STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

STATE VOCATIONAL FEDERATION OF TEACHERS LOCAL 1797 and STATE OF CONNECTICUT

- and -

VOCATIONAL-TECHNICAL FACULTY COUNCIL CEA/NEA

Case No. SPP-6474

Decision No. 2060

June 24, 1981

APPEARANCES:

James C. Ferguson, Esq.
for CSFT/AFT, AFL-CIO

Lubbie Harper, Jr., Esq.
for the State Board of Education

Ronald Erickson, Representative
for Vo-Tech Faculty Council CEA/NEA

DECISION and ORDER

On April 24, 1981, the Vocational-Technical Faculty Council CEA/NEA (Council) filed with the Connecticut State Board of Labor Relations (Board) a complaint alleging that the State of Connecticut (State) and the State Vocational Federation of Teachers Local 1797 had engaged and were engaging in practices prohibited by An Act Concerning Collective Bargaining for State Employees (Act) in that:

1. The State Vocational Federation of Teachers, Local 1797, is the exclusive bargaining representative of the employees in the vocational-technical instructors unit employed by the State of Connecticut.

2. The complainant, the Vocational-Technical Faculty Council CEA/NEA, is a competing employee organization, which seeks to become the bargaining agent for said instructors.

3. The complainant is presently engaged in a campaign precedent to a representation election challenge which will occur in October 1981.

4. The respondents are parties to a contract which illegally denies the complainant access to employee's mailboxes in vocational-technical schools for the purpose of distributing materials concerning the election challenge. (See Section I-5.02, p. 2) attached.

5. Said provision violates C.C.S. Section 5-271 in that it is in derogation of the right of employees to form, join or assist any employee organization (and). . . to bargain collectively through representatives of their own choosing . . .

6. The complainant respectfully requests the Labor Board to declare Section I-5.02 of this contract to be illegal and order both respondents to cease and desist from interfering with the complainant's utilization of employee mailboxes.

On May 20, 1981, the Council amended paragraph 5 of its complaint to read as follows:

> 5. Said provision violates Conn. Gen. Stat. Section 5-272(b)(1) in that it is contrary to the prohibition of interference. restriction, and coercion of rights by employee groups guaranteed to employees delineated in Section 5-271. The contract provision infringes the right of employees to form, join, or assist any employee organization (and) . . . to bargain collectively through representatives of their own choosing . . . . Conn. Gen. Stat. Section 5-271(a).

After the requisite preliminary steps had been duly taken the matter came before the Board for hearing on May 29, 1981, at which the parties appeared, were represented and were fully heard. All parties filed written briefs.

On the whole record before it the Board makes the following findings of fact, conclusions of law, and order.

Findings of Fact

1. The State is an employer subject to the Act.

2. Both the Federation and the Council are employee organizations within the meaning of the Act.

3. The Federation is the exclusive statutory bargaining representative for employees of the State in the vocational-technical instructors' unit and entered into a collective bargaining agreement with the State, covering such unit, effective from July 1, 1979, through June 30, 1982.

4. Said contractcontains the following provision:

> The Union shall have the use of all faculty bulletin boards in faculty lounges for the purpose of posting appropriate notices and bulletins relative to the activities of the Union, and as bargaining agent shall have the exclusive access as may be privileged by law to employees* mailboxes for the purpose of distributing Union bulletins, leaflets, pamphlets and other material.

5. The Council is presently engaged in an organizational campaign through which it seeks to become the bargaining representative for the unit in an election which will take place in October, 1981, if the Council is able to get sufficient expression of desire for its representation to support a notification to the Board during the forthcoming window period between July 1, 1981 and August 31, 1981.

6. There are means of communicating with members of the unit other than through use of the mailboxes but their use is a convenient and inexpensive method.

7. Neither the State nor the Federation has interfered with the use of these alternative means of *communication* between the Council and members of the unit, but both of these parties intend to enforce the contractual limitation if this Board upholds it.

8. The Council has in fact used these alternative means of communication, but has been prevented by the State from the use of the mailboxes.

Conclusions of Law

1. It is the policy of the Act to ensure equality of opportunity to all employee organizations in their organizational drives, i.e., their efforts to reach and persuade voters to favor their selection as exclusive bargaining representative, during all times in which such organizational campaigns are permitted by law.

2. The role of a statutory exclusive bargaining representative entitles it to no favors and no special treatment from the employer in connection with such election campaigns.

3. A clause in a contract between an exclusive bargaining agent and an employer which purports to extend special favor to the agent in connection with an electoral campaign is an illegal attempt to circumvent the policies of the Act.

4. If that clause restricts the use of a means of communication between an employee organization and unit members, it is none the less illegal because other means of communication are left unimpeded.

Discussion

A line must be carefully drawn between the prerogatives of an exclusive bargaining representative and the duty of employers and unions not to discriminate improperly against competing employee organizations. The role of the exclusive 'bargaining agent necessarily entails some kinds of discrimination against other employee organizations. Only the statutory agent, for example, may bargain with the employer about the wages, hours, and other conditions of employment of unit members. It is proper and customary for collective bargaining agreements to protect this exclusive role for the statutory agent and exclude the performance of that role by competing organizations. That exclusion is a kind of discrimination, but a kind that furthers the policies of the Act.

When it comes to election of representatives, however, and campaigns for election by employee organizations, the policy of our labor laws is altogether opposed to the notion of exclusive or favored rights by an incumbent union, and to the taking of sides by the employer. Employees are given "the right of self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment...free from actual interference, restraint or coercion." Sec. 5-271(a) (emphasis supplied). This wide freedom guaranteed to the electors is interfered with and restrained if a legitimate employee organization is curbed or limited in its ability to lay its case before the electorate. Just as the right of the public to know is infringed when its sources of information are curbed so the right of the electorate to make a free and informed choice is infringed if the parties seeking their votes are restrained in their access to the voters.

It is true that the restraint in this case was not complete. The State allowed the Council every legitimate means of access to the voters except the use of the post boxes. It is clear, however, that the post boxes afforded one of the most economical, convenient, and effective means of communication. To allow the Federation full access to those means and deny such access to the Council constituted substantial restraint of and interference with the rights of the electors to untrammeled access to campaign literature from all competing labor organizations. It constituted discrimination in favor of one campaigner which could be justified only if its status as exclusive bargaining representative justified that favor. We find it did not.

No doubt there are some kinds of communication between the exclusive agent and members of the bargaining unit that only the exclusive agent is privileged to make or receive. If the communications were of that kind here, a stronger case could be made for exclusive use of the post boxes by the exclusive bargaining agent. That is not the present case. Here the ban excluded campaign literature issued by all competing employee organizations but one--the incumbent. And, as we hold, there is nothing about the incumbent's status as exclusive bargaining representative that entitles it to exceptionally favorable treatment by the employer in connection with an election campaign.

The respondents also urge that the challenged clause in the contract should be upheld because it was not unilaterally imposed by the State but "is the fruits of good faith collective bargaining." This contention cannot stand. Perhaps it could if the dispute were between the State and the Federation, but it is elementary contract law that an agreement does not bind those who were not privy to the contract or represented by a privy. Here the contracting parties seek to enforce tine clause in question against the Council but the Council is not bound by it. See, City of New London (police department), Dec No. 1128 (1973). Cf. Local 1219, IAFF v. Conn. Labor Relations Bd., 171 Conn. 342 (1976).

While there may be some grounds for distinguishing the decision of Judge Burns in Hartford Ed. Assn. v. Board of Ed., No. 20-82-1B Hfd. County, Aug. 24, 1977, we believe our decision here is fundamentally consistent with the reasoning and holding in that case.

O R D E R

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by An Act Concerning Collective Bargaining for State Employees, it is

ORDERED, that the State of Connecticut and the State Vocational Federation of Teachers Local 1797

I. Cease and desist from enforcing the clause in their contract which forbids use of mailboxes to competing employee organizations for the distribution of campaign literature in elections for (or against) exclusive bargaining representative and from interfering in any way with the use of such mailboxes for such purpose.

II. Take the following affirmative steps which the Board finds will effectuate the purposes of the Act:

(a) rescind the clause in the contract which forbids use of mailboxes by competing employee organizations for the distribution of campaign literature in elections for (or against) exclusive bargaining representative;

(b) Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting in a conspicuous place where the employees customarily assemble, a copy of this Decision and Order in its entirety; and

(c) Report to the Connecticut State Board of Labor Relations at its office in the Labor Department, 200 Folly Brook Boulevard, Fethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the State of Connecticut and the State Vocational Federation of Teachers Local 1797 to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

BY s/ Fleming James, Jr.
Fleming James, Jr., Chairman

s/ Kenneth A. Stroble
Kenneth A. Stroble

s/ Patricia V. Low
Patricia V. Low