VERMONT LABOR RELATIONS BOARD

WINDHAM SOUTHWEST EDUCATION ASSOCIATION, VERMONT-NEA/NEA-READSBORO CHAPTER	)	
	)	DOCKET NO. 91-68
v.	)	
READSBORO BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 12, 1991, the Windham Southwest Education Association, Vermont-NEA/NEA - Readsboro Chapter ("Association"), filed an unfair labor practice charge against the Readsboro Board of School Directors ("Employer"). Therein, the Association alleged that the Employer had violated 21 VSA §1726 (a)(1) and (a)(5), and 16 VSA §2001 and 2008, by unilaterally changing the condition of employment of paying salary step increments, based on experience, prior to the exhaustion of mandated impasse resolution procedures provided for in the Labor Relations for Teachers Act, 16 VSA §1981 et seq.

The Vermont Labor Relations Board issued an unfair labor practice complaint on January 8, 1992. The parties filed a Stipulation of Facts, and agreed to waive an evidentiary hearing before the Board. The parties filed briefs on March 9, 1992.

FINDINGS OF FACT

1. The Readsboro School District is part of the Windham Southwest Supervisory Union School District. The Association is the exclusive bargaining agent for a unit of approximately eight licensed teachers employed in the Readsboro District.

2. The Association notified the Employer in writing in October, 1990, of its desire to commence collective bargaining over a successor to the current collective bargaining agreement. The Association's request for the commencement of negotiations was acknowledged by the Employer in writing by letter dated October 19, 1990.

3. The Association's notification to the Employer was more than 120 days before the School District's June 3, 1991, annual meeting.

4. The Employer and the Association met for the first time on October 31, 1990.

5. The Employer and Association negotiating teams met on eight occasions prior to declaring impasse on June 4, 1991.

6. Commissioner John Knight of the Federal Mediation and Conciliation Service met with the Employer and Association negotiations representative on June 26, 1991, in an attempt to mediate the bargaining impasse. Commissioner Knight was unable to resolve the impasse, and the parties agreed to proceed to fact finding.

7. The Employer and the Association agreed to ask David Randles to serve as a fact finder pursuant to 16 VSA §2007. Randles met with the parties on August 22, 1991. Prior to the date Mr. Randles was to deliver his report to the parties, he was killed in an automobile accident. Representatives of the Employer and the Association are in the process of rescheduling fact finding.

8. To date, a successor collective bargaining agreement to the agreement which expired June 30, 1991, has not been ratified by the parties.

9. Teachers began work for the 1991-92 school year on or about September 1, 1991. In spite of an attempt by the Association to have the Employer pay salary step increments for experience, the teachers' first and subsequent paychecks have not included compensation for experience increments.

10. During the term of the 1989-91 Agreement, each teacher who had not reached the maximum step in his/her respective salary column advanced one step vertically at the beginning of each school year.

11. The current position of the Association in negotiations is that the current (1989-91) collective bargaining agreement be continued for a period of two years, with salaries increased a total of eight percent each year and the addition of a provision which would provide a one-half hour duty free lunch period for each teacher each day.

12. The Employer proposes a wage freeze during the first year of the agreement and the implementation of a revised salary schedule in the second year of the agreement. The Employer also proposes that members of the bargaining unit assume any increased cost for health and dental insurance coverage.

OPINION

The issue is whether the Employer made an improper unilateral change in a condition of employment by failing to pay teachers salary step increases based on experience during the 1991-92 school year. This withholding of experience step increases by the Employer occurred after the June 30, 1991, expiration date of the collective bargaining agreement between the parties, which agreement provides that each teacher who had not reached the maximum step in his or her respective salary column advances one step vertically at the beginning of each school year. At the time of withholding of step increases, the parties had not completed the statutory dispute resolution procedure of fact finding for a successor collective bargaining agreement.

The Association relies on the Board decision, Chester Education Association, 1 VLRB 426 (1978), to support its contention that the Employer committed an unfair labor practice. In Chester, the Board concluded that the employing school board made an improper unilateral change in a condition of employment by failing to pay teachers experience step increases during the school year following the expiration date of the collective bargaining agreement which provided for such increases. At the time of withholding of increases, the parties had not reached agreement on a successor agreement and impasse had not been declared. The Board determined that the school board was prohibited from making unilateral changes in conditions of employment until the completion of the fact finding process. Id.

at 439-443. Thus, the holding in Chester supports the finding of an unfair labor practice in this case.

Nonetheless, the Employer contends that such a conclusion is unwarranted and requests that the Board overrule its Chester precedent. The Employer contends that the Board should follow the private sector precedent established under the National Labor Relation Act, which precedent provides that an employer may make unilateral changes after impasse but prior to completion of dispute resolution procedures.

We believe that the Employer's reliance on private sector precedent to decide this public sector case is inappropriate. The Labor Relations for Teachers Act requires, upon request of either party, the use of mediation and fact-finding to resolve negotiations disputes, and provides that "all decisions of the school board regarding matters in dispute in negotiations shall, after full compliance with this chapter, be final." 16 VSA §2006-2008. In cases arising under this Act, the Board has held that the school board may not take unilateral action on matters in dispute until 30 days after receipt of the report of the fact finder. Rutland Education Association v. Rutland School Board, 2 VLRB 250 (1979). Chester, supra. The Board has drawn a distinction between statutory "impasse" and genuine deadlock. An impasse in the public sector, unlike the private sector, does not mean the parties have reached a deadlock, that they have irreconcilable differences. Declaration of impasse simply means a determination by either or both parties to use statutory dispute resolution procedures; it represents a realization that

third-party assistance is needed to continue productive bargaining. Genuine deadlock is not reached until the parties have exhausted the dispute resolution procedures and it is not appropriate for the employer to make unilateral changes until then. Rutland, supra. Chester, supra. See also VSEA v. State of Vermont (re: Implementation of "6-2" Schedule at Vermont State Hospital), 5 VLRB 303, 315-320 (1982).

We believe this precedent is sound, and decline to overrule it. Thus, we conclude that the Employer has committed an unfair labor practice. The Employer made a unilateral change in the condition of employment that teachers would receive step salary increases based on experience, at the beginning of each school year, by failing to grant such increases for the 1991-92 school year. This was an improper unilateral change since it occurred prior to the completion of dispute resolution procedures.

The appropriate remedy for this unfair labor practice is to order the Employer to cease and desist from this unilateral change and to compensate teachers for wages lost as a result of the Employer's unfair labor practice.

ORDER

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

1. The Readsboro Board of School Directors ("Employer") shall CEASE AND DESIST from its unfair labor practice of withholding annual step salary increases based on experience from teachers represented by the Windham Southwest Education Association, Vermont-NEA/NEA - Readsboro Chapter ("Association").

2. The Employer shall reimburse the teachers for wages lost by the teachers, plus interest, as a result of the Employer's withholding of step salary increases based on experience during the 1991-92 school year.

3. The interest due teachers on lost wages 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 beginning of the 1991-92 school year and ending on the date the teachers receive such monies.

4. The parties shall submit to the Labor Relations Board by July 23, 1992, a proposed order indicating the specific amount of back pay due each teacher; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific factual disagreements and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on those issues shall be held on August 6, 1992, at 9:30 a.m., in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont.

Dated this 26th day of June, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Leslie G. Seaver

Carroll P. Comstock