

VERMONT LABOR RELATIONS BOARD

MARIE LEGACY)	
)	
v.)	
)	DOCKET NO. 94-9
SOUTHWESTERN VERMONT EDUCATION)	
ASSOCIATION, EDUCATIONAL)	
PERSONNEL UNIT, VERMONT-NEA, NEA)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

Marie Legacy filed an unfair labor practice charge on February 24, 1994, as amended on March 7, 1994, against the Southwestern Vermont Education Association, Educational Personnel Unit, Vermont-NEA, NEA ("Association"). Ms. Legacy alleged that the Association violated 21 V.S.A. §1726(b)(1) and/or §1726(b)(3) because her wages had not been increased as a result of collective bargaining contract negotiations, although other employees had their wages raised substantially.

On March 25, 1994, the Association filed a response to the charge. On June 15, 1994, the Labor Relations Board issued an unfair labor practice complaint. A hearing was held on July 14, 1994, before Board Members Charles McHugh, Chairman; Catherine Frank and Carroll Comstock. Ms. Legacy appeared on her own behalf. Joel Cook, Vermont-NEA General Counsel, represented the Association. The parties did not file post-hearing briefs.

FINDINGS OF FACT

1. Marie Legacy has been employed at Mount Anthony Union High School ("MAUHS") since 1970. During her employment, Legacy has worked as an audio-visual aide, school suspension supervisor, resource room aide, and receptionist. Legacy has been employed as a receptionist since 1988. Her job responsibilities include

answering the switchboard, relaying telephone calls, handling inquiries of persons visiting the office, operating the copier, and performing overload work of secretaries.

2. The Association has been exclusive bargaining representative of non-teaching employees at MAUHS since 1976. Legacy has been dissatisfied at various times during her employment with the salary increases which she received compared to other employees. She also was upset when her replacement as school suspension supervisor was hired at the same pay rate as Legacy made at the end of five years in the position. Legacy has been a member of the Association since the Association was organized, except for a period following negotiation of the first contract when she was dissatisfied with her pay rate.

3. By the time of negotiations for a successor collective bargaining contract to the contract expiring at the end of the 1989-1990 school year, the bargaining unit represented by the Association had expanded to include non-teaching staff employed by the Bennington I.D. Board of School Directors, the Mount Anthony Union High School Board of School Directors, and the Southwest Vermont Supervisory Union Board of School Directors.

4. During contract negotiations, which ultimately led to a collective bargaining contract covering the 1990-1993 school years, the employing School Boards proposed that positions be reclassified. The School Boards and the Association agreed to position reclassifications and a new wage schedule. The reclassifications and new wage schedule constituted an attempt by the parties to conform the compensation for the various positions to the level of duties actually performed by the employees.

5. Prior to the 1990-1993 contract, Legacy had been in pay grade "C". This pay grade included, in addition to Legacy's receptionist position, the positions of clerk, secretary and data processor. The 1990-1993 contract reclassified these positions by including the receptionist position held by Legacy and the clerk positions in Group 2, secretaries in either Group 4 or 5 (depending on their supervisory responsibilities), and data processors in Group 4. The positions in Group 2 were rated lower and paid less than the positions in Groups 4 and 5.

6. Under the 1990-1993 contract, the maximum hourly rate for a receptionist during the 1990-1991 school year was \$6.31. Legacy's hourly wage rate was above that rate, and her wage rate was "red-circled" so that she did not lose pay. The next year, the 1991-1992 school year, the maximum hourly wage rate for receptionist was increased to \$6.51. Legacy's wage rate, still above the maximum rate, was increased to \$6.96. In the final year of the contract, the 1992-1993 school year, the maximum hourly rate was increased to \$6.85. Legacy's wage rate, still above the maximum rate, was increased to \$7.12.

7. In total, six employees in the bargaining unit represented by the Association, including Legacy, were disadvantaged as a result of the reclassification and new wage schedule negotiated for the 1990-1993 contract because their wage rates were above the maximum wage rates for their positions. During the term of the contract, these employees received wage increases so that their hourly wage rates were above the maximum rates for their positions. The net effect was that the

six employees received smaller wage increases than employees who were below the maximum rate for their positions.

8. The collective bargaining contract negotiated by the Association and the School Boards for the 1993-1994 school year provided that the maximum hourly wage rate for the receptionist position held by Legacy was \$7.31. Legacy was paid at that rate during the year.

9. Legacy first complained to Association representatives concerning her wages under the 1990-1993 contract during the 1993-1994 school year. Norman Bartlett, the Vermont-NEA Uniserv Director representing the Association, contacted Schools Superintendent Philip Hyjek and requested that Legacy's position be reclassified. The 1993-1994 contract had been negotiated by this point. Superintendent Hyjek denied the request.

OPINION

At issue is whether the Association violated 21 V.S.A. §1726(b)(1) and/or §1726(b)(3) because Marie Legacy received a substantially smaller wage increase as a result of collective bargaining contract negotiations than did most other employees.

The Association made a motion at the hearing in this matter to dismiss this case on jurisdictional grounds because the unfair labor practice charge was untimely filed by Ms. Legacy. The Association failed to make any such claim in its response to the unfair labor practice charge. We decline to dismiss this matter on timeliness grounds given the Association's failure to raise this issue in a more timely manner, and conclude it is appropriate under the circumstances to address the merits.

The Association has a duty to fairly and equitably represent all employees in the bargaining unit in its negotiations with management, and a breach of that duty would be an unfair labor practice. Wilson v. Williamstown Staff Association, 14 VLRB 197, 200 (1991). The Association's duty of fair representation means that it must serve the interests of all employees without hostility or discrimination, exercise its discretion in good faith, and avoid arbitrary conduct. Id.

In a case like the one before us, where at issue is how the terms of a collective bargaining agreement affect an individual employee, the complete satisfaction of all who are represented is hardly to be expected in the give and take of the negotiations process. Lary v. Upper Valley Teachers' Association, 3 VLRB 416, 420-21 (1980). Differences inevitably arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees, the mere existence of which does not make them invalid. Id.

In applying these standards to this case, we conclude that the Association has not breached its duty of fairly representing Ms. Legacy. We recognize Ms. Legacy's concern that the reclassification of her position and the new wage schedule appeared to her to continue a pattern during her employment of other employees being treated more favorably than her concerning wages. However, the reclassification of positions and new wage schedule negotiated in the 1990-1993 contract does not reflect unfair, arbitrary or discriminatory action by the Association.

The decision of the Association to agree to the reclassification and new wage schedule plan was consistent with

the duty of the Association to fairly represent all employees as it was an attempt to conform the compensation of employees to the level of duties which they were required to perform. It is unfortunate for Ms. Legacy, and the five other employees above the maximum of their new pay scales, that they received smaller wage increases than other employees. Nonetheless, such differences in effect on employees are not an unusual result of a comprehensive overhaul of a classification and compensation system. Also, it is noteworthy the Association ensured that Ms. Legacy and the five other employees received no wage reduction, and received some wage increases, even though this meant that they were paid above the new maximum rates for their positions.


In sum, the effect on the pay of Ms. Legacy and the five other employees was unfortunate for them, but does not demonstrate unfair representation by the Association.

ORDER


NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the unfair labor practice charge filed by Marie Legacy against the Southwestern Vermont Education Association, Educational Personnel Unit, Vermont-NEA, NEA, is DISMISSED.

Dated this 7th day of September, 1994, at Montpelier, Vt.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman

/s/ Catherine L. Frank
Catherine L. Frank


Carroll P. Comstock