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CONNECTICUT DEPARTMENT OF LABOR

Board of Labor Relations

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March 3, 2014

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144 Scribner Avenue
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RE: NORWALK BOARD OF EDUCATION
-and-
LOCAL 1042 UNION PRESIDENT STANLEY SHULAR
-and-
ALVIN MOSBY , et al
Case No. MPP-30,372

Gentlemen:

I am recommending dismissal of the complaint filed in the above-captioned case. This action stems from the Report Upon Investigation of Complaint by Jose' A. Santana, Jr., Assistant Agent, a copy of which is attached.

If objection to my recommendation is to be registered, the original must be filed with the Connecticut State Board of Labor Relations within fourteen (14) days of service (*we do not accept facsimile transmissions as meeting the filing requirement.*) Please refer to Article III, Section 7-471-24, of the General Regulations relating to the administration of the Municipal Employee Relations Act (MERA). **ALSO, IF OBJECTIONS TO MY RECOMMENDATION ARE FILED, THE BOARD REQUESTS THAT OPPOSING PARTY (S) BE NOTIFIED. UNLESS WRITTEN OBJECTION IS FILED AS HEREIN PRESCRIBED, THE BOARD WILL DISMISS THE COMPLAINT.**

Please Note: Any written correspondence directed to this office, by any party to this case, must be copied and sent to all other parties.

Sincerely,

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Katherine C. Foley

Katherine C. Foley, Agent

KCF:jc
Attachment
CC: Labor Board Members
Attorney William R.Connon
Richard Sampson, Assistant Director of Collective Bargaining & Organizing
Kevin M. Murphy, Director of Collective Bargaining & Organizing
Attorney J. William Gagne, Jr.
Attorney Susan Creamer

TO: Katherine C. Foley, Agent

FROM: Jose' A. Santana, Jr., Assistant Agent

DATE: March 3, 2014

RE: Norwalk Board of Education
-and-
Local 1042 Union President Stanley Shular
-and-
Alvin Mosby, et al
Case No. MPP-30372 (Amended)

REPORT UPON INVESTIGATION
AND
RECOMMENDATION FOR DISMISSAL OF COMPLAINT

On March 20, 2013, Alvin Mosby, Tony R. Miller, Clyde Richards and Paul J. Kaminski (Complainants) filed the instant complaint with the Connecticut State Board of Labor Relations (Labor Board) alleging that the Norwalk Board of Education (School Board) had violated the Municipal Employee Relations Act (Act). Specifically, Complainants are claiming that the School Board bargained in bad faith with Local 1042 of Council 4, AFSCME, AFL-CIO (Union) over the successor collective bargaining agreement between the School Board and the Union.

An informal conference was held on July 1, 2013 at the School Board offices in Norwalk in order to begin the investigation and conciliation of this complaint. The Complainants were represented by Complainant Mosby and the School Board was represented by Attorney William R. Connon. Although not a named Respondent at the time of its original filing, the Union attended and participated and was represented by Assistant Director of Collective Bargaining Patrick Sampson. Each party, as well as the Union, was given a full opportunity to introduce evidence, present witnesses and to argue their respective positions. On February 10, 2014, the Complainants filed an amended complaint to add Local 1042 Union President Stanley Shular (Union) as a Respondent.

Based on the information received, the following preliminary statement of facts, discussion and recommendation for dismissal of the complaint are required.

PRELIMINARY STATEMENT OF FACTS

1). The School Board is a municipal 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 the custodial, maintenance and security staff of the School Board.

3). Head Custodian Alvin Mosby, Security Guard Tony R. Miller, Custodian Clyde Richards and Maintenance Painter Paul J. Kaminski are all municipal employees within the meaning of the Act.

4.) The School Board and the Union have been parties to a series of collective bargaining agreements, the most recent having been signed on May 31, 2013 and in effect through June 30, 2016. The following are the relevant provisions at issue:

ARTICLE VIII
INSURANCE

Section 8.03. Retiree Medical Insurance.

A. Employees who retire on or after July 1, 2003 under the terms of the Norwalk Pension Plan and their eligible dependents as of the date of retirement shall continue to be covered until Medicare eligible by the medical insurance plan the Board provides to active employees. When the retiree and/or retiree's spouse become eligible for Medicare, the Board shall provide a Medicare Supplement Plan including a prescription drug rider.

B. In order to continue coverage in the same medical insurance plan that the Board provides to its active employees, retirees who retire on or after July 1, 2003 and/or their spouses shall pay the same percentage of premium cost that is paid by active employees, as such percentage is amended from time to time.

C. No premium cost share for a Medicare Supplement Plan shall apply to retirees hired before July 1, 2003.

D. Retirees who were hired by the Board on or after July 1, 2003 and/or their spouses may continue coverage in the Board's Medicare Supplement Plan at their own cost

Effective June 30, 2016, Section 8.03 will be replaced by the following:

Section 8.03. Retiree Medical Insurance.

A. The Board agrees to pay the full yearly health insurance premium for the employee who retires under the terms of the Norwalk Municipal Employees Pension Plan at age fifty-nine (59) until they reach age sixty-five (65), or are covered under Medicare or Medicaid . While eligible for this benefit, said employee may elect to insure his/her spouse, and the Board agrees to pay fifty percent (50%) of the premium for said spouse.

B. Any employee who retires at age fifty-five (55) can, at his/her option, continue the health insurance at the group rate if he/she pays the full yearly premium and

can elect to insure his/her spouse and eligible dependents at the group rate if he/she pays the full yearly premium.

5.) The pertinent chronology of events leading up to the successor collective bargaining agreement is as follows:

March 31, 2013	Tentative agreement reached in mediation
April 6, 2013	Union meeting/ratification of agreement
May 7, 2013	School Board meeting/ratification of agreement
May 31, 2013	Signature date upon which agreement is effective

6.) At the April 6, 2013 Union meeting, a Fact Sheet was distributed to all members in attendance detailing the significant contract language changes. The Fact Sheet included the changes in the insurance plans, insurance premium cost sharing, and retiree medical insurance; along with general wage increases. Subsequently, the Union unanimously ratified the tentative agreement.

7.) At all times material, Stanley Shuler (Shular) was the President of the Union.

DISCUSSION

The Complainants allege the School Board engaged in bad faith bargaining with the Union regarding the negotiations and outcome of the successor collective bargaining agreement. In particular, they assert that the School Board unilaterally implemented changes to the retiree medical insurance provisions of the new contract without any prior involvement, knowledge or agreement of the Complainants.

The School Board asserts no violation of the Act has occurred. As far as the School Board is concerned, they bargained in good faith with the Union over all terms of the successor collective bargaining agreement and, furthermore, have no obligation under the Act to negotiate with individual members of the bargaining unit on these and any other matters.

As to the Union, the Complainants allege it violated its duty of fair representation by acting in collusion with the School Board in misleading their entire membership, including the Complainants, regarding the new retiree medical insurance provisions. They claim they were intentionally left out in the dark while contract negotiations were occurring. It is also alleged that the Complainants were not given any information concerning the proposed insurance changes at issue at the time of the ratification vote on the new agreement. In fact, they claim such a vote never occurred. The Union denies all claims made by the Complainants.

Bad Faith Bargaining

In the context of contract negotiations, the well-established standards for analyzing bad faith bargaining charges are as follows:

"To determine the question of good faith the totality of the parties' conduct throughout the negotiation s must be considered." ***West Hartford Education Association v. DeCourcy***, 162 Conn. 566, 591 (1972) (citations omitted). Ordinarily, a single factor is insufficient to support a conclusion of bad faith. ***State of Connecticut (P-3 B Unit)***, Decision No. 3521 (1997). Conclusions regarding actual or subjective bad faith must be based on an examination of all the evidence....***Ansonia Federation of Teachers***, Decision No. 2570 (1987); ***Bristol Federation of Teachers***, Decision No. 1656 (1978)."

City of Meriden, Decision No. 4553 at p. 8 (2011)

"The obligation to bargain in good faith requires that each party make a sincere effort to reach agreement and to participate in negotiations to that end. This obligation requires more than merely going through the motions of bargaining. The parties must participate actively in the deliberations as to indicate a present intention to find a basis for agreement. Whether a party has met its obligation to bargain in good is most often a subjective determination reached following a careful examination of the totality of the circumstances."

State of Connecticut (P-3 B Unit), *supra*, at p.22 (1997) (internal citations and quotations omitted)

The analysis described above applies equally to the employer and the union. ***Town of Wallingford***, Decision No. 3794 (2000).

There is nothing on the record to even remotely suggest that the School Board bargained in bad faith with the Union over the fairly recently concluded negotiations that resulted in a successor collective bargaining agreement. Complainants presented no evidence whatsoever that the School Board conducted itself in an insincere manner at any phase of the negotiations. According to the School Board, negotiations occurred in a normal typical give-and-take fashion; at a certain point impasse was declared, and ultimately through mediation a compromised resolution was successfully reached; thus avoiding binding interest arbitration. Lacking any merit, Complainants' claim of bad faith bargaining on the part of the School Board must fail.

Furthermore, the School Board is correct that it has no obligation to directly negotiate with the Complainants, individually or as a group, over any of the terms and conditions to be ultimately included or not included in a collective bargaining agreement. It is firmly established that an employer cannot bargain directly with employees concerning mandatory subjects of bargaining. ***West Hartford Board of Education v. DeCourcy***, *supra*; ***Town of Trumbull***, Decision No. 3928 (2003) and cases cited therein; ***Town of Farmington***, Decision No. 3237. Phrased differently: "...once an existing bargaining representative has been selected by a group of employees, an employer must bargain through the agent concerning mandatory subjects of bargaining. The employer may not circumvent the bargaining agent and negotiate directly with the employees."

Norwalk Board of Education, Decision No. 3379 (1996); ***City of New London***, Decision No. 4187 (2006). Complainants' assertion that the School Board violated the Act by not directly including them in the contract negotiations process also is without merit.

It is clear that the Complainants are upset with the new portion of Article 8.03 Retiree Medical Insurance that goes into effect June 30, 2016. Significant changes will occur as of that date. Employees who retire at age 59 continue to get fully paid coverage until they reach age 65 but would have to pay 50% of the health insurance premium for their spouses. Employees retiring at age 55 would have to pay 100% of the premium at the group rate. The Medicare Supplement Plan would no longer be available, including those employees hired before July 1, 2003. However, being unhappy with the results of give and take contract negotiations does not equate into a violation of the Act. As analyzed below, the same is true for the Union.

Duty of Fair Representation

The statutory source of the duty of fair representation in the Act is found in Connecticut General Statutes Sections 7-468(c)[1] and 7-470 (b)(3)[2]. In ***Anthony Parente and Hamden Board of Education (Parente)***, Decision No. 3974 (2004), the Labor Board fully expressed its well-established case law concerning a union's duty of fair representation:

> This 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 exit. (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:

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1 **Section 7-468. Rights of employees and representatives. Duty of Fair Representation.**

(c) When an employee organization has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, it shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

2 **Section 7-470. Prohibited acts of employers and employee organizations.**

(b) Employee organizations or their agents are prohibited from: (3) breaching their duty of fair representation pursuant to section 7-468.

....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 allow 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. 1143 (1973). See, ***Humphrey v. Moore***, 375 U.S. 335 (1964).

Concerning contract negotiations, the Connecticut Supreme Court has similarly stated that "[i]f a union breached its duty of fair representation of unit members every time it made a concession, collective bargaining would be impossible." (internal citations and quotations) ***Labbe v. Pension Commission***, 239 Conn. 168, 194 (1996) In ***Waterbury Firefighters Association, Local 1339 v. State Board of Labor Relations, et al.***, Dkt No CV97 0570953 (May 6, 1998, McWeeney , J)(reversing ***City of Waterbury***, Decision No. 3496 (1997), the Superior Court, stated:

> 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).

The above standards clearly allow a union considerable discretion and wide latitude in the performance of its duties towards its members. Without such considerable latitude, a union would be unable to function and to make difficult decisions. ***Carla A. Boland/AFSCME, Council 4, Local 196, AFL-CIO***, Decision No. 4350 (2008).

In this case, I find nothing in the Union's actions that indicate a violation of the Act. This conclusion is based on the following.

The Complainants assert that the Union breached the duty of fair representation by denying them and other members any opportunity to have input in the negotiation process that resulted in the changes to the retiree medical insurance provisions in the new collective bargaining agreement. In ***Parente***, *supra*, the Labor Board said:

> We begin with the charge that the Association's failure to keep its membership informed about contract negotiation positions of the Association during the bargaining period amounts to bad faith. The Labor Board has previously considered the need for confidentiality in negotiations and has held that within certain limitations, confidentiality of bargaining proposals is a necessary element

> of collective bargaining. See ***Killingly Board of Education***, Decision No. 2118 (1982) and cases cited therein. Generally, negotiators have wide latitude to determine how best to conduct negotiations. In this case, the chief negotiators decided that they would not discuss the details of the negotiations with individuals outside of the negotiation process. The Complainant did not establish why, in this circumstance that decision was dishonest, in bad faith or deceitful.

Likewise, in the instant circumstance, there is no showing that the Union negotiating committee's decision not to discuss any of the details of the negotiation discussions with its bargaining unit members was "dishonest, in bad faith or deceitful."

The Complainants further assert that no information concerning the proposed insurance changes was provided to them and other members by the Union at the April 6, 2013 ratification meeting. Information provided by the Union clearly demonstrates the contrary. A handout entitled "FACT SHEET – CONTRACT LANGUAGE CHANGES" (capitalized as in the original) was made available to all members in attendance at the meeting. This fact sheet contained all the significant languages changes in detailed fashion. With respect to the changes to Section 8.03, Retiree Medical Insurance, the initial School Board proposal which originally sought to replace this provision in its entirety with new language, was additionally included for rank-and file comparison purposes. The assertion that no information was provided simply has no supportive basis in fact and its corollary contention that the membership was mislead holds no weight.

Similarly, the Complainants final assertion that no actual ratification vote occurred also lacks any supportive foundation. The undisputable fact, as separately provided by the School Board and the Union, is that the Union voted to ratify the tentative agreement on April 6, 2013 and the School Board did so on May 7, 2013; resulting with a signed May 31, 2013 collective bargaining agreement now in effect.

In summary, under the legal standards established by the Labor Board which is based upon the reasoning of the United States Supreme Court through its numerous decisions concerning this subject matter, there was no failure here with respect to the Union's duty of fair representation.

RECOMMENDATION

For all of the foregoing reasons, I respectfully recommend that this amended complaint be dismissed.