STATE OF CONNECTICUT
LABOR DEPARTMENT
CONNECTICUT STATE BOARD OF LABOR RELATIONS

SEYMOUR BOARD OF EDUCATION
-and-
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 Seymour Board of Education

Attorney Ronald Cordilico
For the Seymour Education Association

DECISION AND DISMISSAL OF COMPLAINT

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 Teacher 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 the basis of the entire record before us, we make the following findings of fact and conclusion of law, and we dismiss the complaint.
FINDINGS OF FACT

The findings of fact are based upon the full stipulation of facts and exhibits submitted by the parties. (Ex. 3).

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

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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 judgement 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.

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ARTICLE XII – WORKING CONDITIONS

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C. CONTRACT YEAR

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

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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 School Board hired Sara Morgatto, as a second school 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 regular base salary / 185 teacher contract days x 20 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 regular base salary / 185 teacher contract days x 20 extra days) and a $300 special education stipend for a total of $71,960.

11. Benner’s salary for school year 2000-2001 was $65,485, plus a $300 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 Castellucci, 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, Dr. 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, Union President Patricia J. Humeniuk sent a letter to Eugene Coppola, 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.

**CONCLUSION OF LAW**

1. The Association failed to sustain its burden of proof to show that there was a unilateral change to a past practice involving a mandatory subject of bargaining.
DISCUSSION

The Association alleges in this case that the School Board unilaterally eliminated an additional twenty days worked by Mr. Benner, the school psychologist, for fifteen years.

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).

Here, the parties have stipulated 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. With regard to the latter consideration, generally work hours for teachers are a mandatory subject of bargaining, with the following express exceptions: “…the length of the student school year; the scheduling 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).

In order to determine whether the twenty days here are a mandatory subject of bargaining, we need to know the nature of the work at issue, i.e., whether or not it falls within the exceptions cited above. This we cannot do from the stipulated record before us. The stipulated facts refer only to “extra days of summer work.” This work could be a “summer program” (as the School Board asserts in its brief),¹ it could be a continuation of duties performed during the regular school year, or it could consist of administrative tasks.

As the complaining party, the Association bears the burden of proving that the unilateral change involved a mandatory subject of bargaining. We therefore conclude that the Association has failed to demonstrate that there has been a unilateral change to a past practice involving a mandatory subject of bargaining, and we dismiss the complaint.

¹ If the work hours in question are in fact a summer program, we agree with the School Board that it has the right to unilaterally eliminate extra programs without bargaining, both under the contract and under general principles of collective bargaining. *See West Hartford Education Association v. DeCourcy*, 162 Conn. 566, 583 (1972).
ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Teacher Negotiation Act, it is hereby

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

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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

Patricia V. Low
Patricia V. Low
Board Member

C. Raymond Grebey
C. Raymond Grebey
Alternate Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 25th day of June, 2002 to the following:

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Jaye Bailey Zanta, General Counsel
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