We reject this argument. There is nothing in the record to support a finding that Benner held two separate positions, one 20 days in length and one 185 days in length. Rather, the work performed during those days was of the same type and nature as the work performed during the 185 days. As we find only one position exists, we also dismiss the School Board's related arguments incorporating the notion of an elimination of position.

The School Board further argues that even if the additional 20 days are not considered a separate position, it is within the managerial prerogative of the School Board to reduce hours for the single position. Whether this situation is viewed as a change in work schedule or akin to elimination of regularly scheduled overtime, we find that the employer was obligated to bargain about the change. See *Town of Westport*, Dec. No. 1602 (1977); *Town of Southington*, Dec. No. 3685 (1999). The School Board has not raised nor does the record reflect any adequate defense for its refusal to bargain over a change in practice to a mandatory subject of bargaining.

We then come to the matter of remedy. We find that the purposes of the Act will best be served in this case by appropriate cease and desist orders and an order to bargain upon demand of the Association. We further order that Benner be made whole for any losses suffered as a result of this unilateral change.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Act concerning School Board Teacher Negotiations, it is hereby **ORDERED** that the School Board shall:

I. Cease and desist from:

- (a) failing to bargain in good faith with the Association concerning the practice of the additional 20 days assigned to Benner;
- (b) the elimination of the additional 20 days assigned to Benner.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

- (b) Negotiate with the Association immediately upon demand the subject of the additional 20 days assigned to Benner;

- (c) Immediately reinstate the additional 20 days assigned to Benner until such time a change is negotiated with the Association or final impasse is reached in such negotiations;
- (d) Make whole Benner for any losses suffered as a result of the elimination of the additional 20 days;
- (e) Post immediately and leave posted for a period of sixty (60) consecutive from the date of the posting, in a conspicuous place where members of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.
- (f) Notify the Connecticut State Board of Labor Relations at its office at 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Seymour Board of Education to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
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 18th day of August, 2005 to the following:

Attorney Ronald Cordilico
CEA RRR
21 Oak Street, Suite 500
Hartford, Connecticut 06106-8001

Attorney Frederick L. Dorsey
Siegel, O'Connor, Schiff & Zangari, PC RRR
171 Orange Street
New Haven, Connecticut 06510

Jaye Bailey, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS