

VERMONT LABOR RELATIONS BOARD

ESSEX JUNCTION SCHOOL DISTRICT)	
)	
v.)	DOCKET NO. 91-7
)	
ESSEX JUNCTION EDUCATION)	
ASSOCIATION AND VERMONT-NEA)	

MEMORANDUM AND ORDER

At issue is whether the Vermont Labor Relations Board should issue an unfair labor practice complaint in this matter. On January 18, 1991, the Essex Junction School District ("Employer") filed an unfair labor practice charge against the Essex Junction Education Association and the Vermont-NEA ("Associations"). Therein, the Employer alleged that the Associations committed unfair labor practices, during the period the Essex Association was involved in contract negotiations with the Employer concerning a bargaining unit of support staff employees and a unit of teachers, in violation of 21 VSA §1726(b)(2) and (4) by the following actions:

- 1) In various communications to its members (which were attached to the charge), the Associations made statements which were intended to denigrate and to question the effectiveness of the District's Chief Negotiator, Dennis Wells;
- 2) In various documents published in the media, the Association made statements intended to restrain and coerce the Employer in the selection of its representative for purposes of collective bargaining negotiations and to denigrate Wells; and

3) In a public statement to the governing body of the Employer, the Essex Junction Prudential Committee, a member of the Essex Association's bargaining committee for the support staff bargaining unit made a statement which denigrated and questioned the integrity and effectiveness of Wells and the Employer's bargaining committee.

The Employer alleges that, through these actions, the Associations have failed to satisfy the legal obligation to bargain in good faith; have attempted to restrain and coerce the Employer in the selection of a bargaining representative; and have attempted to circumvent the bargaining representative of the Employer. In a response filed January 30, 1991, the Associations admitted that statements made were intended to question the effectiveness of the Employer's Chief Negotiator in reaching a contract settlement. The Associations denied that statements were intended to: denigrate the Chief Negotiator or question his integrity, restrain or coerce the Employer in the selection of its representative for purposes of collective bargaining negotiations, or denigrate or question the effectiveness of the Employer's bargaining committee.

The sections of §1726 of the Municipal Employee Relations Act ("MERA") cited by the Employer to support its unfair labor practice charge provide as follows:

(b) It shall be an unfair labor practice for an employee organization or its agents:

. . .

(2) to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or adjustments of grievances.

. . .

(4) to refuse to bargain collectively in good faith with a municipal employer.

In determining whether statements made by the Associations warrant issuance of an unfair labor practice complaint, the above provisions must be viewed in conjunction with §1728 of MERA, which provides as follows:

The expression of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or promise of benefit.

The Vermont General Assembly, by enacting this provision which is virtually identical to Section 8(c) of the National Labor Relations Act, provided labor organizations and employers with broad free speech rights in making statements during the period when contract negotiations are ongoing, such as involved here, concerning the other party's bargaining team members. Such statements are permissible as long as they contain "no threat of reprisal or promise of benefit."

In this matter, we would issue an unfair labor practice complaint against the Associations if any alleged statements made by the Associations contained a threat of reprisal or promise of benefit since that may restrain or coerce the Employer in the selection of its collective bargaining representative and/or indicate a refusal to bargain in good faith.

However, upon review of the written communications of the Associations to their members and the statements published in the media, we conclude that no statements made contained a threat of reprisal against the Employer or promise of benefit to the Employer concerning the Employer's Chief Negotiator or bargaining committee. Also, the charge filed by the Employer contains no indication that any threat of reprisal or promise of benefit was contained in the public statement made by a member of the Essex Association's bargaining committee to the school board governing the Employer. Thus, we exercise our discretion pursuant to 21 VSA §1727(a) to decline to issue an unfair labor practice complaint in this matter. Hinesburg School District v. Vermont-NEA, 147 Vt. 558 (1986). Haviland v. Kelley, et al, 13 VLRB 43, 44 (1990). Burlington Education Association v. Burlington Board of School Commissioners, et al, 7 VLRB 248 (1984).

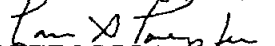
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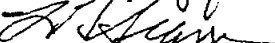
Now therefore, based on the foregoing reasons, the Vermont Labor Relations Board declines to issue an unfair labor practice complaint in this matter and the unfair labor practice charge filed herein is ORDERED DISMISSED.

Dated this 11th day of April, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Teepfer


Leslie G. Seaver