VERMONT LABOR RELATIONS BOARD

GREEN MOUNTAIN UNION HIGH SCHOOL BOARD OF DIRECTORS and CHESTER-ANDOVER ELEMENTARY UNION BOARD OF DIRECTORS	)	
v.	)	DOCKET NO. 78-112R
CHESTER EDUCATION ASSOCIATION and VERMONT EDUCATION ASSOCIATION	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On December 20, 1978 the Green Mountain Union High School Board of Directors (hereinafter "Green Mountain School Board") and the Chester-Andover Elementary Union Board of Directors (hereinafter "Chester-Andover Board") filed an unfair labor practice charge with the Vermont Labor Relations Board. In that charge the Green Mountain School Board and the Chester-Andover School Board (collectively referred to as "School Boards") alleged that the Chester Education Association (hereinafter "CEA") and the Vermont Education Association (hereinafter "VEA") had committed an unfair labor practice in violation of 21 V.S.A. §1726(b)(5). Specifically, the School Boards charge that the CEA and VEA (hereinafter collectively referred to as "Associations") have: (1) engaged in a partial work stoppage in the form of a "work to rule" policy implemented by the CEA; and (2) are encouraging members to go out on strike in the form of a total walkout.

The Board issued a complaint of unfair labor practice on February 2, 1979. A hearing was held in the matter in Chester, Vermont on March 1, 1979. All members of the Board were present. The complainants were represented by R. Bruce Freeman, Attorney for the School Boards. The respondents were represented by Gary H. Barnes, Attorney for the Associations.

FINDINGS OF FACT

1. The complainants represent the Green Mountain Union High School District and the Chester-Andover Elementary Union District, which are considered municipal employers for the purposes of unfair labor practices under the Vermont Municipal Labor Relations Act.

2. The respondent, the CEA, is the recognized agent of the teachers in both union school districts for purposes of collective bargaining, and is an employee organization for the purposes of unfair labor practices under the Vermont Municipal Labor Relations Act.

3. The CEA is an affiliate of the Vermont Education Association, which is comprised of various member teacher associations throughout the State of Vermont.

4. Since October 1977 the parties have been involved in collective bargaining in an effort to reach a master agreement for the 1978-79 school year. The last master agreement between the parties expired prior to the beginning of the 1978-79 school year. No new agreement has been reached to date.

5. In September, both School Boards adopted interim policies for the Elementary School and for the High School which changed certain terms and conditions of employment as set forth in the expired master agreements. (Complainants' 1, 3, 4, and 5)

6. Both School Boards have paid teachers at the Elementary School and at the High School the same salary the teachers received for the 1977-78 school year without any incremental increases set forth in the expired master agreements. (Complainants' 1, 2 and 4)

7. The parties have submitted their unresolved issues to a fact finding committee. Informal hearings by the fact finding committee have been completed and a report is expected from the committee sometime after April 1, 1979.

8. Sometime during the fall of 1978 the CEA distributed a written document entitled "Work to Rule" to each teacher at the Green Mountain High School and at the Chester-Andover Elementary School. In general the guidelines for the "work to rule" program which are set forth in this document, are that teachers should honor all their contractual commitments previously entered into, but should not perform any noncontractual duties such as field trips, seeing students early in the morning or staying after hours, nor

should they enter into any new contracts or commitments to perform extra curricular activities. (Complainants #9).

9. On October 30, 1978 a letter on CEA stationery was sent to the principal of the Green Mountain High School which was signed by the class advisors for grades 7 - 12 and the club advisors for the botany, Spanish, Russian, French, tennis, railroad, ski, art, drama and Latin clubs as well as the National Honor Society and the Future Homemakers of America. The letter states that no teachers associated with these clubs or activities will sign any forms for expenditures from the student activities accounts, or attend any club or class activities beyond "regular teacher duty hours," or participate in any fund raising activities for any class or club, or meet with the clubs unless contracted to do so. The reason given in the letter for setting up these guidelines is "the school board's reluctance to negotiate a fair contract." (Complainants' 10).

10. The parties stipulated that neither the 1978 Master Agreements nor individual contracts signed by the teachers set forth working hours. (Complainants' 1, 2, 4).

11. The only reference to working hours appearing in writing is in the "Teacher Handbook" for the Green Mountain Union High School. On page 13 of this handbook it states:

> "Teachers are to be present in the building from 7:45 a.m. until 3:30 p.m., Monday through Thursday. Teachers may leave at 2:35 p.m. on Fridays."

On pages 2 and 3 of this handbook, "Roles of the Teacher" is set forth. This statement of teacher role expectations and responsibilities states that a teacher should: be ready to work beyond the five period teaching day; support school activities by attending and participating in extra curricular activities on a regular basis; be available prior to the opening of school for planning sessions; and be concerned about the total educational program of the school. (Complainants' 6).

12. The hours set forth in that handbook are considered a minimum level of conduct by the Green Mountain Board of School Directors and do not represent what is expected.

13. Teachers are interviewed for positions at the Green Mountain Union High School and hired by the School Board with an eye towards their contribution to "total educational program" including clubs and similar extra and co-curricular activities.

14. All of the teachers who testified at the hearing consider themselves as "professionals" and consider this to mean that they are not engaged in a 9-5 type job but rather expect to work extra hours.

15. Out of 525 students at the High School at least one-half participate in extra or co-curricular activities.

16. Extra and co-curricular activities at the High School fall into two different categories: voluntary and contractual. Teachers who are class advisors or club advisors (see list of signatures in Complainants' 10) volunteer their services and receive no remuneration for time spent on these activities outside of the working hours referred to in the teachers handbook. Teachers are remunerated on a contractual basis for co-curricular activities most of which involve the coaching of athletic programs. The list of the co-curricular activities for which contracts are available appears in Appendix C of the Agreement between the parties. (Complainants' 1). Teachers enter into these contracts with the school on a voluntary basis.

17. The Elementary School also has separate contracts with teachers for coaching their intramural sports programs. The Elementary School does not have voluntary extra curricular activities like the clubs at the High School; however, the School does hold certain programs during the year which occur after regular school hours and which involve the voluntary participation of the teachers.

18. Prior to implementation of the "work to rule" policy, contracts for co-curricular activities at the High School and the Elementary School were routinely filled by teachers. Teachers at the High School also routinely volunteered their services as class and club advisors and planned activities with students which took place after school hours and occasionally on weekends.

19. All of the contracts for coaching co-curricular sports programs which had been signed prior to the implementation of the "work to rule" policy have been fulfilled by the teachers at the High School and at the Elementary School. However, since the implementation of "work to rule"

none of the contracts which remain open have been signed. These include boys and girls basketball and volleyball at the Elementary School and many of the spring sports programs at both schools.

20. Scheduled classes at the High School and the Elementary School generally end at 2:30 p.m. Since the implementation of the "work to rule", teachers have met with students and conducted extra and co-curricular activities from 2:30 to 3:30 p.m., but have generally refused to plan any activities after 3:30 or on the weekends. Some clubs and activities which involve outside hours have continued with the voluntary help of parents and the school administration but certain plans for field trips and weekend excursions have had to be cancelled.

21. Cynthia Austin is a music teacher at the High School. At the beginning of the school year she had planned to take a group of students to a music workshop at Plymouth State College and had agreed to participate in a school sponsored cotillion. She had also considered preparing the marching band for a festival in Washington, D.C. She has cancelled all of these plans as a result of the "work to rule" policy.

22. Richard Suffern teaches English and Latin at the High School. Since "work to rule" he has cancelled the production of a drama club play and a field trip to Boston. Although many reasons including financial considerations entered into his decision, the "work to rule" policy was a key factor.

23. Robert Freeman is the director of physical education at the High School. Last spring he successfully applied for a grant to develop a "parcourse" for the school. Although he had discussed with the principal remuneration for actual construction work on the course, his work on the project to date has been totally voluntary. In February he discontinued his involvement in the project in part because of the "work to rule" policy.

24. Norman Stevens is the principal of the Green Mountain High School. In his opinion the effect of "work to rule" at the High School has been to curtail the availability or, where the activities are going on with parental or administrative help, the effectiveness of important educational programs.

25. Students at the High School have complained about the lack of extra and co-curricular activities, and have held a meeting in the auditorium to express their concerns.

26. While there is no evidence that any of the teachers at the High School who have cancelled plans for extra curricular activities did so at the insistence of the Associations that they comply with the "work to rule" guidelines, services which had been rendered in the past and are valuable to the education of high school students have been withheld by the High School teachers in concert.

27. The impact of the "work to rule" has been less at the Elementary School since not many activities have ever been scheduled for after school. But certain programs such as Show and Tell Night, boys and girls basketball and volley ball, and the primary Christmas program have been affected by "work to rule".

28. During the months of October, November and December 1978, Paul Stagner, Chief Negotiator for the CEA, made certain statements to the local press concerning the possibility of a strike as a result of the failure to settle contract negotiations. Mr. Stagner has also commented to the press that a strike by teachers would be lawful after the fact finding process has been completed. Mr. Stagner has 10 years experience as a negotiator and in his opinion the press plays an important tactical role during contract negotiations as a liaison between the parties and the taxpayers.

29. A strike in the form of a total work stoppage has been discussed at CEA meetings. On November 29, Mr. Ball, one of the teachers at the High School, suggested that the teachers go out on strike. The suggestion was promptly squelched by the Association leadership. (Respondents' B)

30. At a CEA meeting which took place on January 16, 1979, a motion was made to amend the constitution so that the executive committee would be empowered to call a strike vote if the negotiation process "does not result in a negotiated agreement". The motion passed. (Complainants' 10).

31. At the same meeting, a motion was made by the Chairman of the Crisis Committee for the CEA to meet on February 25, 1979, "to vote to strike and/or take other necessary action". This motion carried. The February 25 date was chosen in expectation that fact finding, originally scheduled for February 8, would be completed. (Complainants' 11).

32. A meeting of the CEA was held on February 25, as scheduled, but a vote to strike was postponed until April 1, since fact finding took longer than expected and is not yet completed.

33. In September the CEA organized a "Crisis Committee" which has met throughout the school year and more recently has rented office space in Chester, Vermont. One of the functions of the Crisis Committee has been to improve communications between the teachers and to date no strike related activities have taken place at the store front which the Crisis Committee rented.

34. There is no evidence that any officer of the Associations has recommended to any member of the Associations or group of members that they go out on strike in the sense of a total refusal to work.

OPINION

I

WORK TO RULE IS A "STRIKE"

The Associations move that the Board dismiss this matter on the grounds that the evidence does not support the charge of an unfair labor practice in violation of 21 V.S.A. §1726(b)(5). Since the teachers have performed all contractual obligations and have only withheld voluntary services for which they were not compensated, the Associations argue that the "work to rule" policy is not a "strike" as it is defined in the Municipal Labor Relations Act.

Under 21 V.S.A. §1735 certified teachers are considered municipal employees for the purposes of "representation in, and prevention of unfair labor practices under sections 1726-1729" of the Act. Under §1726(b)(5) of the Act it is an unfair labor practice for an employee organization or its agents:

> "To engage in, or to induce or encourage any person to engage in a strike or a refusal in the course of his employment to use, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services. . ." (emphasis added)

A strike" is defined in 21 V.S.A. §1722(16) as:

> "conduct by an employee or employee organization or its agents which produces, induces, or encourages a work stoppage, slowdown or withholding of services. . ."

The Associations' position that "work to rule" is not a strike is based on a narrow interpretation of the word "services" as meaning only services which are specified in the contract. Since there is no requirement in the expired master agreements between the parties or in the individual teacher contracts for 1978-79 that teachers participate in extra-curricular activities outside normal school hours or sign up for available contracts for co-curricular activities, the Associations contend that these duties are voluntary and are not within the meaning of "services" as it is used in the definition of a strike.

We reject this interpretation of "services" as it applies to teachers. While extra and co-curricular activities are generally performed by teachers in most schools on either a voluntary basis or by separate contract, they are an integral part of a sound educational program and an inseparable part of a teacher's duties. The educational climate of a school is dependent on teachers and students doing more than the bare minimum of work. As each teacher who testified at the hearing acknowledged, teaching is a profession which involves more than 9-5 type hours. Courts which have considered this question have reached similar conclusions. See, for example, McGrath v. Burkard, 131 Cal. App. 367, 280 P.2d 864 (1955); Parrish v. Moss 200 Misc. 375, 106 N.Y.S. 577, aff'd without opinion 279 App. Div. 604, 107 N.Y.S. 2d 580 (1951); District 300 Education Assn. v. Board of Education 31 Ill. App. 3rd 550, 334 N.E. 2d 165 (1975).

In the instant case, while extra curricular activities are voluntary, they have been performed in the past by teachers on a regular basis as part of their jobs. Similarly, contracts for co-curricular activities have also been filled on a regular basis. While the contracts do not specifically require the performance of these duties, they do not set forth the number of working hours a teacher is expected to put in either. The only place that working hours are specified is in the "teachers handbook" for the high school which also lists in a statement of "teacher role expectations and responsibilities:" attendance and participation in extra curricular activities on a regular basis; readiness to work beyond a five hour day; concern for the total educational program of the school, etc. The evidence further demonstrates that one of the criteria used for hiring teachers is their potential contribution to the school's extra curricular program. Teachers are thus made aware from the time they are interviewed, of their employer's expectations that they will participate in these activities.

We are not persuaded by the argument that the statutory definition of a strike pertains only to the withholding of services specified in a contract. A contract cannot be expected to cover the minutiae of duties which a teacher is expected to perform. To do so for each extra and co-curricular activity would detract from the consensual nature of those duties which allows a teacher to judge how much he/she can handle in any

particular year or semester. In our view, a "strike" in the Municipal Act is broadly defined to cover the withholding of "any" services to the employer. This includes those which have been defined in the contract as well as those which have been established and understood through the past practices of the parties.

Clearly in this case the performance of extra and co-curricular activities has been part of the duties of a teacher at both schools in the past. Furthermore, the decision to withhold these duties was a concerted action on the part of the teachers as a group, as evidenced by the "work to rule" guidelines published and distributed by the Associations, the letter of October 30 setting forth guidelines concerning teacher participation in club and class advisorships, and the activities which have been curtailed or cancelled as a result of teacher compliance with the "work to rule" guidelines. The evidence further shows that the purpose of "work to rule" is to bring pressure on the School Boards during the current contract negotiations between the parties. The letter of October 30 specifically states that the withholding of teachers' participation in club and class activities is "as a result of the School Boards' reluctance to negotiate a fair contract."

We find that the respondent Associations have participated in a concerted action to withhold services for the purpose of influencing their bargaining relationship with their employer and have, therefore, engaged in a "strike" as it is defined in the Municipal Labor Relations Act. The Associations' motion to dismiss is, therefore, denied.

II

TEACHERS LIMITED RIGHT TO STRIKE

Having found that the respondent Associations have engaged in a "strike" within the meaning of the Act, we must consider whether the strike is an unfair labor practice under §1726(b)(5). The School Boards construe the unfair labor practice statutes as they apply to teachers as prohibiting teachers from striking or encouraging strike activity at any time. After carefully considering all of the statutes involved, we disagree with this analysis.

At common law, courts have universally held that there exists no fundamental right to strike by employees in either the private or the public sector

absent express statutory authorization (See 37 ALR 3d 1147; 18 I. Kheel Labor Law §57.02 [1]). While many states have enacted specific legislation prohibiting all public employees from engaging in strikes or withholding services, Vermont has enacted specific legislation extending a limited right to strike to municipal employees. For the reasons given below we believe that the legislative intent in enacting the provisions of the Municipal Labor Relations Act and the Teachers Labor Relations Act was to extend this statutory authorization to teachers as well as to other municipal employees at least so far as unfair labor practices are concerned.

Section 1726(b)(5), as cited above, prohibits all municipal employees including certified teachers from engaging in or encouraging a strike. Section 1730, however, specifically gives municipal employees a limited right to strike.

> "A strike shall not be prohibited unless:
>
> (1) It occurs sooner than 30 days after delivery of a factfinder's report... ;
>
> (2) It occurs after both parties have submitted a dispute to final and binding arbitration, or after a decision or award has been issued by the arbitrator; or
>
> (3) It will endanger the health, safety, or welfare of the public... "

Thus, although the unfair labor practice statute appears to place a blanket prohibition on all strikes, as the Associations point out in their brief, a technical interpretation of this statute can lead to an anomalous result. If a municipal strike occurred which was legal under §1730, it would be contradictory for this Board to find that the strike was an unfair labor practice under §1726(b)(5). The unfair labor practice provisions of the Act cannot be understood unless they are construed in harmony with the Act as a whole.

The School Boards argue that while strikes may be an unfair labor practice for municipal employees under the circumstances set forth in §1730, this is not true for teachers since §1735 which applies the Municipal Act to teachers for the purposes of unfair labor practices does not specifically apply §1730. We disagree with this conclusion. While §1735

only specifically applies §§1726-1729 to teachers, the stated intent of §1735 is to apply these sections for "the purposes of representation in, and prevention of unfair labor practices." Just as the provisions concerning unfair labor practices cannot be understood without being read in conjunction with the definitions of "strike" etc. contained in §1722, the prohibition against strikes in §1726(b)(5) cannot be understood without being read in conjunction with §1730. In our view the legislative purpose behind the enactment of §1735 is to apply the unfair labor practice statutes to teachers as they are applied to other municipal employees. Any other interpretation would result in our giving effect to legislative policy which is inconsistent with the purposes expressed in §1735.

For the foregoing reasons we conclude that teachers are given the same limited right to strike as municipal employees for the purposes of finding an unfair labor practice under §1726(b)(5). We do not, however, agree with the Associations' position that 16 V.S.A. §2010 of the Teachers Labor Relations Act relating to court injunctions against teacher strikes requires that this Board apply the same criteria for ordering teachers to cease and desist from a strike as must be applied by a court when issuing an injunction. Section 2010 prohibits courts from issuing an injunction or a restraining order:

> "Except on the basis of findings of fact made by a court of competent jurisdiction after due hearing prior to the issuance of a restraining order or injunction that the commencement or continuance of the action poses a clear and present danger to a sound program of school education which in the light of all relevant evidence it is in the best public interest to prevent."

21 V.S.A. §1735 expressly provides that enforcement of a Board order under §1729 to prevent an unfair labor practice is not subject to the provisions of 16 V.S.A. §2010. If a court in an enforcement proceeding under §1729 is not subject to the provisions of 16 V.S.A. §2010, it would be illogical to say that this Board must apply the criteria set forth in §2010 in reaching its decision.[1] In our opinion 16 V.S.A. §2010 pertains only to an

[1] In any event the criteria set forth in 21 V.S.A. §1730(3) relating to the "health, safety or welfare of the public" could be construed as being essentially similar to the criteria in 16 V.S.A. §2010 relating to the public interest in preventing "a clear and present danger to a sound program of school education." This limitation avoids eviscerating the school board's authority to impose a reasonable settlement under 16 V.S.A. §2008.

injunction of a teacher strike which has not been found to be an unfair labor practice by this Board. It applies only to courts and has no relevance to a finding by this Board that a strike is an unfair labor practice.

In applying the foregoing statutory construction to the instant case, we conclude that since the teachers, through a concerted effort organized by the Associations, withheld services under "work to rule" prior to the completion of factfinding, an unfair labor practice has been committed by the Associations in violation of 21 V.S.A. §1726(b)(5).

We do not find, however, that the Associations have committed an unfair labor practice by encouraging or inducing a strike in the sense of a complete cessation of all services. On the contrary, the evidence shows that the Associations have made a concerted effort to prevent a total walkout in the face of difficult negotiations with the School Boards. We do not regard discussions in CEA meetings concerning the possibility of strikes or the taking of strike votes after factfinding, the formation of a crisis committee, or tactical statements to the press concerning the possibility of a strike, as being evidence of encouragement on the part of the Associations to induce its members to strike illegally. Again a technical reading of the provisions of §1726(b)(5) prohibiting the inducement or encouragement of any person to engage in a strike leads to an anomalous result since technically it prohibits the organization of a strike which would be legal under §1730.

Since we find that the teachers would have the right to strike 30 days after the delivery of the factfinding report providing that the strike did not "endanger the health, safety or welfare of the public"[§1730(3)], it would in our view be inconsistent to find that actions taken by the Associations in preparation for the contingency of such a strike to be an unfair labor practice. Furthermore we find that any charge relating to views expressed by members of the Associations to the press with regard to the possibility of a strike presents serious First Amendment problems, particularly in view of the freedom of expression guaranteed in 21 V.S.A. §1728. In our opinion nothing we heard in this case with regard to statements to the press amounts to an unfair labor practice. While the Associations' statements to the press may reflect an intent to excite the public, they do not reflect an intent to incite the membership when coupled with the Associations' actual record of discouraging its members from engaging in a total walkout.

III

REMEDY

Having found that the Associations are engaging in an unfair labor practice by withholding certain services, this Board must, under 21 V.S.A. §1727(d), order the Associations to cease and desist from implementing "work to rule" and may order such affirmative action as it may deem necessary. While under most circumstances we would make such an order unconditionally and might even order that the Associations be fined, we cannot in equity ignore the fact that in this case the employees' unfair labor practice has been committed in the face of a continuing unfair labor practice on the part of the employers, Chester Education Association v. Chester-Andover School Boards, #78-95R.

In the private sector the NLRB and the courts have distinguished between "economic strikes" which are engaged in for the purpose of modifying or terminating a contract and "unfair labor practice strikes" which occur as a result of the employer's unfair labor practices, Mastro Plastics Corp v. N.L.R.B. 350 U.S. 270, 100 L.Ed 309, 76 S.Ct. 349 (1955). (See also 18F Kheel, Labor Law §30.03.) In Mastro Plastics Corp, supra, the United States Supreme Court ruled that while an employer has the right to discharge striking employees when an "economic" strike occurs within 60 days from the time the union notifies the employer of its desire to terminate a contract, the employer does not have the right to discharge striking employees if the strike occurs as a result of the employer's unfair labor practices even if the contract contains a no-strike clause. In reaching its decision the Court stated:

> "There is inherent inequity in any interpretation that penalizes one party to a contract for conduct induced solely by the unlawful conduct of the other, thus giving advantage to the wrongdoer." id, 350 U.S. at 287

In a more recent case the Eighth Circuit Court of Appeals broadened this ruling when it held that when an employer's refusal to bargain is a contributing factor to a strike, the strike is an unfair labor practice strike notwithstanding other issues involved, N.L.R.B. v. Columbia Tribune 495 F.2d 1384 (8th Cir. 1974). See also Donovan v. N.L.R.B. 520 F.2d 1316 (2d Cir. 1975).

While we do not interpret federal precedent in the private sector on this issue as altering in any sense our determination that a strike which is unauthorized by statute is an unfair labor practice, we do believe that it stands for the proposition that unfair labor practices by an employer must be given consideration when arriving at an equitable remedy for the unfair labor practices of the employees.

In the instant case the parties have been negotiating a new master agreement for over a year and a half. In September the CEA filed an unfair labor practice charge against the Chester-Andover School Board as a result of the School Board's implementation of interim policies prior to the declaration of impasse by either side. The interim policies altered the sick leave policy and grievance procedure and provided that teachers would receive the same salaries they had received the previous year without the annual incremental increase set forth in the old master agreement.

After adopting the charge as a complaint and holding a hearing on the matter, this Board found that the unilateral implementation of these policies was a "per se" refusal to bargain in violation of §1726(a)(5), Chester Education Association v. Chester-Andover School Boards, #78-95R. In our Findings of Fact, Opinion and Order issued December 21, 1978, we ordered the Chester-Andover School Board to cease and desist from implementing the interim policies and to pay the elementary school teachers the incremental increase they would have received under the salary schedule for the prior year until they had reached agreement on a new contract or until they had completed the statutory bargaining process. The Chester-Andover School Board subsequently appealed our order thereby staying its execution, and to date have not complied with any of its terms.

While no unfair labor practice charges were ever brought against the Green Mountain High School, the exhibits presented at the hearing in this matter indicate that the Green Mountain School Board adopted interim policies which made similar changes in the expired master agreement with the teachers at the high school. The Green Mountain School Board also paid its teachers the same annual salary which they had been paid for the previous year without an incremental increase. Thus, while this Board has never issued

a cease and desist order against the Green Mountain High School for an unfair labor practice, the factual circumstances which led to a finding of an unfair labor practice against the Chester-Andover School Board are practically identical to those which also occurred at the Green Mountain High School.

As was evident from the hearing in this matter, the protracted negotiations between the parties have often been heated and bitter. While elsewhere in Vermont teacher associations have engaged in walkouts when they found themselves without a contract in September, the Associations in this case have continued to encourage their members to perform all of their contractual responsibilities in the absence of a master agreement and in the face of the employers' unfair labor practices. Under these difficult circumstances they have managed to successfully discourage their membership from engaging in a walkout while the negotiation process continues.

In the final analysis, a fair remedy depends on equitable considerations which involve three parties: The Associations, the School Boards and the students whose education has been affected by this labor dispute. We are well aware, for example, that a student is only a high school senior once in his life and that extracurricular activities are an invaluable part of that year. In view of the total record, however, we cannot ignore the fact that the School Boards commenced their unfair labor practices in September and it was not until the end of October that the teachers embarked on any retaliatory actions. Many teachers have been deprived throughout this school year of pay increases which we believe they are legally entitled to.

In our view there is sufficient evidence that this controversy has been provoked by the School Boards. The real losers have been the teachers who have been deprived of money and the students who have been deprived of an important part of their educational experience. We believe that the "work to rule" policy must end but we do not believe that it is fair to the teachers or of any benefit to the students at this late date in the school year, to order the teachers to cease and desist from "work to rule" and at the same time give the School Boards the full benefit of their own illegal actions. We, therefore, believe that in equity an order for the Associations to cease and desist from "work to rule" should only be applied when the School Boards cease and desist from committing unfair labor practices themselves.

In conclusion we find that the respondents have engaged in an unfair labor practice at the Chester-Andover Elementary School and at the Green Mountain High School in violation of 21 V.S.A. §1726(b)(5). Accordingly, we order that the respondents as the collective bargaining agents for the Chester-Andover Elementary School cease and desist from encouraging concerted action to carry out "work to rule" at such time as the Chester-Andover School Board complies with our Order of December 21, 1978. Since, as was pointed out earlier, the Associations have never charged the Green Mountain High School Board with an unfair labor practice and an order has never been entered against that School Board, we order the respondents as the collective bargaining agent for the Green Mountain High School cease and desist from encouraging concerted action to carry out "work to rule" at such time as the Green Mountain School Board is legally able to implement changes in the expired master agreement consistent with the opinions expressed in Chester Education Association v. Chester-Andover School Board, supra.

ORDER

For the foregoing reasons and in accordance with this Board's authority to prevent unfair labor practices under 21 V.S.A. §1727(d), it is hereby ORDERED that:

1. At such time as the Chester-Andover School Board complies with this Board's Order of December 21, 1978, the Chester Education Association and the Vermont Education Association shall:

(a) Call appropriate meetings of their members for the purpose of revoking the "work to rule" policy;

(b) Cease and desist from encouraging concerted action by their members to carry out the "work to rule" policy.

2. At such time as the Green Mountain High School Board is legally able to unilaterally implement changes in the expired master agreement between the parties in accordance with this Board's opinion expressed in Chester Education Association v. Chester-Andover School Board, #78-95R, the Chester Education Association and the Vermont Education Association shall:

(a) Call appropriate meetings of their members for the purpose of revoking the "work to rule" policy;

(b) Cease and desist from encouraging concerted action by their members to carry out the "work to rule" policy.

3. By way of affirmative relief, for every day that the Chester Education Association and the Vermont Education Association is in violation of the order set forth above, the Chester-Andover School Board and the Green Mountain High School Board need not comply with the dues deduction provisions set forth in Article II of the Interim Policies adopted by the School Boards.

Dated this 29th day of March, 1979, at Montpelier, Vermont.

Appeal to Sup Ct dismissed by stip. 2/24/79

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

Robert H. Brown