

VERMONT LABOR RELATIONS BOARD

BARRE CITY EDUCATIONAL SUPPORT)
PERSONNEL ASSOCIATION)
)
v.)
)
BOARD OF SCHOOL COMMISSIONERS OF)
THE CITY OF BARRE)

DOCKET NO. 79-66R

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On September 18, 1979, the Barre City Educational Support Personnel Association (hereinafter "Association") filed an unfair labor practice charge with the Vermont Labor Relations Board (hereinafter "Board") alleging the Board of School Commissioners of the City of Barre (hereinafter "Employer") unilaterally decreased the hours in the workday for the 1979/1980 workyear. This action, the Association charges, was an attempt to coerce and interfere with the union and its representatives during the bargaining process in violation of 21 V.S.A. §1726(a)(1) and (2), subsequently adversely affecting the integrity and membership of the union as proscribed in 21 V.S.A. §1726(a)(3).

On September 25, 1979, after investigating the matter and taking the verified allegations contained in the charge as true, the Board issued a complaint and notice of hearing to be held October 25, 1979.

An answer to the charge was filed by the Employer on October 9, 1979; and a hearing on this matter was held before Members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on October 25, 1979. Representing the Association was Allen T. Stook, Director of the Vermont Education Association/National Education Association Uniserv District #2. The Employer was represented by Peardon Donaghy, Esquire. Requests for findings

of fact and conclusions of law were filed by the Employer on November 8, 1979 and by the Association on November 13, 1979.

FINDINGS OF FACT

1. The Board of School Commissioners of the City of Barre is the governing body of the Barre City School District, a municipal employer under 21 V.S.A. §1721 et seq.

2. The Barre City Educational Support Personnel Association is the exclusive bargaining representative of all aides employed by the Barre City School District, municipal employees under 21 V.S.A. §1721 et seq.

3. On or about January 29, 1979, the Employer voluntarily recognized the unit in response to a petition for recognition submitted by the Association in accordance with 21 V.S.A. §1581 et seq.

4. Negotiating sessions were held on May 24, 1979, June 19, 1979, June 28, 1979, August 1, 1979, and August 9, 1979.

5. A major issue in dispute during negotiations was the level of hours of employment guaranteed the aides per day and per week. The Association seeks no less than a six and one-half hour workday (resulting in a guaranteed thirty-two and one-half hour workweek). The Employer resists the establishment of a guaranteed number of hours on a daily basis, maintaining specific workday minimums are not a subject of bargaining.

6. During the 1978-1979 school year, aides not then certified as a collective bargaining unit worked six and one-half hours per day.

7. On or about August 20, 1979, each member of the bargaining unit received notification from Mr. William C. Rochon, Director of Pupil Personnel Services and Special Education, that the length of the workday for aides during the 1979-1980 school year would be reduced to six hours per day, effective September 5, 1979. (Aides Exhibit #1).

8. Two additional bargaining sessions were held on August 23 and August 29, 1979, at which time the parties discussed the Employer's reduction in hours.

9. On August 30, 1979, the parties declared impasse, submitting the matter of a guaranteed minimum of hours per workweek (among other issues in dispute) to mediation.

10. In a letter from Mr. Rochon dated September 17, 1979, all bargaining unit members were notified all aides would work a six and one-half hour day effective September 24, 1979, until further notice. (Employer's Exh. "A"). The reason given by the Employer for this action as stated in Mr. Rochon's notification was an assessment that in some instances student service requirements were not being met.

11. Of a total of forty aide positions budgeted by the Employer for the 1979-1980 school year, nineteen are federally funded "Title I" positions, and the remainder are either funded locally or in conjunction with state assistance.

12. The Employer was notified on July 1, 1979, that "Title I" funds for the 1979-1980 school year would be less than those available in the previous year.

13. The Employer's witness, Mr. William Rochon, testified that the reduction in daily work hours for the aides was based on the School District's perceived inability to pay the aides should they continue to work a thirty-two and one-half hour week.

14. As a result of the reduction in hours effective September 5, 1979, each member of the bargaining unit lost one-half hour of work per day for thirteen days prior to September 24, 1979.

OPINION

This case requires us to decide whether the Employer's unilateral action decreasing the number of hours in the workday, during the hiatus between unit recognition and the execution of the first collective bargaining agreement, constitutes an unfair labor practice as charged by the Association. Two similar unfair labor practice proceedings have been recently decided by this Board and our Supreme Court: In Re: Southwestern Vermont Education Association 136 Vt. 490 (1978) and Vermont Education Association v. City of Rutland School Department 2 VLRB 186 (1979).

Southwestern Vermont Educ. Assn., supra. and VEA v. City of Rutland Sch. Dept., supra. both conclude:

"...(O)nce it has been proved that the employer engaged in a discriminatory conduct which could have adversely affected employee rights to some extent, the burden of proof is upon the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him." VEA v. City of Rutland School Dept., supra at 190.

We find the Employer's unilateral reduction in the hours of employment for newly recognized bargaining unit members, to be within the purview of conduct "inherently destructive" of protected employee rights. Despite the absence of anti-union animus on the record, the natural foreseeable consequence of this unilateral action in the context of negotiations warrants the inference of an intent to discriminate. Thus, here too, the Employer carries the onerous burden of establishing the sole reason for the half hour decrease in the aides' workday was economic.

The Employer asks that in deciding this matter we consider NLRB v. Cone Mills Corporation 373 F.2d 595 (1967), which treated unilateral changes in conditions of employment. In Cone Mills, supra, the court held that there might be circumstances which the Board should or could accept as

excusing or justifying unilateral action. Such a justification could exist if a full review of the record showed the unilateral action would not frustrate bargaining.

Such is not the case here. To the contrary, the subject of the unilateral action in this instance was and remains a major stumbling block preventing settlement between the parties, an issue contributing to the declaration of impasse which has subsequently been submitted to mediation. In this context and absent evidence sufficient to find otherwise, we reject the Employer's offering that this action was justified.

We believe the Employer in this case has not satisfied that burden. Accordingly, we sustain the Association's charge that this action constitutes: 1) interference with the administration of the recognized employee organization, and collective bargaining process in violation of 21 V.S.A. §1726(a)(1),(2) and (3); and 2) a per se violation of the duty to bargain in good faith in violation of 21 V.S.A. §1726(a)(5).

ORDER

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

- 1) The Board of School Commissioners of the City of Barre cease and desist from any future unilateral altering of the hours of employment of bargaining unit members while statutorily required to bargain with the Barre City Educational Support Personnel Association.

- 2) The Board of School Commissioners of the City of Barre take the following affirmative action: Reimburse each bargaining unit member six and one-half hours pay in order to make them whole for wages lost during the thirteen days the reduced workday was in effect.

Dated this 19th day of November, 1979, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William D. Kemsley, Jr.
William D. Kemsley, Jr.

Robert H. Brown
Robert H. Brown