In the Matter of Norwalk Board of Education
-and-
Local 1042, Council 4, AFSCME, AFL-CIO
Case No. MPP-16,037
Decision No. 3377

Appealed to Hartford Superior Court on 5/10/96
Docket No. CV96-560567

Withdrawn by Union on 12/22/97

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
NORWALK BOARD OF EDUCATION

DECISION NO. 3377

-and-

APRIL 1, 1996

LOCAL 1042, COUNCIL 4,
AFSCME, AFL-CIO

Case No. MPP-16,037

APPEARANCES:

Attorney Elizabeth A. Foley,
For the School Board

Attorney J. William Gagne, Jr.,
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On December 10, 1993, Local 1042 of Council 4, AFSCME, AFL-CIO (Union) filed a complaint with the Connecticut State Board of Labor Relations (Labor Board) alleging that the Norwalk Board of Education (School Board) had engaged and was engaging in practices prohibited by the Municipal Employee Relations Act (Act). Specifically, the Union alleged the following:

> Since on or about October 1, 1993 and all times thereafter the above named Respondent acting through its officers, agents and representatives have been in violation of the Municipal Employee Relations Act by repudiating the clear terms and conditions of the contract and Decision 2260.
>
> In particular the above named Respondents, Chief Specialist of the Food Service Department; Facilities Manager of the Board of Education and Maintenance Supervisor of the Board of Education all engaged in collusion with an attempt to undermine and defraud Decision 2260 by doing work which is certified and

recognized to be under the jurisdiction of Local 1042 of Connecticut Council #4, AFSCME, AFL-CIO.

After the requisite preliminary steps had been taken, the matter was heard by the Labor Board on June 5, 1995. The parties appeared, were represented by counsel and were fully heard. Both parties filed written briefs, the last of which was submitted on September 11, 1995.

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

FIN-DINGS 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 times material has represented a unit of custodial and maintenance workers employed by the School Board.

3. The parties have a collective bargaining agreement effective from July 1, 1992 through June 30, 1997.

4. The School Board employs an individual as Chef Specialist who is responsible for supervising the preparation and delivery of all the food that is served throughout the school system.

5. The food is delivered in two trucks. One truck is staffed by Local 1042 and the other is staffed by Local 1748.

6. Local 1748 is the exclusive bargaining representative for the food service employees bargaining unit.

7. On November 22, 1993, Mark Gorian, the Director of Facilities, was informed by the principal at Naramake Elementary School, that the Chef Specialist had personally delivered food for a school function, which had taken place on Saturday, November 20, 1993.

8. Gorian then spoke to the Chef Specialist and informed him that the delivery of food is bargaining unit work and that he is not authorized to deliver food. Gorian also informed the Chef Specialist that the School Board had an obligation to pay the driver for the "minimum call in pay".

9. During this conversation, Gorian asked the Chef Specialist who he would have called

in to perform the delivery and the Chef Specialist responded "Mr. Campbell". Mr. Campbell is a member of Local 1748.

10. Thereafter, the paperwork was completed and Mr. Campbell was paid for the "minimum call in pay".

11. On November 22, 1993, the Union filed a grievance alleging that "the food service cook is driving our truck on weekends". However, no specific section of the contract was listed as being violated.

12. On the same day, Gorian responded to Mosby's grievance stating in relevant part: I discussed this with Frank Harris and Jim Ielli. Paperwork was submitted on 11/22/93-AM. Instructed them to pay Mr. Campbell for a two hour call-in.

13. Article 22 of the collective bargaining agreement (prior practices) provides as follows:

> Previous benefits mutually agreed to as established practices heretofore and have not been superseded by the provisions of this Agreement, shall be a part of this Agreement.

14. The record evidence failed to establish that call in food service delivery on weekends was performed only by members of Local 1042.

CONCLUSIONS OF LAW

1. Prior to the Labor Board's decision in ***City of New Britain***, Decision No. 3290 (April 6, 1995), in the absence of an adequate defense, an employer committed an illegal refusal to bargain and a prohibited practice under the Act when it unilaterally transferred to non-bargaining unit personnel work that had been performed exclusively by bargaining unit employees in the past.

2. Absent exceptional circumstances, the standard enunciated in ***City of New Britain***, Decision No. 3290 (1995) will not be applied retroactively to cases in which the action complained of occurred prior to April 6, 1995.

3. The School Board did not violate the Act when the Chef Specialist drove a truck delivering food to Naramake school on November 20, 1993

4. The School Board did not violate the Act when it paid George Campbell, a member of Local 1748, two hours call-in pay.

DISCUSSION

The complaint filed by the Union contains two allegations. The first allegation is that the School Board violated the Act by repudiating the contract and Decision No. 2260. The second allegation is that certain management personnel acted in collusion by performing bargaining unit work. In its brief, the Union only argued that the School Board violated the Act by having non-bargaining unit employees perform bargaining unit work. No argument was made that the School Board's actions constituted a repudiation of contract. We, therefore, conclude that the Union has abandoned that claim.

The issue before us then is whether the School Board unilaterally assigned bargaining unit work to non-bargaining personnel when the Chef Specialist delivered food to Naramake School on November 20, 1993. This case implicates our recent decision in New ***Britain***, Decision No. 3290 (1995).

Prior to our decision in ***City of New Britain,*** Decision No. 3290 (April 6, **1995),** our case law concerning subcontracting and transfer of bargaining unit work had developed to include a general statement of law that provided that, in the absence of an adequate defense, an employer committed an illegal refusal to bargain and, thus, a prohibited practice under the Act when it unilaterally contracted out and assigned to non-bargaining unit personnel work that had been performed exclusively by bargaining unit employees. See ***Middletown Redevelopment Agency,*** Decision ***No.*** 1880 (1980); ***City*** of ***Torrington***, Decision No. 2172 (1983); ***Town of East Haven,*** Decision No. 2020 (1981); ***Board of Education of City of Hartford***, Decision No. 1938 (1980); ***City of Watertown,*** Decision No. 2515 (1986).

In New ***Britain*** we also stated that, absent exceptional circumstances, we will not retroactively apply the ***New Britain*** standard to cases in which the actions complained of pre-date April 6, 1995. We again emphasize, however, that, with the issuance of ***New Britain,*** parties have been put on notice that cases concerning actions post-dating April 6, 1995 will be evaluated using the New ***Britain*** standard. The record in this case reveals that the events alleged as a violation occurred prior to April 6, 1995 and that no exceptional circumstances exist. Thus, we will not retroactively apply the New ***Britain*** standard to the facts of this case.

Turning to the facts in the present case, we find that the Union has failed to prove that the work in question belongs exclusively to its bargaining unit. The record reflects that the delivery of food to the schools in the district was performed by both members of Local 1042 and Local 1748. Thus, the work has been shared. The Union does not dispute this fact, but its testimony seems to suggest that delivery of food on weekends was the exclusive domain of Local 1042. We believe that the evidence is too vague and sparse on this point to allow us to make a factual finding. Assuming, however, that the facts support the Union's contention we believe that the Union's position would inappropriately micro-divide the work

in order to prove a violation. For example, in ***Thomaston Board*** *of* Education, Decision No. **3008 (1992),** we declined to break up the intermediate steps of keeping attendance into minute segments. In the present case, we decline to **break** up food delivery into weekday and weekend segments. Accordingly, we dismiss.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby ORDERED that the Complaint herein be and the same hereby is DISMISSED.

CONNECTICUT STATE BOARD OF LABOR **RELATIONS***

s/Antonia C. Moran
Antonia C. Moran,
Board Member

s/Anthony Sbona
Anthony Sbona,
Board Member

* Chairman Margaret A. Lareau resigned prior to deliberations of this case by the Board.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 1st day of April, 1996 to the following:

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