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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

COVENTRY SCHOOL COMMITTEE	:	
	:	
v.	:	M. P. NO. 13053
	:	
COVENTRY TEACHERS' ALLIANCE and RHODE ISLAND STATE LABOR RELATIONS BOARD	:	

D E C I S I O N

BOURCIER, J. This is an appeal from a decision of the Rhode Island Labor Relations Board dated January 10, 1979. The appellants are the Coventry School Committee; the respondents are the Coventry Teachers' Alliance and the Rhode Island State Labor Relations Board. Jurisdiction in this court is by virtue of §42-35-15, R.I.G.L., as amended.

I.

TRAVEL OF CASE

On July 18, 1977, an arbitration award and decision was made in the matter of the Coventry School Committee and the Coventry Teachers' Alliance, Local 1075, AFL-CIO. (Petitioners' Exhibit 1) In that award and decision, the arbitration panel discussed and disposed of, by decision, various issues and contentions that were preventing the respective parties from reaching agreement upon a mutually satisfactory Collective Bargaining Contract. Despite the arbitration panel's decision, the parties continued to agree to disagree; no written contract resulted, and the school teachers thereupon went out on strike. That strike action brought into the dispute between the School Committee and its teachers, this Superior Court; the Governor; the Commissioner of Education, Dr. Robinson and the Deputy Commissioner of Education, Dr. Arthur Pontarelli. After diligent effort by all, the school teachers went back to school and the School Committee went back to Coventry. In the immediate quiet that followed, the parties were expected to resolve their contract negotiations and to enter into a final Collective Bargaining Agreement. Within a day or so thereafter,

on October 7, 1977, (Tr. p. 58) the Coventry School Superintendent; the School Committee attorney; the President of the Teachers' Alliance and the Alliance's attorney, all met to finalize the terms, conditions and agreements, that would hopefully comprise the final Collective Bargaining Agreement. Disagreement rather than agreement resulted over an Article 5, 5-5, contained therein. Nonetheless the Alliance President brought the proposed contract to its printer to have copies made. The Alliance President thereafter delivered the printer's galley, or proof sheets of the proposed contract, to the School Committee and to the Assistant Superintendent, a Mr. Raymond Riley. Mr. Riley called everyone's attention to the fact that Article 5, 5-5, was included in the "Galley Sheet Contract". At that point, nothing appears to have been further accomplished on the contract. The reason for the contract negotiation inactivity was in part due to the fact that in November of 1977, a School Committee election took place in Coventry. That election resulted in a three person change of membership on the School Committee. (Tr. p. 16) Later, in mid February 1978, the Teachers' Alliance sent a letter to the School Committee requesting that the "Galley Sheet Contract", plaintiff's

exhibit number 5, be formally signed by the new School Committee. (Tr. p. 17) In late February, 1978, what the Alliance believed to be the final agreement, but what in fact was the Galley or proof sheets of the proposed contract from the printers, was signed by Stuart K. White, Jr., the Chairman of the Coventry School Committee. Mr. White affixed his signature to the Galley Sheet Contract, but with a condition that the provision therein designated as Article 5, 5-5, be excluded from the final draft of the contract. (Tr. pp. 17, 21, 97, 109 and 112) The Alliance thereupon, on April 12, 1978 filed an unfair labor practice charge with the State Labor Relations Board, alleging therein that the School Committee was "refusing to execute a Collective Bargaining Agreement previously agreed to by the parties, including the provisions of Article 5, 5-5." The School Committee in defense of that charge contended that it had at no time agreed to include Article 5, 5-5, in any written contract, and accordingly it was not refusing to execute the actual Collective Bargaining Agreement that had been agreed upon between the parties.

II.

THE SCOPE OF THIS COURT'S APPELLATE REVIEW

§42-35-15, R.I.G.L., 1956, as amended, confers

appellate jurisdiction in this Superior Court to review decisions of the various state administrative agencies. The scope of review permitted is however, limited. Fundamental in the appellate review statute is the basic legislative intention that this Court should not, and cannot, substitute its judgment on questions of fact for that of the respondent governmental agency. Lemoine v. Department of Mental Health, 113 R.I. 285, 291 (1974). This is so even in those cases where this Court, upon reviewing the evidence might be inclined to view the evidence differently than did the agency. Cahoone v. Board of Review, 104 R.I. 503, 506 (1968). Judicial scrutiny on appeal is limited to an examination and review of the certified record to determine if there is any competent evidence upon which the agency's decision rests. If there is such evidence, this Court is required to sustain the decision. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607 (1977); Prete v. Parshley, 99 R.I. 172, 176 (1965).

Where however, the findings or conclusions made by an agency are not supported by reliable or probative evidence in the record, or by the reasonable inferences that can be drawn therefrom, then the findings made by the agency are not

controlling upon this Court. Millerick v. Fascio, 384 A.2d 601 (1978); DeStefanis v. Rhode Island State Board, 107 R. I. 625 (1970); McGee v. Local 682, etc., 70 R.I. 200 (1944).

The Administrative Procedures Act permits this Court to reverse, modify or remand an agency decision only in those instances where the Court finds that substantial rights of the appellant have been prejudiced because of error of law, or where the agency's decision is in violation of constitutional or statutory provision; is in excess of the statutory authority of the agency; is made upon unlawful proceedings; is affected by error of law; is clearly erroneous in view of the reliable probative and substantial evidence in the whole record, or is arbitrary or capricious or characterized by an abuse of discretion or, represents a clearly unwarranted exercise of the agency's discretion.

III.

THE EVIDENCE

At the hearing before the respondent Board, William H. Berger, the president of the respondent Teachers' Alliance testified. He recalled that at the meeting held on October 7, 1977, between the School Superintendent; the Committee's

Attorney and the Alliance's attorney, that the parties had all agreed upon the terms of a final contract (Petitioner's exhibit 2) which included the disputed Article 5, 5-5. (Tr. pp.11,13) On cross-examination, however, it became apparent, or at least should have become apparent, that Mr. Berger's previous definite recollection, was in fact nothing more than an assumption on his part that the meeting participants, and the School Committee thereafter, had agreed upon the disputed contract provision language. Mr. Berger was in reality referring back to the arbitrator's award and not to the proposed final contract draft negotiations. (Tr. pp. 26,27,36,37) He admitted that the School Superintendent at the October 1977 contract meeting at the Committee attorney's office, objected to the contract language in Article 5, 5-5. (Tr. p. 25) Mr. Berger also admitted on cross-examination, that Article 5, 5-5, was never discussed with the School Committee after the date of the arbitration award (July 18, 1977) and that his testimony regarding the School Committee's approval of the disputed contract provision was actually based upon an assumption that he concluded from the fact that the "School Committee's arbitrator" did not dissent from the arbitration award. (Tr.pp.30-31)

How that assumption could lead to the conclusion that the School Committee, had in fact some three months later agreed to include Article 5, 5-5 of the arbitration award in the Collective Bargaining Contract defies logic. Particularly is that so, in light of Mr. Berger's uncontradicted testimony that after the date of the arbitration award, which was July 18, 1977, Article 5, 5-5 was never again discussed with the School Committee. (Tr.p.29)

Illustrative of Mr. Berger's reasoning leading to his conclusion that the School Committee both agreed to, and knew of the inclusion of Article 5, 5-5, in the final contract proposal is his testimony which reads in part as follows:

Q. 99: Mr. Berger, referring to the meeting at Arthur Capaldi's office, it has been brought out that there was certain language written in addition to Article 5, and that language was changed pursuant to some suggestion of Mr. Roche, is that correct?

A. Yes.

Q.100: Do you remember what the specific language was?

A. I believe it had the whole paragraph from the arbitration. I'm not sure, but I think it had a little more in it than it states there now.

Q.101: Do you remember what Mr. Roche said?

A. No, I don't honestly -- I can't remember exactly what he said. I know he objected to what was written therein. It was changed, but I can't remember exactly.

Q.102: Was it changed immediately at that time?

A. Yes, it was.

Q.103: In front of Mr. Roche and Mr. Capaldi?

A. Yes, it was.

Q.106: That particular section, the section that was written in?

A. I believe so. The whole arbitration award was given to the School Committee, and that was part of it so I believe the School Committee had seen that just like they had seen the rest of the arbitration award.

Q.107: But my question specifically was, whether or not they had seen the contract with that particular provision incorporated into the contract?

A. They saw the arbitration award.

Q.108: I realize what you are saying. They saw the arbitration award, but it doesn't answer my question. Did the School Committee see--was the School Committee aware of the proposed contract with language having been inserted?

A. I believe they should have been aware of it.

Q.109: Were they aware of it at the time of Mr. Roche's and Mr. Capaldi's meeting?

A. They were aware of that as much as they were aware of any other section of the contract that we were talking about at that time.

Q.110: Was that a section of the contract at that particular time?

A. Part of the arbitration award?

Mr. Gallo: Yes.

Q. 111: Your opinion, in order words, is that arbitrator's award required that it be in the contract, is that what you are saying?

A. Yes.

Q. 112: Therefore, the School Committee must have known that that was going too in the contract?

A. Yes.

Q.113: But apart from your opinion, was the School Committee specifically aware of a contract having been printed or proposed with that section included?

A. You best ask the School Committee.

(Tr. pp.26-27)

Q.115: During the time of the negotiations, from the beginning of the negotiations through the negotiations, as they occurred, as

they were taking place during the strike with the assistance of the people that you mentioned in your testimony, was this particular clause brought up?

A. Yes.

Q. 116: Where?

A. In the arbitration.

Q. 117: Apart from the arbitration, during the negotiation, was this particular award or provision ever discussed?

A. Are you talking about prior to the arbitration or after the arbitration award?

Q. 118: After the arbitrator's award.

A. This section, no, it never was discussed.

Q. 119: In other words the arbitrator's award came down and was rendered?

A. Yes. (Tr. pp. 28-29)

A review of the transcript, which contains the

testimony of the others who attended the October 7, 1977 meeting at Mr. Capaldi's law office, discloses clearly that neither School Superintendent Roche nor Mr. Capaldi, representing the Committee, at any time, ever agreed to include the disputed proposed contract provision, Article 5, 5-5, in the final Collective Bargaining Contract. (Tr. pp.47,48,49,50,59,60,79-80,81) In fact, Superintendent Roche testified that Article 5, 5-5, was never discussed until February 15, 1978 at a School Committee meeting at which time he discussed the matter with the Assistant Superintendent of Schools, Raymond Riley, who advised the Committee not to agree to include it in the final contract. (Tr.pp.60-62) If there was any question about the Superintendent's position as to any agreement by the Committee on Article 5, 5-5, it should have been resolved by his pointed answer to counsel's question on page 64 of the transcript.

Q. 26: My question to you, sir, is, has any School Committee to this date expressed a willingness to sign a contract that included Article 5, 5-5?

A. No.

The fourth person present at the October 7, 1977 meeting was attorney Richard Skolnik. Mr. Skolnik did not testify. However, the record is replete with statements from Mr. Skolnik concerning his impressions of what had been discussed and agreed upon at the meeting. None of his statements, however, are evidence, and of course cannot be considered by this Court as evidence. The Board on the other hand, erroneously believed that Mr. Skolnik had in fact testified and given evidence as a witness. (Tr. p. 92)

It follows from a thorough and detailed analysis of the transcript certified to this Court that the only evidence before the Board regarding any agreement on the part of the School Committee to the proposed Collective Bargaining Agreement with the disputed Article 5, 5-5, provision included therein, comes from Mr. Berger in his direct examination. A close reading of his entire testimony reveals however, as previously noted, that his conclusion was simply based upon conjecture and assumption.

Mr. Stuart K. White, Jr., the present Chairman of the School Committee did in fact sign what he believed to be the final contract proposal, in mid February 1977, but specifically excluded from it, on the advice of Mr. Riley, the Assistant

Superintendent of Schools, Article 5, 5-5. Mr. White testified that the School Committee had never agreed to include that provision in the Collective Bargaining Contract.

The Teachers' Alliance in its legal memorandum contends that because the Assistant Superintendent of Schools, Mr. Riley, was not called by the School Committee as a witness during the hearings before the State Labor Board, that this Court should conclude from that fact that Mr. Riley's testimony would have been adverse to the School Committee's position. The Teachers' Alliance cites in support of that contention the case of Benevides v. Canario, 111 R.I. 204 (1973). The Teachers' Alliance misconceives and misconstrues the thrust of the Opinion in Benevides. In the instant case, there is no evidence whatsoever in the record to show whether or not Mr. Riley was in fact available to testify as a witness during the hearing. In addition, there is no evidence in the record to show whether or not Mr. Riley was unavailable to the Teachers' Alliance, if it wished to call him as a witness. Accordingly, the inferences that the Teachers' Alliance requests this Court to draw from the fact that Mr. Riley did not testify, would be both unreasonable and unwarranted in view of the clear language of our

Supreme Court in Anderson v. Friendship Body Works, Inc., 112 R.I. 445, 451 (1973).

The Labor Board's decision, if allowed to stand, will in effect force the School Committee to include in its final Collective Bargaining Agreement with the Teachers' Alliance, a contract provision which the School Committee never agreed to include in that contract. It is important to note, that the Labor Board never made any finding to the effect that the Committee had in fact agreed to include Article 5, 5-5, in the final Collective Bargaining Agreement. The failure to find that fact, which was an issue upon which the Teachers' Alliance had the burden of proof, in view of their complaint, implies a finding against mutual agreement by the parties upon Article 5,5-5. Gilbert v. Haywood, 37 R.I. 303, 320 (1914) Nonetheless, the Labor Board thereafter proceeded to enter an order against the School Committee which implied that it had made such a finding. On the record of the evidence as certified to this Court, if the Board had in fact made such a finding, that finding would not be supported by the reliable or probative evidence in the record or by the reasonable inferences that could be drawn therefrom.

Contrary to the direct contention of the

Teachers' Alliance made in this appeal, there is no rule of law, legislative or judicial, that obligates the School Committee to sign a contract which contains therein a provision upon which mutual agreement has not been reached. In fact, the opposite is the clear law. §28-9.3-4, R.I.G.L., 1956, as amended, obligates parties to Collective Bargaining negotiations to reduce any "agreement resulting from negotiations" to writing. Absent mutual agreement on Article 5, 5-5, the School Committee is not required to include that provision in its contract. The fact that the arbitration panel refused to order that Article 5, 5-5, be included in the Collective Bargaining Agreement, as requested by the Teachers' Alliance, and instead suggested different contract language, does not in and of itself obligate the School Committee to agree to include the proposed or suggested language in the Collective Bargaining Agreement. Town of Scituate v. Scituate Teachers' Association, 110 R.I. 679, 682, Footnote #2. (1972)

It appears from the decision of the Labor Board in this case, that the Board misconceived as did the Teachers' Alliance, the obligation of the parties to reduce the agreements made by them to writing. §28-9.3-4, R.I.G.L. requires only that

agreements, meaning mutual agreements, be reduced to writing. The law does not in any manner suggest that anything other than mutual agreements be reduced to writing. In this case on the issue of the disputed Article 5, 5-5, it is absolutely clear from the evidence that there was never any mutual agreement reached on that provision between the School Committee and the Teachers' Alliance. Accordingly, there was no legal obligation imposed upon the School Committee to sign a Collective Bargaining Agreement which included a contractual provision which it had never agreed to include therein.

DECISION

A careful reading of the transcripts certified to this Court by the respondent Labor Board, clearly indicates that there is no reliable, probative evidence contained therein that permits this Court to find that the Coventry School Committee and the Teachers' Alliance mutually agreed to include in their final Collective Bargaining Agreement, the disputed Article 5, 5-5, provision. The Labor Board never made any finding that mutual agreement on that issue had been met or made between the

parties. Accordingly, the Coventry School Committee should not be compelled to sign a Collective Bargaining Agreement which contains Article 5, 5-5, therein. The Labor Board has clearly misconceived the material evidence before it and has proceeded therefrom as if the School Committee had in fact agreed to include Article 5, 5-5, in the final Collective Bargaining Agreement. That conclusion by the Board is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Findings by an agency, whether implied or explicit, upon which its decision is based, which are not supported by the reliable, probative and substantial evidence in the record are not immune from judicial review by this Court. Millerick v. Fascio, 384 A.2d 601 (1978); McGee v. Local 682, etc., 70 R.I. 200 (1944).

The decision of the Labor Board is based entirely upon the testimony of the witness William Berger, regarding any agreement by the School Committee to include Article 5, 5-5, in the final Collective Bargaining Agreement between the Teachers' Alliance and the Coventry School Committee. That testimony when examined, is based entirely upon conjecture and assumptions

that were not warranted by the evidence or by any reasonable inferences that could be drawn therefrom. Accordingly, the decision of the Labor Board finding that the Coventry School Committee's refusal to sign the Collective Bargaining contract with Article 5, 5-5, included therein constituted an unfair labor practice is reversed.

The Labor Board's order to the Coventry School Committee requiring it to execute the terms of the Collective Bargaining Agreement with Article 5, 5-5, therein, is likewise reversed.