

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
SCHOOL ADMINISTRATORS  
OF WATERBURY

DECISION NO. 4091

-AND-

OCTOBER 14, 2005

DAVID J. GARDINO

Case No. TPP-24,086

Attorney John Gesmonde  
Attorney Lucas Rocklin  
For the Union

Attorney Susan Sprano  
For the Complainant

**DECISION AND DISMISSAL OF COMPLAINT**

On June 25, 2003, David J. Gardino (the Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging the Waterbury Board of Education (the School Board) and the School Administrators of Waterbury (the Union or SAW) violated the School Board/Teacher Negotiation Act (TNA or the Act) by agreeing to resolve a grievance and providing varying monetary amounts to affected bargaining unit members in settlement of said grievance. On November 17, 2004 and December 10, 2004, the complaint was amended alleging violation of the Act only as against the Union.

After the requisite preliminary steps had been taken, the parties came before the Labor Board for a hearing on April 25, 2005. All parties were afforded a full opportunity to adduce evidence, examine and cross-examine witnesses and make argument. All parties filed post hearing briefs, the last of which was received on June 6, 2005.

On the basis of the record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint.

## FINDINGS OF FACT

1. The School Board is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act, and, at all material times, has been the exclusive bargaining representative of a bargaining unit of administrators employed by the School Board.
3. At all material times, the School Board and the Union have been parties to a collective bargaining agreement which contains the following relevant provision (Ex. 5):

Section 1 (b). Members of the bargaining unit will be afforded the right to participate at the rate of \$30 per hour in committees, assignments, activities or tasks which necessitate commitments by the administrator in excess of the normal work hours and/or days as defined in Article V, Section 2. This payment only applies to programs not locally funded which specifically provide and fund such payments. An Administrator shall not be precluded from incorporating such allocation in the writing of the grant.
4. The Complainant was employed by the School Board as the Supervisor of Music and was a member of the bargaining unit represented by the Union.
5. Sometime in 2001, the School Board identified the position of Supervisor of Music as well as other administrator positions for elimination. (Ex. 6).
6. At a special meeting conducted on August 6, 2001, the School Board reinstated the Supervisor of Music position. (Ex. 6).
7. By memorandum dated September 5, 2001 from Michael Eagen, Director of Personnel-Education to the Complainant, Eagen advised the Complainant of the School Board's decision to reinstate his position subject to the following: "Some changes in your responsibilities may have been made and you will be notified of these changes by a separate memorandum." (Ex. 6).
8. In September 2001, the Complainant was assigned additional responsibilities related to library/media.
9. At this same time, other bargaining unit members were also assigned various additional responsibilities.
10. On October 3, 2001, the Union filed a grievance, No. 2001-2002-1, alleging "the Board violated the collective bargaining agreement when it assigned additional duties to Supervisors and increased the work load of other bargaining unit members." (Ex. 10).

11. On September 20, 2002, the Union and the School Board engaged in settlement discussions regarding this grievance. The proposed settlement agreement, which was later executed on May 29, 2003, included payments in varying amounts to certain affected supervisors.
12. Also on September 20, 2002, Union leadership and counsel for the Union met with the affected supervisors to discuss the proposed settlement.
13. The Complainant expressed his displeasure with the proposed settlement and left the meeting before it concluded.
14. The other administrators present at the meeting agreed that the Union should accept the proposed settlement. Subsequently, the Union's Executive Board also approved the proposed settlement.
15. On May 29, 2003, the School Board and the Union executed the settlement agreement which provided in relevant part (Ex. 10):
  1. To fully and finally settle Grievance Number 2001-2002-1, the Board shall pay stipends to the effected employees as follows:
    - 1a. The Board shall pay to Cheryl Kane, Supervisor of Math, a biweekly stipend in the amount of \$576.92 retroactive to the beginning of the 2001-2002 school year and continuing until such time that Ms. Kane no longer performs the additional duties or the Board and SAW negotiate a different rate pursuant to Paragraph 3 of this Agreement.
    - 1b. The Board shall pay to Amy DeLucia, Supervisor of Reading, a biweekly stipend in the amount of \$576.92 retroactive to the beginning of the 2001-2002 school year and continuing until such time that Ms. DeLucia no longer performs the additional duties or the Board and SAW negotiate a different rate pursuant to Paragraph 3 of this Agreement.
    - 1c. The Board shall pay to Linda Janowitz, former Supervisor of Early Childhood Education, a biweekly stipend in the amount of \$576.92 retroactive to the beginning of the 2001-2002 school year and continuing up to the date Ms. Janowitz retired from employment with the Board.
    - 1d. The Board shall pay to Nicholas Augelli, Supervisor of Education Technology, a stipend in the amount of \$10,000 for additional duties performed during the 2001-2002 school year.
    - 1e. The Board shall pay to Donald Schaer, Supervisor of Technology Education, a biweekly stipend in the amount of \$384.62 retroactive to the

beginning of the 2001-2002 school year and continuing until such time that Mr. Schaer no longer performs the additional duties or the Board and SAW negotiate a different rate pursuant to Paragraph 3 of this Agreement.

1f. The Board shall pay to Elizabeth McGrath, Supervisor of Art, a biweekly stipend in the amount of \$384.62 retroactive to the beginning of the 2001-2002 school year and continuing until such time that Ms. McGrath no longer performs the additional duties or the Board and SAW negotiate a different rate pursuant to Paragraph 3 of this Agreement.

1g. The Board shall pay David Gardino, Supervisor of Music, a stipend in the amount of \$5,000 for additional duties performed up to the date of this Agreement.

1h. The Board shall pay to Bernadette Gwiazdoski, Supervisor of Life Management, a stipend in the amount of \$5,000 for additional duties performed up to the date of this Agreement.

2. Effective on execution of this Agreement, the Board will no longer require David Gardino to perform the library media duties and Bernadette Gwiazdoski to perform the world languages duties.

3. Stipend payments shall not effect the employee's base pay for purposes of calculating paid leave pursuant to the collective bargaining agreement but shall be included in base pay solely for the purpose of calculating pension benefits if permitted by the relevant law and calculations.

4. SAW and the Board agree to negotiate a lower stipend amount or to eliminate the stipend in the event that the additional duties are reduced or eliminated by the Board.

### **CONCLUSIONS OF LAW**

1. It is a prohibited practice within the meaning of § 10-153e(c) of the Act for a union or its agents to breach the duty of fair representation owed to all its members pursuant to § 10-153a of the Act by engaging in conduct that is arbitrary, discriminatory, or in bad faith.
2. In the circumstances of this case, the Union did not violate the Act.

### **DISCUSSION**

In the instant case, the Complainant asserts that the Union breached its duty of fair representation when it entered into a grievance settlement providing for varied compensation for affected bargaining unit members and without the agreement of those affected members. The Union argues that it did not breach its duty of fair representation

as it acted neither arbitrarily, discriminatorily, nor in bad faith. In this case, we agree with the Union.

This Board has repeatedly affirmed its reasoning in regard to a union's duty of fair representation. As discussed recently in the matter of *Anthony Parente and Hamden Education Association*, Decision No. 3974 (2004),

Our case law concerning a union's duty of fair representation is well established:

[t]his Board has elaborated on the standards to which a Union must adhere in fulfilling its duty of fair representation. We have stated that a Union breaches its duty of fair representation only when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. Only when the Union's conduct is motivated by hostility, bad faith, or dishonesty does a prohibited practice exist. (internal citations and quotations omitted) *Local 1565, Council 4, AFSCME, AFL-CIO (David Bishop)*, Decision No. 3510 (1997); *A.C.E.S. Education Association (Krajewski)*, Decision No. 3329 (1995). See *Vaca v. Sipes*, 386 U.S. 411, 87 S. Ct. 903 (1967).

In determining if a union breaches its duty of fair representation when it makes a choice that adversely affects one member or class of members our case law states: inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. (internal citations and quotations omitted) *University of Connecticut AAUP*, Decision No. 2714 (1989); *Board of Education, City of Ansonia*, Decision No. 1141 (1973)...

In *Waterbury Firefighters Association, Local 1339 v. State Board of Labor Relations, et al.*, Docket No. CV97 0570953 (May 6, 1998, McWeeney, J) (reversing *City of Waterbury*, Decision No. 3496 (1997)), the Superior Court quoted the U.S. Supreme Court, stating: We hold that the rule announced in *Vaca v. Sipes*...that a union breaches its duty of fair representation if its actions are either "arbitrary, discriminatory or in bad faith" –applies to all union activity, including contract negotiation. We hold that a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" ...as to be irrational. *Airline Pilots Association v. O'Neill*, 499 U.S.65 (1991).

Here, the complaint is focused on the fact that, in the course of negotiating a settlement to a grievance, certain bargaining unit members received more compensation than others. The Complainant received \$5,000 compensation for additional duties performed for two years and those duties were removed as a result of the settlement.

Other bargaining unit members received biweekly salary stipends annually totaling \$15,000; still others received lump sum payments of 10,000. One bargaining unit member received the same relief afforded to the Complainant.

In the course of negotiating this settlement, the Union explained the proposal to affected supervisors present at the September 20, 2001 meeting. While the Complainant was initially present at this meeting, he became upset and left before its conclusion. The remaining supervisors agreed to the proposed settlement and the Union's Executive Board later ratified the agreement.

As discussed above, the mere fact that certain bargaining unit members received differing amounts of compensation does not, in itself, constitute a breach of the duty of fair representation. These bargaining unit members were performing varying levels of additional responsibilities. There is nothing in the record to suggest that the amounts negotiated for each affected supervisor were in any way influenced by arbitrariness, a desire to discriminate, or determined in bad faith.

Further, "the Union has no obligation to pursue any grievance, or to carry it to arbitration, as long as the decision is not "arbitrary, discriminatory, or in bad faith." *Local 1565, Council 4, AFSCME, AFL-CIO (David Bishop)*, Decision No. 3510 (1997). In this case, the Union exceeded the minimum requirements imposed by its statutory obligation. The Union sought and received the approval of the affected bargaining unit members before entering into the settlement agreement. Again, the record is void of any showing of arbitrariness, discrimination, or bad faith.

Based on the above, we dismiss this complaint.

**ORDER**

Pursuant to the power vested in the Connecticut State Board of Labor Relations by the School Board/Teacher Negotiations Act, it is hereby

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

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 14<sup>th</sup> day of October, 2005 to the following:

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Jaye Bailey, General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS