

VERMONT LABOR RELATIONS BOARD

ORLEANS CENTRAL EDUCATION )  
ASSOCIATION )

v. )

IRASBURG BOARD OF )  
SCHOOL DIRECTORS )

DOCKET NO. 91-13

MEMORANDUM AND ORDER  
AND  
UNFAIR LABOR PRACTICE COMPLAINT

At issue is whether the Vermont Labor Relations Board should issue an unfair labor practice complaint in this matter. On February 6, 1991, the Orleans Central Education Association ("Association") filed an unfair labor practice charge against the Irasburg Board of School Directors ("School Board"). Therein, the Association alleged that the School Board violated 16 VSA §2001 and §2007, and 21 VSA §1726(a)(1) and (5), through conduct engaged in with respect to collective bargaining negotiations between the Association and the School Board. The Employer filed an informal response to the charge on February 19, 1991. Timothy Noonan, Executive Director of the Vermont Labor Relations Board, met with the parties on April 23, 1991, in furtherance of the Board's investigation of the charge and to informally attempt to resolve the issues in dispute. The issues in dispute were not resolved.

The Association first alleges that the School Board interfered with employee rights and violated its duty to bargain in good faith by failing to have its representative in negotiations either positively recommend or support a tentative agreement reached during mediation.

The Association offers as a factual basis to support this allegation that a tentative agreement was reached at a mediation session; that Paul Lefebvre, a member of the School Board and its representative in negotiations, signed the tentative agreement and agreed to positively recommend the tentative agreement for ratification; and that Lefebvre subsequently neither recommended that the tentative agreement be ratified nor did he vote to ratify the agreement. The investigation conducted by the Labor Relations Board in this matter revealed that Lefebvre did sign the tentative agreement, which included a statement that the tentative agreement "shall be positively recommended for ratification by the signatories hereunder." The investigation further revealed that, at a subsequent meeting of the School Board, Lefebvre joined the other two members of the School Board in unanimously voting not to ratify the agreement.

We believe that the factual allegations of the Association, and the results of the investigation of the Board, are sufficient to warrant the issuance of an unfair labor practice complaint on the issue of whether the failure of Lefebvre to vote to ratify the tentative agreement, after agreeing that he would positively recommend its ratification, constituted a refusal to bargain in good faith by the School Board.

The Association further alleges that the School Board interfered with employee rights and violated its duty to bargain in good faith by engaging in surface bargaining and failing to grant the authority to bargain to its representative in negotiations. The Association offers as a factual basis to

support this allegation that a member of the School Board, Dave Turner, stated at a negotiations session subsequent to the School Board rejection of the tentative agreement that Lefebvre did not have the approval or the authority of the Board to agree to the provisions contained in the tentative agreement.

There is no duty on the part of an employer to be represented at the bargaining table by a person with competent authority to enter into a binding agreement with the employees. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 148 Vt. 26, 31 (1978). Rather, use of a negotiator without authority to bind the employer is merely some evidence, to be considered in conjunction with other conduct, of employer bad faith. Id. We conclude that the factual allegations offered by the Association in this regard are insufficient to warrant the independent issuing of an unfair labor practice complaint. We believe that the alleged statement by Turner contributes to any ultimate determination that an unfair labor practice occurred only to the extent that it may relate to the failure of Lefebvre to vote to ratify the tentative agreement, after agreeing that he would positively recommend its ratification.

The final allegation of the Association is that the School Board committed an unfair labor practice subsequent to the rejection of the tentative agreement by requesting a negotiations session and then at the session held on December 19, 1990, failing to offer any proposals to the Association and summarily declaring impasse prior to any promulgation or discussion of any such proposals. The investigation conducted by the Board in this

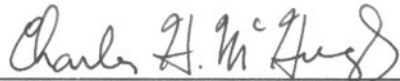
matter revealed that at this negotiations session, the parties jointly agreed to schedule a subsequent meeting with a mediator/factfinder, and that at no time between the December 19, 1990, meeting and the subsequent meeting with the mediator/factfinder did the Association attempt to ascertain from the School Board which issues were in dispute. Under these circumstances, we conclude that the School Board committed no unfair labor practice and we exercise our discretion pursuant to 21 VSA §1727(a) to decline to issue an unfair labor practice complaint on this allegation by the Association.

NOW THEREFORE, based on the foregoing reasons:

1. The unfair labor practice charge filed herein is ORDERED DISMISSED on all issues, except whether the Irasburg Board of School Directors violated its duty to bargain in good faith, pursuant to 21 VSA §1726(a)(1) and (5) and 16 VSA §2001, by the failure of Paul Lefebvre, Member of the Irasburg Board of School Directors, to vote to ratify the tentative agreement, after agreeing that he would positively recommend its ratification, discussed herein. On that issue, the Vermont Labor Relations Board HEREBY issues an unfair labor practice complaint, and a hearing is scheduled before the Board in the Board hearing room, 13 Baldwin Street, Montpelier, Vermont, on May 16, 1991, at 1:00 p.m.

Dated this 2nd day of May, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Charles H. McHugh, Chairman



Leslie G. Seaver