

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT **STATE** BOARD OF LABOR RELATIONS

In the matter of

**CITY OF HARTFORD AND ITS BOARD  
OF EDUCATION**

**-and-**

**LOCAL 818, COUNCIL 4, AE'SCME  
AFL-CIO**

Case **No.** MDR-11.655

Decision No. 2812

June 13, 1990

A P P E A R A N C E S :

Helen Apostolidis, Attorney  
for the City and the Board of Education

Barbara Collins, Attorney  
for the Union

Decision and Declaratory Ruling

On October 12, 1988, **Locals** 287 and 818 of Council 4, AE'SCME, AFL-CIO (the Union or Petitioner) filed with the Connecticut State **Board** of Labor Relations (the Labor Board) a petition for declaratory ruling. At the informal conference held by the Assistant Agent to the Board, the petitioner submitted a draft stipulation of facts. **On** May 16, 1989, petitioner filed an amended petition for declaratory ruling, deleting any reference to Local 287. **The** petition alleged in relevant part as follows:

**Local** 818 seeks a ruling that in regards to the pension benefits for the **Board** of Education employees which are controlled by a municipal charter that (a) the representatives of Municipal government are required to participate in negotiations and accept or reject the agreement within the time periods listed in the Municipal **Employee** Relations Act; and (b) in the event that interest arbitration occurs that the arbitrators have full authority to issue an award which mandates the benefits that the City pension must provide to Board of Education employees, even if the award modifies the Municipal Charter.

On May 16, 1989, the parties reached a complete stipulation of facts and exhibits, waiving a hearing before the Labor Board. The Union's post hearing brief was received on August 1, 1989; the City's brief was received on August 21, 1989. On the basis of the record before us, we make the following decision and declaratory ruling.

#### FINDINGS OF FACT

Based upon the stipulation of the parties and the exhibits, we make the following findings of fact.

1. **Local** 818 of Council 4, AFSCME, AFL-CIO (the Union) represents the supervisory employees of the Hartford Board of Education.

2. These employees of the Board of Education are members of the City's Municipal Employees Retirement Fund.

3. **The** Union has sought to modify the pension benefits of its members through current negotiations for a successor collective bargaining agreement.

4. In order to modify the pension benefits, the Charter of the City of Hartford must be amended. (Exhibit 1, Chapter III, Section 10, City of Hartford Charter).

5. The process to amend the **Charter** requires approval by the City of **Hartford Common** Council. (Exhibit 1, Chapter III, Section 12, City of Hartford Charter).

The **Common** Council is a separate governing body from the Board of Education. (Exhibit 1, Chapter III, Section 1; Chapter XVIII, Section 1).

7. The Board of Education has no authority to approve changes in the City pension. The Board of Education does not have sole and exclusive control over pension improvements in the pension for Board of Education employees.

8. **The** Board of Education does not contribute to the City pension on &half of its employees.

9. **The** Union and the Board of Education reached an agreement regarding improvement in pension benefits for **Local** 818 members. (Exhibit 2). These improvements were submitted by the Board of Education to the Common Council for approval by letter dated June 14, 1988. (Exhibit 3).

10. **The** Common Council referred the agreement reached by the Board and Local 818 to its Operating and Management Budget **Committee**, which rejected the pension agreement.

11. **The** Union and the Board of Education modified its original agreement which was resubmitted to the Common Council Operating Management and Budget Committee. **This** agreement was also rejected.

12. Subsequently, the Union and the Hoard of Education did reach an agreement on the terms of the collective bargaining agreement and all terms, except those concerning improvement in pension benefits have been **implemented.**

13. **During** the negotiations of a prior collective bargaining agreement, the parties reached an agreement concerning improvement in the pension benefits. These improvements were never approved or implemented by the **Common** Council.

## I. INTRODUCTION

The issue raised by the petition is whether the City's **representatives** or the School Hoard's representatives can negotiate the issue of pensions.<sup>1</sup> In deciding this issue, we are faced with two statutory provisions of the **MERA**, Sections 7-474(b) and 7-474(d), which are arguably difficult to reconcile. Also relevant to this discussion are Sections **10-220** and **10-222** C.G.S., which define the duties and powers of local school boards to operate the local educational system. In addition, the Supreme Court has analyzed the role of local school boards in the collective bargaining process. Local 1186 AF'SCME v. Hoard of Education of the City of New Britain, 182 Conn. 93 (1980). This decision and the above referenced statutory provisions are all relevant to answering the petition and will be discussed at length below.

## II. BACKGROUND

The general process for the negotiations and funding of collective bargaining agreements in the municipal sector is set forth in Section 7-470(c) and 7-474 of the C.G.S. Section **7-470(c)** concerns the duty of a municipal employer and the exclusive bargaining representative to bargain in good faith. **Once** an agreement is reached, the municipal employer must make a request to the legislative body for funds necessary to implement the agreement and for approval of any provision which conflicts with "any charter, special act, ordinance, rule or regulation adopted by the municipal employer..." 7-474(b) C.G.S. **Once** these conflicting contractual provisions are approved by the legislative body, "the terms of the agreement prevail over any charter special act, ordinance, rules or regulations adopted by the municipal employer" Section 7-474(f). However, these above referenced provisions do not generally apply to local school boards. If a school board has sole and exclusive control over conditions of employment of its employees, then the legislative **body** of the municipality and for that matter, any representative of the City has absolutely no power to review and

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<sup>1</sup> We have **consistently** held that the terms and conditions of a retirement, pension and disability plan vitally affect the compensation and conditions of employees who will be subject to them and are therefore mandatory subjects of bargaining under the Act. Town of Hamden, Dec. No. 1277 (1975); City of Norwich, Dec. No. 1239 (1974); rev'd. on other grounds 173 Conn. 210 (1977); State of Connecticut, (Pension Coordinating Committee), Dec. No. 2044 (1981); State of Connecticut, Dec. No. 2006 (1981). This is also the rule of the **NLRB** and the federal courts. See Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157,159, 78 L.R.R.M. 2974 (1971); Inland Steel Co. v. NLRB, 170 F. 2d 247 (7th Cir 1948).

approve contract provisions negotiated by the school board. Section 7-474(d) states that if a municipal employer is a "...**district**, school board, housing authority or other authority established by law, which by statute, charter, special act or ordinance has sole and exclusive control over the appointment of and the wages, hours, and conditions of employment of its employees" it has the authority to enter into a collective bargaining agreement without approval of the legislative **body** of the municipality. In the present case, the parties have stipulated that the School Board does not have sole and exclusive control over the pension benefits. However, we believe that a thorough discussion of the sole and exclusive control language found in Section 7-474(d) C.G.S. is absolutely essential to a full understanding of the scope of our ruling. **This** discussion follows below.

We turn first to Section **10-220** and 10-222, which appear to **vest** sole and exclusive control to local boards of education. **Section 10-220**<sup>2</sup> defines the duties of **local** boards of education and includes the power to "...**employ** and dismiss teachers of the schools of such district subject to

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<sup>2</sup> C.G.S. Sec. 10-220(a) Duties of boards of education. Each local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state as defined in section **10-4a** and provide such other educational activities as in its judgment will best serve the interests of the school district: provided any board of education may secure such opportunities in another school district in accordance with provisions of **the general** statutes and shall give all the children of the school district as nearly equal advantages as may be practicable; shall have charge of the schools of its respective school district; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make **recommendations** based on such study to the town; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes and at all times shall insure all such buildings and all capital **equipment** contained therein against loss in an amount not less than eighty percent of replacement cost; shall determine the **number**, age and qualifications of the pupils to be admitted into each school; shall employ and dismiss the teachers of the schools of such district subject to the provisions of section **10-151** and **10-158a**; shall designate the school which shall be attended by the various children within the school district; shall make such provisions as will enable each child of school age, residing in the district to attend some public day school for the period required by law and provide for the transportation of children whenever transportation is reasonable and desirable, and for such purposes may make contracts covering periods of not more than five years; may arrange with the board of education of an adjacent town more conveniently; shall cause each child seven years of age and over and under sixteen living in the school district to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of it by the town or necessary to carry into effect the powers and duties imposed by law.

the provisions of Sections 10-151 and 10-158(a)..." Section 10-222<sup>3</sup> outlines the appropriation and budget process for local school boards and makes it clear that the "money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education". The Connecticut Supreme Court in interpreting these statutory provisions has stated that the "[T]he clear **intendment** of Section 10-222, when read in connection with Section 10-220, is that all appropriations for school purposes shall be made to the board of education to be expended by that board. **The** number of teaching positions necessary in the public schools, the need for a curriculum coordinator, and the maintenance of school properties are matters within the sound discretion of the board of education under General Statute Section 10-220." Board of Education v. Ellington, 151 Conn. 1,9 (1963); See also Herzig v. Board of Education, 152 Conn. 144 (1964); Wallingford v. Wallingford Board of Education, 152 Conn. 568 (1965); Waterbury Teachers Association v. Furlong, 162 Conn. 390 (1972).

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<sup>3</sup> Sec. 10-222. **Appropriations** and budget. Financial information system. (a) Each local board of education shall prepare an itemized estimate of the cost of maintenance of public schools for the ensuing year and shall submit such estimate to the board of finance in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations for the school district, not later than **two** months preceding the annual meeting at which appropriations are to be made. The money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education. Any such board may transfer any unexpended or uncontracted-for portion of any appropriation for school purposes to any other item of such itemized estimate. Expenditures by the board of education shall not exceed the appropriation made by the municipality, with such money as may be received from other sources for school purposes. If any occasion arises whereby additional funds are needed by such board, the chairman of such board shall notify the board of finance, board of selectmen or appropriating authority, as the case may be, and shall submit a request for additional funds in the same manner as is provided for departments, boards or agencies of the municipality and no additional funds shall be expended unless such supplemental appropriation shall be granted and no supplemental expenditures shall be made in excess of those granted through the appropriating authority. The annual report of the board of education shall, in accordance with section 10-224, include a summary showing (a) the total cost of the maintenance of schools; (b) the amount received from the state and other sources for the **maintennance** of schools, and (c) the net cost to the municipality of the maintenance of schools. (b) The commissioner of education shall develop a financial information system to assist local and regional boards of education in providing to the state board of education budget and year-end expenditure data in conformance with the provisions of section 10-227. The financial information system shall be consistent with regulations concerning guidelines for municipal financial reports adopted by the secretary of the office of policy and management pursuant to the provisions of section 7-394a.

These above referenced statutory provisions and the court's interpretation of them suggest that a school board has sole and exclusive control over **the** wages, hours and conditions of employment of its employees. Put another way, if a school board has the discretion to decide how to spend its appropriation, it follows that it has the discretion to decide what level of compensation and benefits it will pay its employees. And if there is an exclusive bargaining representative which represents its employees, the school board has the obligation to bargain in good faith and to honor any agreement reached by the parties. Under these statutory provisions, local school boards would appear to be separate employers having sole and exclusive control over the working conditions of its employees.

**However**, there remains a further dimension to this analysis. The Supreme Court in Local 1186 AFSCME v. Board of Education of the City of New Britain, 182 Conn. 93 (1980) addressed the issue of whether a school board **is a municipal** employer for purposes of collective bargaining. Traditionally, the City and the Union had negotiated contracts concerning board of education employees without participation by the school board. The school board's decision to do its own testing and hiring was precipitated by a series of disagreements and delays with the City's Civil Service Commission. The question presented was whether the local school board was bound by the terms of the collective bargaining agreement negotiated by the City and **Local** 1186 on behalf of non-professional classified employees of the Board of Education in regard to the hiring and testing of these employees. In answering this question, the Court had to determine whether the school board was the **body** empowered to engage in collective bargaining. **The** Court first looked to Section **10-220** of the Connecticut General Statutes and stated:

The authority vested in local boards of education is derived from a multitude of sources. **On** the one hand, local boards act as agencies of the state to carry out the constitutional guarantee of free public education contained in article eighth, Section 1 and implemented by General Statutes Section 10-220. Pursuant to Section 10-220, local boards are specifically charged with the duty to "maintain good public elementary and secondary schools" and to see to "the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes." See Maitland v. Thompson, 129 Conn. 186, 191, 27 **A.2d** 160 (1942). Furthermore, although it is the municipalities that appropriate the funds for the maintenance of public schools, General Statutes Section **10-220** provides that it is the local boards that decide, in their discretion, how those funds shall be **budgeted** and expended. Board of Education v. Ellington, 151 Conn. **1,6**, 193 A 2d 466 (1963); cf. Fowler v. Enfield, 138 Conn. 521, 530, 86 **A.2d** 662 (1952).

However, the court further noted that local charter provisions may diminish a local school board's discretion.

On the other hand, local boards are also governed by local charters specially enacted by the General Assembly pursuant to article tenth of the constitution of Connecticut and the Home Rule Act; General Statutes Sections 7-187-7-201. . . **Local** charters may be binding upon local boards either because a relevant state statute expressly defers to local charter provisions, as in Section **10-151(d)**; see Cammisa v. Board of Education, 175 Conn. 445, 448, 399 **A.2d** 521 (1978); or because the local charter provisions are not inconsistent with or inimical to the efficient and proper operation of the educational system otherwise entrusted by state law to the local boards. See Wallingford v. Board of Education, 152 Conn. 568, 574-75, 210 **A.2d** 446 (1965). (footnotes omitted) **Id** at 100.

The Court, after concluding that local charter provisions could act as a limitation on a local board's power found in Section **10-220** C.G.S., held in that case that the local charter granted the school board a wide range of discretion and thus the School **Board** was a municipal employer of its nonprofessional classified employees. This was the case despite the fact that the school board did not control the termination of its employees which were subject to the provisions of the Civil Service Commission, which was established by charter provision.

Subsequently, in City of Hartford, Decision No. 2335 (**1984**), several bargaining units comprised of non certified personnel filed complaints with this Board alleging that the School **Board committed** a refusal to bargain by submitting their respective collective bargaining agreements to the legislative **body** of the City for review and approval as a prerequisite to implementation. In that case, as in the present case, the City charter provided that non certified employees **were** to be covered under the City's pension system. The school board contended that it could not negotiate the subject of pensions and furthermore that the entire agreement must be **submitted** to the legislative body for approval prior **to** implementation. We held that the entire collective bargaining agreement did not have to be submitted to the legislative body, rather only that part of the agreement for which the school board lacks sole and exclusive control over **need** be **submitted** and that the **submittal must be** within the time limits outlined in Section 7-474 (b) C.G.S. This decision was appealed by the City and denied by the Superior Court. The City further appealed to the Supreme Court, which dismissed the appeal as moot.

### III. THE ISSUES

This brings us to the present case. Here, the School Board and **Local 818** had reached an agreement which would have improved the pension benefits of the bargaining unit members. **This** agreement was rejected by the Council's Operating Management and Budget Committee. The issue was renegotiated by the parties but once again was rejected by the Council's Management and Budget **Committee**. The issue in the present case is not like the issue in Hartford, supra, which dealt with the role of the legislative body in reviewing collective bargaining agreements when it does not have sole and exclusive control over the subject matter. The present case seeks to identify the role of the City's representatives in the negotiation and arbitration process when the school board is negotiating a subject which is not within the school board's sole and exclusive control, but rather in the control of the City. Both of the parties in their briefs have framed four questions for us to consider in answering the petition. They are as follows:

1. For the issue of pensions where the Board of Education does not have exclusive control, must the City be a party to the negotiation?

2. If the answer to **Question One** is "**no**", then what is the authority of the Board of Education to negotiate the issue of pensions?

3. If the answer to **Question One** is "**no**", how are the impasse procedures of **MERA** implemented for these negotiations?

4. What is the effect of the Hartford Common Council not rejecting in a timely manner the proposed improvements in the pension plan for the Board of Education employees?

The Union argues, in regard to question 1 and 2 that City does not have to be a party to the negotiations unless it wishes to be and the School Board has full authority to negotiate pension **plan** changes subject to timely review by the **Common Council**. In regard to question 3, it argues that the City has the absolute right to participate, but only the School Board need participate in the arbitration procedure. They also contend that any mediated settlement or fact finder's report must be reviewed by the **Common Council** subject to the time limits of Section 7-473 C.G.S. In regard to question 4, the Union argues that if the Common Council does not reject the pension improvements in a timely manner, the improvements must be implemented.

Surprisingly, the attorney for the respondent<sup>4</sup> did not take a position on the questions one, three & four. The Respondent argues that the School Board has the authority to negotiate pensions subject to the approval of the legislative body but have taken no position as to whether the **City's** representatives have any role in the negotiation and impasse resolution process.

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<sup>4</sup> **Respondent** counsel was representing both the School Board and the City in this proceeding.



In answering this petition, we continue to adhere to the Supreme Court's analysis in Local 1186, supra, which we adopted in Hartford, supra. In Hartford, we found that the School **Board** does not have sole and **exclusive** control over pensions because of the City's charter provision, a point which both parties have agreed to in the stipulation. However, the question presented here is what is the City's role during the negotiation and impasse procedures when it has sole and exclusive control over a condition of employment. The Union's position is that the City may participate at its discretion in the negotiation process up to and including fact finding. Furthermore, it believes the School Board has the authority to negotiate and be involved in the mediation and fact finding process subject to review by the legislative **body** if an agreement is reached. However, at the arbitration stage, the City must be involved. The Union does not express what the City's level of involvement should be at this stage, but it can be inferred that both the School Board and the City appear as **equal** parties before the arbitration panel.

This solution we feel is not only impractical and unworkable, but logically **inconsistent** with the Supreme Court's sole and exclusive control analysis discussed in Local 1186, supra. **The** practical problems are obvious. If the City does decide to participate in the negotiations, what exactly is its role? Does it sit as an advisor, observer, or equal party? Local legislative bodies and school boards are oftentimes at odds politically and **philosophically** with one another. The School Board may resent the City's presence at the table and of course refuse to accept its advice despite the realization that its failure to do so may result in rejection by the local legislative body. **On** the other hand, if the City is an equal at the table, the Union may be faced with entirely different proposals by separate employers. Put another way, who does the Union negotiate with? It obviously cannot reach two different agreements with two separate employers. More importantly, Section **7-473c(c) (2)** requires an arbitration panel in rendering an award to consider "the negotiations between the parties prior to arbitration". If an arbitration panel is faced with a negotiations history between the School Board and the Union and a final proposal by the City which is clearly at odds with the School **Board's** proposals during negotiations, must it then discount this criteria in making the award because there is no negotiation history between the employer who has sole and exclusive control and the Union? **This** approach would render this provision meaningless. However, it is our view that since the City has sole and exclusive control over this subject matter, it is only the City who should negotiate that subject, and the arbitration panel should consider only the history of negotiations between the City and the Union.

Our reasoning above is buttressed by a holding of the Connecticut Supreme Court in Carofano v. Bridgeport, 196 Conn. 623 (1985). There the Court found that the binding arbitration provisions of the MERA was not an unconstitutional delegation of legislative power because of the limited choice (i.e. last best offer of one party over that of another) conferred upon the arbitration panel. **The** court noted that "the specification of certain factors to be considered by the arbitrators in making this limited choice is a further control over their exercise of the delegated authority" Id at 635, " **..and** an award without giving weight to the factors specified **..would be ..infirm"** Id at 637. Given this language, we have

serious doubts whether an arbitration award which considers the negotiation history between the School Board and the Union, when the School Board does not have sole and exclusive control over that condition of employment, would survive constitutional attack.

In summary, we find that given the present statutory scheme, the only logical answer to the questions posed must be as follows: If the School Board does not have sole and exclusive control over a condition of employment because a charter provision has removed that control, the School Board cannot negotiate that condition of employment or **participate** in the **impasse** resolution procedures outlined in the Act. Thus, it is the sole responsibility of the City and/or its designees to negotiate that condition of employment subject to review by the City's legislative body. We find this conclusion to be supported by the statutory language outlined in Section 7-474(d) and 7-474(b). Conversely, the School **Board has** no role in this process, unless the City clearly and unequivocally has designated the School Board as its bargaining representative specifically for the purpose of negotiating that condition of employment. Our reasoning for this conclusion is based upon our reading of Section **7-473c(c) (2)** as discussed above, the Supreme Court's analysis in Carofano v. Bridgeport, supra and the lack of any language in the Act providing for joint employer status. Finally, the legislative body must adhere to the time limits outlined in Section 7-474(b) which require the submittal of any agreement reached between the City's negotiation and the exclusive bargaining representative within 14 days of the agreement to the legislative body which in turn has 30 days to accept or reject its agreement. Failure of the legislative body to act within that 30 days time **period** binds the City to the agreement reached. We recognize that this decision may leave open some procedural questions. However, we believe that the resolution of these issues should await a full presentation and arguments by the parties.

#### **DECLARATORY RULING**

By virtue of and pursuant to the provisions vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act and the Uniform Administrative Procedures Act, it is hereby

**DECLARED,** that where a local school board does not have sole and exclusive control over a condition of employment by virtue of a charter provision (1) the Municipal Government of the City or **Town** is solely responsible for negotiating and participating in the impasse resolution procedures of the Act as discussed herein and (2) the School Board has no power to participate in the negotiation and impasse resolution procedures unless designated by the City or **Town's** representatives.

#### **CONNECTICUT STATE BOARD OF LABOR RELATIONS**

By s/Patricia V. Low  
Patricia V. Low, Chairman

s/Margaret Lareau  
Margaret Lareau

s/Susan Meredith  
Susan Meredith

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