

VERMONT LABOR RELATIONS BOARD

BURKE BOARD OF SCHOOL
DIRECTORS

v.

CALEDONIA NORTH EDUCATION
ASSOCIATION

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DOCKET NO. 94-49

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint. On September 13, 1994, the Burke Board of School Directors ("Employer") filed an unfair labor practice charge against the Caledonia North Education Association ("Association").

Therein, the Employer alleged that the Association violated the duty to bargain in good faith during negotiations for a successor collective bargaining agreement to the agreement expiring at the end of the 1992-93 school year. There are two allegations by the Employer, each of which will be discussed in turn.

The Employer first alleges that the Association "refused to negotiate with the (Employer) for the 1994-95 school year and in fact negotiated in bad faith". In exercising our discretion pursuant to 21 V.S.A. §1727(a) in deciding whether to issue an unfair labor practice complaint, we will not issue a complaint unless the charging party has set forth sufficient factual allegations for us to conclude that the charged party may have committed an unfair labor practice.

The Employer has not set forth sufficient factual allegations concerning the 1994-95 school year for us to conclude

that the Association may have committed an unfair labor practice. The only factual allegation which is relevant in this regard is the following statement: "During negotiations, the Association has admitted under oath that they proposed multi-year agreements." This allegation, however, weighs against the issuance of a complaint. Since the parties were negotiating a successor agreement to the agreement expiring at the conclusion of the 1992-93 school, a multi-year agreement proposed by the Association had to cover at least the 1993-94 and 1994-95 school years. The fact that the Association made proposals covering the 1994-95 school year provides some evidence that they negotiated for that year. The Employer having set forth no further factual allegations relating to that year, we cannot conclude that the Association may have failed to bargain in good faith concerning the 1994-95 school year.

The second allegation of the Employer is that the Association did not bargain in good faith over the proposals made by the Employer because, in an unfair labor practice charge filed by the Association (i.e., NLRB Docket No. 94-38), the Association asserted that terms imposed for the 1993-94 school year by the Employer "had not been the subject of negotiations" although, in fact, the Employer had proposed during bargaining sessions all the items ultimately imposed.

This allegation does not support the issuance of an unfair labor practice complaint against the Association. The Employer apparently is requesting us to infer that, because imposed terms had been proposed by the Employer despite the Association's

allegation to the contrary, the Association did not bargain in good faith. This is not a logical inference; the only logical inference to draw is that the Association's allegation may be inaccurate. We can determine whether the Association's allegation in the unfair labor practice charge in Docket No. 94-38 is inaccurate through the evidentiary hearing which we have scheduled in that case for October 13, 1994. The possibility that such allegation may be inaccurate provides no appropriate independent basis by which to support a conclusion that the Association did not bargain in good faith.

Thus, we conclude that the Employer has failed to set forth sufficient factual allegations by which we can conclude that the Association may have committed an unfair labor practice. We note that, even assuming arguendo that a sufficient factual basis exists to warrant a conclusion that the Association may have committed an unfair labor practice, the Employer has not requested an appropriate remedy. The Employer requests the Board to "pose such penalties as it may feel are just, including the decertification of the (Association) as the bargaining unit for the employees of the Burke School District". We do not impose penalties in unfair labor practice cases. As we have stated elsewhere, in exercising our broad powers to remedy unfair labor practices pursuant to 21 V.S.A. 1727(d), our orders are to be remedial "make whole" orders, not punitive. Burlington Education Association v. Burlington School District, 16 VLRB 398, 410-411 (1993). Cavendish Town Elementary School Teachers Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16

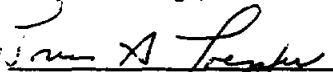
VLRB 378, 391 (1993). The Employer's request that we impose penalties on the Association thus is inappropriate.

NOW THEREFORE, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED that the unfair labor practice charge filed by the Burke Board of School Directors is DISMISSED.

Dated this 5th day of October, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock