VERMONT LABOR RELATIONS BOARD

MIDDLEBURY UNION HIGH SCHOOL EDUCATIONAL SUPPORT PERSONNEL UNIT	)	
	)	DOCKET NO.91-71
v.	)	
MIDDLEBURY UNION HIGH SCHOOL BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

On November 19, 1991, the Middlebury Union High School Educational Support Personnel Unit ("Union") filed an unfair labor practice charge against the Middlebury Union High School Board of School Directors ("School Board"). The Union alleged that the School Board had violated 21 VSA §1721(a)(1) by interfering with, restraining and coercing employees in the exercise of their rights guaranteed by the Municipal Employee Relations Act, 21 VSA §1721 et seq; and 21 VSA §1726(a)(3) in discriminating in regard to the hiring and tenure of employment to discourage membership in the Union. Specifically, the Union alleged that the School Board acted in bad faith and engaged in coercive behavior by unilaterally implementing subcontracting of bargaining unit work during the course of negotiations. The Union contended that the right to freely organize and bargain collectively had been irreparably harmed by the action of the School Board.

On February 19, 1992, the Vermont Labor Relations board issued an unfair labor practice complaint. Hearings were held on March 23 and April 6, 1992, in the Board hearing room in

Montpelier before Board members Louis A. Toepfer, Acting Chairman; Catherine L. Frank and Carroll P. Comstock. Attorney Scott Cameron represented the School Board. Joel Cook, Vermont-NEA General Counsel, represented the Union.

At the March 23 hearing, the Union sought to amend its charge verbally to allege the violation of 21 VSA §1726(a)(5). The School Board objected to the verbal amendment of the charge. The Board decided that the amendment to the charge needed to be in writing. On March 27, 1992, the Union filed an application to amend the charge to add as an allegation that the School Board had violated "21 VSA §1726(a)(5) by refusing to bargain collectively in good faith with the exclusive bargaining agent". The Union indicated that the amendment did not alter the factual allegations in this matter, but that the purpose of the amendment was merely to make clear that the grounds on which the Union's claim is based include violation of the School Board's duty to bargain collectively in good faith with the Union. On April 1, 1992, the School Board filed a response opposing the amendment of the charge. At the outset of the April 6 hearing, the Board granted the application to amend pursuant to Section 32.7 of the Board's Rules of Practice allowing the Board to permit an amendment of a charge "as it deems proper". Upon granting the application to amend, the Board indicated that it would proceed with the April 6 hearing and would grant the School Board additional hearing time after April 6 as necessary. The School Board did not request additional hearing time upon the conclusion of the April 6 hearing.

The Union filed a brief on April 14, 1992. The School Board filed a brief on April 20, 1992. The Union filed a reply brief on May 1, 1992. The School Board did not file a reply brief.

FINDINGS OF FACT

1. On September 5, 1989, the Union filed a Petition for Election of Collective Bargaining Representative, requesting the election among all non-supervisory, non-certified support staff employed more than 20 hours per week by the School Board. The parties resolved unit determination issues in dispute, and agreed to the conducting of a representation election among support staff employees, including custodians, to determine whether they wished to be represented by the Union or no union. The Union prevailed in the December 6, 1989, election, and the Board certified the Union as exclusive bargaining representative of the employees by Order of December 21, 1989 (Exhibits 1-9).

2. On October 29, 1990, the Union and the School Board commenced negotiations for a first collective bargaining agreement for employees in the support staff bargaining unit. The parties met for this purpose on several occasions during the ensuing fall and winter and into the spring of 1991.

3. Neither the Union nor the School Board made bargaining proposals concerning the contracting out of bargaining unit work. Among the bargaining proposals by the Union, upon which tentative agreement was reached by the parties, were the following:

ARTICLE XIV, MANAGEMENT RIGHTS:

> 14.1 Unless limited by specific provisions of this agreement or by provisions of law, the Board retains the full right and authority to manage and efficiently operate the School District.

ARTICLE XV, COMPLETE NEGOTIATIONS:

> 15.1 This agreement constitutes the entire agreement of the School Board and the Association arrived at as a result of collective bargaining negotiations. During the term of this agreement neither party will be required to negotiate with respect to any such matter whether or not covered by this agreement. This agreement may not be modified in whole or in part, except by mutually agreed further collective bargaining and, as a result of such bargaining, an instrument in writing signed by both parties.
>
> 15.2 The parties acknowledge that during negotiations which resulted in this agreement each had the unlimited right and opportunity to make demands with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement (Exhibit 11).

4. Prior to the certification of the Union as bargaining representative of the employees, the School Board had reduced the work force and contracted out work. Specifically, the School Board contracted out bus driving services, the food service, heating and ventilation work and snowplowing.

5. The physical plant of the Middlebury Union High School is divided into three sections: a junior high school, senior high school and vocational center. The junior/senior high school share certain facilities, such as the cafeteria and gymnasium. The vocational center is located in a separate, adjacent building.

6. During the past five years, there have been numerous complaints from the public and employees about the cleanliness and lack of maintenance in the junior/senior high school building. The School Board considered contracting out custodial work on several occasions before the Union was certified as

bargaining representative of support staff, but had decided not to contract out the custodial work.

7. The New England Association of Schools and Colleges ("NEASC"), Commission on Public Secondary Schools, is an accrediting organization to which Middlebury Union High School belongs. A visiting committee from NEASC conducted an evaluation of Middlebury Union High School, including its physical plant, during the period October 14-17, 1990. In its evaluation report, the visiting committee, among other things, indicated that the school was poorly maintained and made various recommendations with respect to improved maintenance (Exhibit 10, pgs. 9, 53-57).

8. The School Board has several committees which concentrate their efforts on specific areas of concern. One of these committees is known as the "Facilities Committee". After receipt of the NEASC report, the Facilities Committee discussed ways in which the maintenance problems could be addressed. The Committee identified as the major problem the cleanliness and maintenance of the junior/senior high building. Two specific problems identified in this regard were: 1) the supervisor of the custodial staff worked a regular day shift and therefore was unable to fully supervise the work of the custodians in the junior/senior high school, who began their workday at 3:00 p.m. and 2) the custodial staff did not have the advanced cleaning equipment needed to properly do their work.

9. The Committee decided that the solution to these problems was to contract out custodial work to a professional cleaning contractor. The Committee decided that contracting out cleaning services had the following advantages: 1) reduce costs, 2) improve supervision over the custodial work performed at night, 3) provide more modern equipment and more efficient cleaning methods, and 4) reduce time spent by the principal dealing with complaints about the building's cleanliness.

10. At a May 21, 1991, meeting of the School Board in a session open to the public, the Facilities Committee recommended that the School Board contract out the work of the night shift custodial staff at the junior/senior high school to a professional cleaning contractor. A motion was made by members of the Committee which provided:

> To accept the Facilities Committee recommendation that to professionalize the maintenance of the buildings, the Board authorize the Business Manager to ask for bids, bidders to understand that current MUHS employees will have the opportunity to apply for employment with the successful bidder (Exhibit 12).

11. At the time this motion was considered, the Chairperson of the School Board's Negotiations Committee, Dr. James Malcolm, raised for the School Board's consideration the timing of this decision and the effect it would have on the ongoing negotiations with the Union. After discussion, the School Board approved the motion by a unanimous vote, with two abstentions. The two abstentions were by members of the School Board's negotiating team, a Mr. Huestis and Dr. Malcolm. While the record does not indicate Huestis' reason for abstaining, Dr.

Malcolm's reasons for so doing were that, while he agreed that contracting out cleaning services would be less costly and more efficient, as a member of the School Board involved in negotiations with the Union he did not want to place himself in a position which could compromise that role (Exhibit 12).

12. At no time prior to the decision on this motion did either the Facilities Committee, members of the School Board or members of the administration of the school district ever discuss with the Union, or any of its members or representatives, that consideration was being given to contracting out bargaining unit work.

13. Between May 21 and May 30, 1991, neither the School Board nor any representative of the School Board informed either the Union or any of its members or representatives that the School Board had made a decision to contract out bargaining unit work.

14. On May 30, 1991, the bargaining teams for the Staff Association and the School Board met, and mutually came to the conclusion that they were at impasse. At this time, the members of the Union's bargaining team were unaware of the contracting out decision made by the School Board nine days earlier, and this topic was not discussed during the meeting.

15. The administration of the school district requested bids from cleaning contractors for the custodial work, with the deadline for submitting bids set at June 25, 1991. Four cleaning companies submitted bids, including J. M. Hopkins & Co. (Exhibits 15, 18-21).

16. At no time during the bidding period did the School Board, or any representative of the School Board or member of the school administration, inform the Union or any of its members or representatives that it had decided to contract out bargaining unit work.

17. Soon after high school graduation in June, 1991, the Union first became aware that the School Board had made some decision affecting bargaining unit work. One of the second shift custodians, Douglas Haskins, who was also a member of the Union bargaining team, noticed school administrators walking around the school with some people, one of whom subsequently informed Haskins that this group included representatives of cleaning contractors considering bidding to perform custodial services at the school.

18. Haskins immediately spoke to David Boulanger, UniServ Director for Vermont-NEA and chief negotiator for the Union, about what he had discovered. On June 21, 1991, Boulanger wrote a letter to Scott Cameron, Attorney for the School Board, which provided in pertinent part:

> It has come to my attention that the Middlebury High School Board of School Directors is soliciting bids for custodial services at the High School.
>
> In the context of the current impasse in contract talks with the organized Support Staff which currently performs this work this is clearly an attempt to coerce employees in the exercise of their rights which are guaranteed under the Municipal Emploeyes Labor Relations Act. Coupled with delays in the process, and other acts of the Board including but not limited to, the Board's assertion that it would not have a proposal nor be represented by counsel, it is clear that the Board is and has been acting in bad faith.

> The employees have asked that I investigate the filing of Unfair Labor Practice charges in this matter and I am so doing.
>
> In addition I am informing you that the Association is hereby reserving its right to bargain over the impact of any and all subcontracting which may have impact on the employees represented by the Association.
> ...
> (Exhibit 22).

19. By letter dated July 22, 1991, Dr. Malcolm responded to Boulanger's June 21 letter. The letter provided in pertinent part as follows:

> ...(T)he Board fully understands the feelings of your members, and the position of the Association in this matter. The decision to put certain janitorial services out for bid was in no way intended to injure either the bargaining process or the collective bargaining rights of any employee. Rather, this decision represents a legitimate attempt to effectuate reductions in maintenance costs and upgrade services by contracting out a portion of the janitorial services.
>
> Given the magnitude of cost savings inherent in the proposal from J. M. Hopkins & Company, the Board feels that it would be fiscally irresponsible not to pursue this option in an expeditious manner. Nevertheless, the Board is mindful of the Association's position as representative of the employees in the unit who will be affected by this decision, and has every intention of respecting the employment rights of these individuals as the process moves forward.
>
> The Board is willing to consider the Association's request to bargain over the impact which this decision to subcontract may have on certain employees in the bargaining unit...
>
> The Board intends to implement this decision in an expeditious manner, i.e. by early August, 1991. This date of implementation will give the contractor adequate time to hire staff (and I am informed that the contractor will extend offers of employment to displaced workers first), and fully implement work procedures prior to the start of the new school year. This does not imply that the current round of collective bargaining, or the impact bargaining requested by the Association must be concluded by that

> date. The Board is certainly willing to continue bargaining after the date of implementation, assuming that no final agreement is reached by that time.
>
> I believe it would be in the interests of all concerned to convene a meeting between Association representatives, affected employees, and representatives of the Board at the earliest possible opportunity...(Exhibit 23).

20. The Union, subsequent to receipt of this letter, made no request to bargain over the impact of the contracting out decision.

21. On August 9, 1991, the School Board entered into a one-year contract with J. M. Hopkins Company to perform custodial work at the junior/senior high school during the evening shift. As a result of this decision, the positions of five custodial employees were eliminated. Each of the five employees were provided opportunity to accept work with J. M. Hopkins Company. The School Board agreed to make up the difference between the pay they would receive from J. M. Hopkins during their initial, three-month training period and their former salaries. The School Board made no provision to pay for the health, dental and life insurance benefits which the affected employees previously had received. Three of the affected employees accepted positions with J. M. Hopkins.

22. Among the reasons for the School Board's decision to contract out the custodial work was cost. The savings associated with the one-year contract were approximately $17,000-$18,000 (Exhibit 24).

OPINION

The Union offers two alternative theories supporting the contention that the School Board committed an unfair labor practice in this case: 1) the School Board violated 21 VSA §1726(a)(5) by deciding unilaterally, and at a time when it was under a legal duty to bargain in good faith with the Union, to contract out the work of bargaining unit members; and 2) the School Board violated 21 VSA §1726(a)(1) and (a)(3) by deciding unilaterally to contract out the work of bargaining unit members, because of the inherently destructive impact that decision had on important employee rights.

We first discuss the alleged violation of §1726(a)(5) of the Municipal Employee Relations Act ("MERA"), which makes it an unfair labor practice for an employer "to refuse to bargain collectively in good faith with the exclusive bargaining agent". The statutory duty to bargain under MERA is violated when an employer, without first consulting a union with which it is carrying on bonafide contract negotiations, institutes a unilateral change in a mandatory subject of bargaining. Burlington Fire Fighters v. City of Burlington, 142 Vt. 434, 436-437 (1983). The unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith is the very antithesis of bargaining and is a per se violation of the duty to bargain. Id. Under MERA, it is an unfair labor practice for an employer to unilaterally change conditions of employment during the course of negotiations prior to the exhaustion of mandated statutory impasse resolution procedures. Local 98, IUOE, AFL-CIO v. Town of Rockingham, 7 VLRB 363, 372 (1984).

It is clear that the School Board unilaterally contracted out the night shift custodial work at the junior/senior high school without negotiating with the Union. The School Board did not discuss the issue with the Union prior to deciding at the May 21, 1991, School Board meeting to contract out the work of the custodial staff to a professional cleaning contractor. The School Board also did not inform the Union of the contracting out decision during the period for cleaning companies to submit bids to perform the custodial work. The Union only became aware of the School Board's action when one of the custodians inadvertently discovered shortly before the closing of the bidding period that the School Board was soliciting bids for the custodial work.

The next consideration in determining whether a per se violation of the duty to bargain in good faith exists is whether the contracting out of custodial services constituted a mandatory subject of bargaining. Under MERA, "wages, hours and conditions of employment" are mandatory subjects of bargaining. 21 VSA §1725. "(W)ages, hours and other conditions of employment" means any condition of employment directly affecting the economic circumstances, health, safety or convenience of employees but excluding matters of managerial prerogative. 21 VSA §1722(17). Managerial prerogative means any non-bargainable matter of inherent managerial policy. 21 VSA §1722(11).

In construing similar language under the National Labor Relations Act; which requires employers and unions to bargain with respect to "wages, hours and other terms and conditions of employment", 29 U.S.C. §158(d); the U.S. Supreme Court concluded that the employer's failure to bargain over its decision to contract out maintenance work previously performed by bargaining

unit employees was a violation of the employer's duty to bargain in good faith. Fibreboard Corp. v. NLRB, 379 U.S. 203 (1964). The Court held that the replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment came within the phrase "terms and conditions of employment" and, thus, constituted a mandatory subject of bargaining. Id. at 215. The Fibreboard decision continues to be controlling precedent in the private sector within the factual context in which it was decided. First National Maintenance Corp. v. NLRB, 452 US 666, 679-681 (1981). The precedent established by Fibreboard has been widely followed in the public sector, as long as the subcontracting decision primarily related to terms and conditions of employment rather than formulation or management of public policy. West Irondequoit Teachers Association, NYSUT, AFT, AFL-CIO, 20 PERB 3064 (N.Y. Public Employment Relations Board, November 24, 1987). Racine County v. WERC, 259 N.W.2d 724 (S.Ct. of Wisc., 1977). Teamsters Local Union No. 48 v. Boothbay/Boothbay Harbor Community School District (Maine Labor Relations Board, Case No. 86-02, March 18, 1986).

In applying these precedents to this case, which precedents we find persuasive given the similarity in statutory language, we conclude that the contracting out of custodial work in the Middlebury Union High School constituted a mandatory subject of bargaining. This case, like Fibreboard, involves replacement of employees in an existing bargaining unit with those of an independent contractor to do the same work (i.e., maintenance and cleaning of the junior/senior high school) under similar

conditions of employment. We recognize that the conditions of employment may be somewhat different since greater supervision exists under the contractor, and the employees work with more modern equipment. However, since there is no indication before us that the general cleaning and maintenance duties of employees substantially changed, it is evident that the conditions of employment are at least similar. Also, it is evident that the contracting out decision relates primarily to conditions of employment rather than formulation or management of public policy. This is particularly so where the employment of five employees has been terminated, directly impacting their "economic circumstances" pursuant to 21 VSA §1722(17), and there is no evident "matter of inherent managerial policy" directly at issue pursuant to 21 VSA §1722 (7) and (11). Accordingly, we conclude that the decision to contract out custodial services is a mandatory subject of bargaining. Since the School Board indicated willingness to bargain only over the impact of the contracting out decision, and not the decision itself, the School Board made a unilateral change in a mandatory subject of bargaining.

The final consideration in determining whether there is a per se violation is whether the School Board made this unilateral change in a mandatory subject of bargaining at a time when it was under a legal duty to bargain in good faith over this issue with the Union. The contracting out decision was made during the period when the School Board was engaged in negotiations with the Union for an initial collective bargaining agreement, which clearly was a period when the School Board was under a legal duty

to bargain in good faith on mandatory subjects of bargaining. Rockingham, 7 VLRB at 362-364. Burlington Fire Fighters, 142 Vt. at 435, 437. Nonetheless, the School Board contends that the Association waived its right to negotiate over the contracting out of custodial work because it never requested to bargain the issue, and thus the School Board cannot be found to have refused to bargain the issue. The School Board relies on the following facts to support this contention: 1) the Union never made a proposal during negotiations which would have negated the authority of the School Board to contract out custodial work; 2) the Association proposed that a so-called "zipper" clause, which restricted the obligation to bargain during the term of the contract, be included in the contract, and this proposal was tentatively agreed to by the School Board; and 3) after the Union discovered that the School Board had decided to contract out work, which was prior to the School Board entering into a contract with a private contractor, the Union made no request to negotiate, but instead indicated that the Union was going to file an unfair labor practice charge over this matter.

In determining whether these facts indicate whether the Union waived its right to bargain over the contracting out of custodial work, we look to past decisions of the Board and the Vermont Supreme Court on waiver issues. In determining whether a party has waived its bargaining rights, we have required that it be demonstrated a party consciously and explicitly waived its rights. Rockingham, 7 VLRB at 375. VSEA v. State of Vermont (re: Implementation of "6-2" Schedule at Vermont State Hospital),

5 VLRB 303, 326 (1982). In such matters we are further guided by our Supreme Court, which defines a waiver as the "intentional relinquishment of a known right". In re Grievance of Guttman, 139 Vt. 574 (1981). A party can intentionally relinquish a known right by failing to assert it in a timely manner. VSEA v. State of Vermont, 6 VLRB 217 (1983).

We disagree with the School Board that the failure of the Union to make a bargaining proposal during negotiations restricting the School Board's ability to contract out work meant, in and of itself, that the Union waived its right to bargain the issue. In Mount Abraham Education Association v. Mount Abraham Union High School Board, 4 VLRB 224, 231 (1981), the Board indicated that the fact that a matter had been omitted from a labor agreement, and had not been discussed in negotiations did not, in and of itself, constitute a waiver of the party's right to contest a unilateral change over a particular subject unless the party explicitly waived that right. Analogously here, the fact that the Union omitted from its bargaining proposals any specific provision on contracting out, and that issue was not discussed during negotiations, did not, in and of itself, constitute a waiver of the Union's right to contest the unilateral action by the School Board of contracting out the custodial work unless the Union explicitly waived that right.

The School Board relies on the "zipper" clause proposed by the Union (the provisions of which are contained in Finding of Fact #3 herein), and tentatively agreed to by the School Board, as the Union's explicit waiver of the right to contest

contracting out of work. The "zipper" clause in this matter is similar to the "zipper" clause at issue in Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO and Champlain Water District, 10 VLRB 252, 254-55, Finding of Fact #2 (1987). Reversed on Other Grounds, ___ Vt. ___ (Sup. Ct. Dock. No. 88-016, May 24, 1991). In that case, the Board indicated that, while an employer may rely on the "zipper" clause to avoid bargaining over new subjects during the term of the contract, the employer is not free to use the provision to justify a unilateral change in existing conditions of employment. Id. at 259. Analogously here, the School Board is not free to use the tentatively agreed upon "zipper" clause to justify the unilateral change in existing conditions of employment of contracting out custodial work during the period the entire contract is still being negotiated. The Union did not waive the right to contest this unilateral action on a mandatory subject of bargaining by proposing the "zipper" clause.

The final waiver issue is whether the Union waived its right to contest the contracting out by not explicitly requesting to bargain on the issue once the Union became aware the School Board had decided to contract out the custodial work. We conclude that there was no explicit waiver by the Union in this regard. First, as already indicated, the unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith is a per se violation of the duty to bargain. Burlington Fire Fighters, 142 Vt. at 435-36. Thus, the unilateral contracting out action by the Employer, standing by itself, is sufficient for us to conclude there was an unfair

labor practice, even under circumstances where the Union did not request bargaining on the issue. Second, immediately upon discovering the School Board's action, the Union representative contacted the School Board attorney by letter, and charged the School Board with "acting in bad faith" and indicated that the Union was investigating the filing of an unfair labor practice charge. This was a clear sign of the Union's objection to the unilateral contracting out action of the School Board, and indicates that the Union did not waive its right to negotiate over the subject. Mt. Abraham, 4 VLRB at 231-32.

Third, the School Board's actions in this regard indicate that it would have been a futile act for the Union to request bargaining over the contracting out of custodial services. An employer must inform the union of its proposed actions under circumstances which at least afford a reasonable opportunity for counter arguments or proposals. NLRB v. Centra, Inc., 954 F.2d 366, 373 (6th Cir. 1992). If a policy is implemented too quickly after notice is given, or an employer has no intention of changing its mind, the notice constitutes nothing more than informing the union of a fait accompli. Id. Notice of a fait accompli is simply not the sort of timely notice upon which the waiver defense is predicated. Id. In this case, leaving aside that the School Board did not actually give notice of the contracting out action to the Union, it is evident that the contracting out of custodial work was a fait accompli as of the May 21 School Board meeting when the School Board approved the motion to "ask for bids, bidders to understand that current MUHS

employees will have the opportunity to apply for employment with the successful bidder". It is evident that, at this point, the School Board had decided to contract out custodial work, with the only issue to be decided which contractor would do the work. If there was any doubt in this regard, it was put to rest by the July 22, 1991, letter of the School Board to the Union, in response to the Union letter objecting to the School Board action, wherein the School Board makes it clear that the decision to contract out custodial work was final and was to be implemented by early August, 1991. This was a clear indication that the School Board had no intention of changing the decision and was going to quickly implement it. It would have been futile for the Union to request bargaining under such circumstances, and the Union waived no bargaining rights by failing to do so.

In sum, the unilateral action by the School Board of contracting out custodial work during the time it was under a legal duty to bargain in good faith was a per se violation of the duty to bargain, and the Union did not waive its right to bargain over this issue. Given this conclusion, and the ultimate remedy in this case, we do not need to reach the Union's alternative theory in this matter - i.e., that the School Board committed an unfair labor practice because of the inherently destructive impact of the contracting out decision on employee rights.

In deciding what remedy to apply as a result of the School Board's unfair labor practice, we look to §1727(d) of MERA, which authorizes the Board to require a party committing an unfair labor practice "to cease and desist from the unfair labor

practice and to take such affirmative action as the Board shall order". In determining the remedy, we are seeking to enforce the duty to negotiate in good faith. At the very least, this requires the School Board to cease and desist from implementing its contracting out decision, and negotiate in good faith on this issue with the Union. However, this remedy would be incomplete since it would not make the terminated custodians "whole" for the School Board's statutory violation. The common remedy in such cases, in addition to a bargaining order, is to order the affected employees reinstated with back pay and benefits. Fibreboard, 379 U.S. at 215-17. We conclude that such a remedy is appropriate in this case.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The Middlebury Union High School Board of School Directors ("School Board") shall cease and desist from the contracting out of evening shift custodial services at the Middlebury Union High School;

2. The School Board shall bargain in good faith with the Middlebury Union High School Educational Support Personnel Unit ("Union") with respect to the contracting out of custodial services;

3. The custodians at the Middlebury Union High School, whose employment was terminated due to the contracting out of custodial work, shall be reinstated to their positions as custodians;

4. The custodians shall be awarded back pay and benefits, including reimbursement for medical expenses which they incurred which would have been paid by the School Board had their employment not been terminated, from the date commencing with their termination of employment until their reinstatement for all hours of their regularly assigned shift, minus any income (including unemployment compensation received and not paid back) received by the custodians in the interim;

5. The interest due employees on back pay shall be computed on gross pay and shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing with the termination of employment of the custodians, and ending on the date of their reinstatement; such interest for each paycheck date shall be computed from the amount of each paycheck minus income (including unemployment compensation) received by the custodians during the payroll period;

6. The parties shall submit to the Board by September 23, 1992, a proposed order indicating the specific amount of back pay and other benefits due the custodians; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on these issues shall be held on October 1, 1992, at 1:00 p.m. in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont; and

7. Copies of this Order shall be posted by the School Board at Middlebury Union High School at places normally used for employer-employee communications.

Dated this 3rd day of September, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer, Acting Chair

Catherine L. Frank

Carroll F. Comstock