VERMONT LABOR RELATIONS BOARD

MILTON STAFF ASSOCIATION, VERMONT-NEA / NEA LOCAL 130	)	
v.	)	DOCKET NO. 93-71
MILTON BOARD OF SCHOOL TRUSTEES	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint. On December 23, 1994, the Milton Staff Association, Vermont-NEA / NEA Local 130 ("Association"), filed an unfair labor practice charge against the Milton Board of School Directors ("School Board").

Therein, the Association alleged that the School Board committed an unfair labor practice in violation of 21 V.S.A. §1726(a)(1), (2), (3) and (5), by failing to grant wage increases pursuant to the collective bargaining agreement with an expiration date of June 30, 1992, once the expiration date of that agreement had passed and a successor agreement had not been negotiated. Specifically, the Association alleged that the School Board committed an unfair labor practice by: 1) failing to implement an arbitrator's award directing the School Board to grant wage increases pursuant to the expired agreement for the 1992-1993 year, and 2) also failing to grant wage increases during the 1993-1994 year in accordance with the same expired agreement. At the time the Association filed the charge, the Association and the School Board still had not negotiated a successor agreement to the agreement which had expired June 30, 1992.

As a remedy, the Association requested that the Labor Relations Board direct the School Board to: 1) negotiate in good faith a successor agreement with the Association, 2) implement the arbitrator's award (with interest) covering the 1992-1993 year, 3) implement the wage provisions of the expired agreement from July 1, 1993 (with interest), until such time as a successor agreement is negotiated, and 4) compensate the Association for all expenses incurred as a result of filing this charge.

On January 17, 1994, the School Board filed a response to the unfair labor practice charge. Therein, the School Board contended that the Labor Relations Board should defer this matter to the grievance and arbitration procedure set forth in the parties' expired collective bargaining agreement. The School Board indicated that it had filed a motion in court to vacate the arbitrator's award covering the 1992-1993 year, and that the Labor Relations Board should defer to that court action. With respect to the wage issue concerning the 1993-1994 school year, the School Board indicated that the Association had filed a grievance raising the same issues as raised before the Labor Relations Board, and thus the Labor Relations Board should defer to the grievance procedure on that issue.

Timothy Noonan, Labor Relations Board Executive Director, met with the parties on June 28, 1994, in furtherance of the Board's investigation of this unfair labor practice charge. At the meeting, the parties indicated that a successor collective bargaining agreement had been reached in May, 1994, to the agreement which expired June 30, 1992. The term of the successor

agreement is July 1, 1992, to June 30, 1994. Among other provisions, the agreement provides for step wage increases for the 1992-1993 year, and a 2 percent across the board increase for the 1993-1994 year (which constitutes an increase less than a step increase would have provided).

We need to decide whether this unfair labor practice charge is justiciable given the fact that the parties, by settling their contract negotiations dispute, have agreed upon what was in dispute in the matter before us - i.e., the wages due employees for the 1992-1993 and 1993-1994 years. The School Board contends that we should dismiss this charge as a result of the collective bargaining agreement. The Association contends that the actions of the School Board are capable of repetition, yet evading review, and that we should rule on the underlying issue so the issue is decided for future contract disputes. The Association also requests as a remedy that we order the School Board to pay interest on the back pay to employees for the 1992-1993 and 1993-1994 years.

In the past, the Labor Relations Board and the Vermont Supreme Court have dismissed cases as moot or not justiciable where associations and school boards have reached agreement on a collective bargaining contract pending the outcome of an unfair labor practice charge prompted by actions occurring during contract negotiations. North Country Education Association v. Brighton School Board, 135 Vt. 451 (1977). Windsor Southwest Education Association v. Windsor School District Board of School Directors, 11 VLRB 217 (1988). These cases are consistent with

the general principle that jurisdiction is conferred on the Board only when an actual controversy between the parties exists. In re Friel, 141 Vt. 505 (1982).

Similarly here, we conclude that the charge should be dismissed as not justiciable because no actual controversy exists between the parties. The underlying dispute as to whether the employees are entitled to a wage increase pursuant to the provisions of the expired agreement, before the successor agreement has been negotiated, has now been resolved by the parties agreeing to a successor agreement containing wage provisions for the period in dispute. The dispute thus has been brought to an agreed conclusion before Board review.

We appreciate the concern of the Association that the School Board could take similar action in a future contract dispute. Nonetheless, if a similar action occurs in a future round of negotiations, we believe that the Board would be able to review such action in a timely manner. Windsor, 11 VLRB at 219. This is not a case that is capable of repetition, yet evading review. c.f., Burlington Fire Fighters Association v. City of Burlington, 4 VLRB 379, 384-85 (1981).

Finally, the Association's argument that we adjudicate this matter to potentially provide the remedy of interest on the back pay due employees is not compelling. This is a matter that should have, or could have, been negotiated as part of the successor agreement reached by the parties. The fact that it was not part of the final agreement is an insufficient basis to issue an unfair labor practice complaint.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the unfair labor practice charge filed by the Milton Staff Association, Vermont-NEA / NEA Local 130, is DISMISSED.

Dated this 25th day of August, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Louis A. Toepfer

Carroll P. Comstock