HELEN BRYANT, et al.,

Grievants,

v.

DOCKET NO. 02-23-047

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants are thirty-one bus operators, mechanics, and maintenance personnel employed by the Logan County Board of Education ("Board"), and members of Amalgamated Transit Union, Local 1539. The filed this grievance against the Board on February 12, 2002:

> The Logan County Board of Education has, in a continuing course of conduct, arbitrarily and capriciously discriminated against us as a result of our union affiliation by refusing to meet and deal in good faith with our union ATU Local 1539, which is our designated representative, over workplace problems and issues and other terms and conditions of employment.
>
> As part of this course of conduct, the Logan County Board of Education has failed and refused to provide the union with information in a timely manner in order to evaluate, file, and/or process grievances.

The statement of grievance does not include the relief sought by Grievants, but it is evident they want the Board to recognize and deal with the union in good faith.

By letter dated February 14, 2002, Assistant Superintendent David Godby informed the Grievants the matter could not be resolved at level two, and instructed them to appealto level four. Grievants appealed to level four on February 22, 2002. A level four hearing was scheduled for August 5, 2002. Prior to the hearing, the parties conferred and, after reaching certain stipulations regarding portions

of the case (See footnote 1) , agreed to submit the primary legal issue on briefs for resolution by the Administrative Law Judge. A briefing schedule was set, and this matter became mature for decision on September 15, 2002, the deadline for response briefs to be filed. (See footnote 2) Grievants were represented by Charles F. Donnelly, Esq., Donnelly & Carbone, and the Board was represented by Daniel J. Stickler, Esq., Jackson & Kelly. (See footnote 3)

The material facts giving rise to this grievance are not in dispute, and are set forth in the following findings.

FINDINGS OF FACT

1. Grievants are thirty-one bus drivers, mechanics, and maintenance personnel employed as bus operators for the Board, and are members of Amalgamated Transit Union, Local 1539.

2. On June 8, 1971, after conducting a representational election, the West Virginia Department of Labor certified the Amalgamated Transit Union Local 1539 (“Union”)as the collective bargaining representative for the bus drivers, mechanics and maintenance personnel employed by the Logan County Board of Education. (Grievant's Exhibit 1). (See footnote 4)

3. Thereafter, the Board and the Union negotiated and entered into a series of collective bargaining agreements, one example dated July 6, 1971, and one January 2, 1980. (Grievants' Exhibits 2 and 3) The last written agreement is dated December 18, 1981. (Grievants' Exhibit 4)

4. All of the agreements contain an express provision recognizing the Union, the latest reading as follows:

> The Board recognizes the Union as the representative for the employees of the student transportation services operated by the Board. These employees include mechanics, transportation aides, as well as drivers.

5. The 1971, 1980, and 1981 contracts contain provisions authorizing the Union “to consult with the Board or its designated representatives pertaining to wages, hours, and working conditions at the appropriate time” for planning and preparing the budget each year. (Art. 11, 1971 contract, Grievants' Exhibit 2; Art. 17, 1980 contract, Grievants' Exhibit 3; and Art. 12, 1981 contract, Grievants' Exhibit 4)

6. The Board's Rules and Regulations for Pupil Transportation currently provide as follows:

> Employees shall have the opportunity to consult with the designated representative of the Board on wages, hours and working conditions at the appropriate time for preparation and planning of the budget each year.

G. Ex. 5.

7. Article 17 of the 1981 agreement further contains an anti-discrimination provision, as follows:

> The Board recognizes the right of school employees to become members of employee organizations. Participation in such organizations shall be on a voluntary basis. There shall be no discrimination by either party to this memorandum for employees' participation or lack of same in such organization. Both parties further agree to discourage acts of discrimination by employees in all respects.

8. The 1981 agreement additionally establishes the duration of the agreement, as follows:

> This memorandum shall become effective immediately upon acceptance by the duly authorized representatives of each party. This memorandum shall remain in effect for an indefinite period, or until such time as either party desires to initiate changes. At such time, the party which desires changes shall notify the other party at least ninety (90) day's in advance.

9. In their earlier agreements, the parties expressly agreed to settle “all grievances and complaints ... fairly and promptly” through the established grievance procedure. Moreover, these agreements specifically recognized the Union's role in the grievance procedure and provided that,

> Employees and/or their Union representatives, as selected by said employee or group of employees will be given every opportunity to voice their grievance or complaints without fear of reprisal. (See, Ex. 2, Art. 3; Ex. 3, Art. 3).

10. In May 2001, representatives of the Board announced it no longer had any contractual obligations or relationships with the Union, and the Board was under no obligation to deal with the Union.

11. Further attempts on the part of the Union to meet with the administration of the Board to discuss terms and conditions of employment were unsuccessful, resulting in the filing of the instant grievance by the Union.

DISCUSSION

Grievants are members of a union who claim their contract with the Board has been breached and ask the Grievance Board to hold the contract enforceable. The Board argues the contract is invalid. Both agree the instant grievance presents a purely legal issue: Whether Grievants are entitled to enforcement of the 1981 Agreement with the Board.

It is well-settled that "a union cannot force itself upon a public employer absent a statutory requirement mandating that the public employer recognize the union." Kirkpatrick v. Mid-Ohio Valley Tr. Auth., 188 W. Va. 247, 423 S.E.2d 856 (1992); City of Fairmont v. Retail, Wholesale, and Dept. Store Union, AFL-CIO, 166 W. Va. 1, 283 S.E.2d 589 (1980). Grievants argue however, that, because the Board voluntarily recognized and entered into a collective bargaining agreement with the Union, the Union, is as a matter of law, entitled to enforcement of the contract and recognition of the commitment rights existing under well established principles of labor law. See Local 598 AFSCME v. City of Huntington, West Virginia, 173 W. Va. 403, 317 S.E.2d 167 (1984)(Collective bargaining agreements for public employees - once agreed upon - are legally enforceable); Triggs v. Berkeley County Bd. of Educ., 188 W. Va. 435, 425 S.E.2d 111 (1992)(Court looks to general principles of labor law to determine custom and usage of statutorily created seniority system)); See also, Local Union 812, ATU v. Central West Virginia Transit Authority, 179 W. Va. 31, 365 S.E.2d 76 (1987).

The West Virginia Supreme Court of Appeals has determined that, notwithstanding the absence of a statutory provision authorizing public employee bargaining, a municipality or governmental entity may voluntarily enter into a collective bargaining agreement. In Cityof Huntington, supra, the City claimed that a collective bargaining agreement between it and a union representing sanitation workers was not enforceable because the legislature had not adopted a statute allowing or requiring public employee collective bargaining. The Court disagreed and found the statutory authority of a municipality to enter into contracts and generally conduct business and incur obligations on behalf of the city authorizes a city to enter into a collective bargaining agreement. The Court noted:

> Certainly Huntington had the right to enter into individualized contracts with sanitation workers. If municipal authorities believed it would be more efficient to enter into a general agreement, we do not believe that barring that alternative approach serves any compelling public policy.

Id. at 109.

Furthermore, the Court indicated that a governmental entity cannot reap the benefits of such an

agreement and then simply terminate it at its pleasure. The Court stated:

> For a period of more than ten years, the City of Huntington has engaged in collective bargaining agreements with major municipal unions. It is apparently the City's considered judgment that contracting for necessary municipal services in this way has, on the balance, been prudent. Because the city has reaped the benefits of this efficient approach, it cannot now be heard to say it will not suffer the consequences of agreements that have been as binding on the other party. (Emphasis added).

Id.

In reaching its decision, the West Virginia Supreme Court of Appeals relied upon an Ohio case addressing public employee collective bargaining between employees and a county board of education. In Dayton Classroom Teachers Assn. v. Dayton Board of Education, et al., 41 Ohio St.2d 127, 323 N.E.2d 714 (1975), union members challenged the refusal of a county board of education to permit certain grievances to be arbitrated pursuant to “Master Agreements” reached after collective negotiations. The county boardasserted, in part, that the agreements were generally beyond their authority, and, more specifically, an improper delegation of the board's power. The Ohio court disagreed and determined that a board of education does not exceed its statutory power when it voluntarily enters into a collective bargaining agreement:

> Neither reason nor authority prohibits a board of education from manifesting its public decisions in written form and calling the writing an agreement or contract. It cannot be seriously argued that entering into such agreement is a departure from, or surrender of, independent exercise of a Board's policymaking power.

Noting the county board's ability to enter into contracts, the Court concluded “that a board of education is vested with discretionary authority to negotiate and to enter into a collective bargaining agreement with its employees.” Id. at 132. Ultimately, the Ohio court found the contract to be enforceable and ordered the Dayton Board of Education to arbitrate the issues.

The analysis applied by the Court in City of Huntington and Dayton Classroom Teachers is applicable here. Like a municipality, a county board of education has the statutory authority to enter into a contract. W. Va. Code § 18-5-5 provides:

> The county board of education shall be a corporation by the name of “The board of education of the county of . . .,” and as such may sue and be sued, plead and be impleaded, contract and be contracted with. (Emphasis added)

Thus, the Board may contract with entities such as a union - and enjoy the benefits and be responsible for the commitments of such an agreement.

Therefore, since the Board has already recognized and bargained with the Union in the past, it is obligated to continue this relationship unless and until it properly notifies the Union it wishes to alter the terms or terminate the contract. See Kirkpatrick, supra. (West Virginia Supreme Court of Appeals strongly suggests that, while a public employeris under no statutory obligation to initially enter into a collective bargaining agreement with a Union, it must honor any agreement and rights once established.)

While many of the provisions contained in the Agreement have been superceded by statutory enactments, and therefore incorporated into the Agreement by its own terms, there remain terms and conditions of employment still left up to negotiation between the Board and its employees. The Board's refusal to meet and negotiate with the Union amounts to a breach of an enforceable contract.

The foregoing is supplemented with the following Conclusions of Law.

CONCLUSIONS OF LAW

1. “A union cannot force itself upon a public employer absent a statutory requirement mandating that the public employer recognize the union.” Kirkpatrick v. Mid- Ohio Valley Tr. Auth., 188 W. Va. 247, 423 S.E.2d 856 (1992); City of Fairmont v. Retail, Wholesale, and Dept. Store Union, AFL-CIO, 166 W. Va. 1, 283 S.E.2d 589 (1980).

2. Notwithstanding the absence of a statutory provision authorizing public employee bargaining, a municipality or governmental entity may voluntarily enter into a collective bargaining agreement. Local 598 AFSCME v. City of Huntington, West Virginia, 173 W. Va. 403, 317 S.E.2d 167 (1984)(Collective bargaining agreements for public employees - once agreed upon - are legally enforceable); Triggs v. Berkely County Bd. of Educ., 188 W. Va. 435, 425 S.E.2d 111 (1992)(Court looks to general principles of labor law to determine custom and usage of statutorily created seniority system)); See also, Local Union 812, ATU v. Central West Virginia Transit Authority, 179 W. Va. 31, 365 S.E.2d 76 (1987).

3. W. Va. Code § 18-5-5 provides:

> The county board of education shall be a corporation by the name of “The board of

> education of the county of . . .," and as such may sue and be sued, plead and be impleaded, contract and be contracted with. (Emphasis added)

4. Thus, the Board may voluntarily contract with entities such as a union - and enjoy the benefits and be responsible for the commitments of such an agreement.

5. Since the Board has already recognized and bargained with the Union in the past, it is obligated to continue this relationship unless and until it properly notifies the Union it wishes to alter the terms or terminate the contract. See Kirkpatrick v. Mid-Ohio Valley Transit Authority, 188 W. Va. 247, 423 S.E.2d 856 (1992).

6. In this case, the Board, while agreeing to meet with any individual bus operators, has refused to meet with the Union concerning employee wages and other terms and conditions of employment. In doing so, the Board has violated both the law and its own policies.

Accordingly, this grievance is **GRANTED**, and the Board is hereby **ORDERED** to immediately cease and desist in its refusal to recognize and bargain and negotiate with representatives of ATU Local 1539 according to the terms and conditions set forth in the 1981 Memorandum Agreement between the Board and the Union.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. However, the appealing party is required byW. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: November 21, 2002

Footnote: 1

The Board stipulated it had no objection to meeting with the Union during budget meetings. The portion of the grievance concerning the Board's failure to respond to certain information requests propounded by Grievants was withdrawn.

Footnote: 2

Grievants' Post-hearing Brief was received on September 4, 2002. The Board did not submit a post-hearing brief.

Footnote: 3

By previous Order dated May 17, 2002, following submission of briefs, the undersigned Administrative Law Judge determined the Grievance Board had jurisdiction of this matter.

Footnote: 4

The exhibits referenced herein are contained in the Appendix to Grievants' initial brief on the jurisdiction issue submitted on or about April 4, 2002.