

VERMONT LABOR RELATIONS BOARD

MIDDLEBURY UNION HIGH SCHOOL)	
TEACHERS ASSOCIATION-)	
HANNAFORD REGIONAL)	
TECHNICAL UNIT/VERMONT-NEA/)	
NEA)	
)	
v.)	DOCKET NO. 06-26
)	
PATRICIA HANNAFORD REGIONAL)	
TECHNICAL SCHOOL DISTRICT)	
BOARD OF DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 21, 2006, the Middlebury Union High School Teachers Association – Hannaford Regional Technical Unit/Vermont-NEA/NEA (“Association”) filed an unfair labor practice charge. The Association alleged that the Patricia Hannaford Regional Technical School District Board of Directors (“Employer”) violated its duty to bargain in good faith pursuant to 21 V.S.A. Section 1726(a)(5) by conditioning its willingness to negotiate a collective bargaining contract on the Association agreeing to conduct the ratification of the contract with a process approved by the Employer. The Employer filed a response to the charge on July 7, 2006.

After investigation of the unfair labor practice charge, the Labor Relations Board issued an unfair labor practice complaint. The Board conducted a hearing on January 11, 2007, in the Board hearing room in Montpelier before Board members Richard Park, Acting Chairperson; Joan Wilson and James Dunn. Donna Watts, Vermont-NEA General Counsel, represented the Association. Attorney Scott Cameron represented the Employer. The parties filed post-hearing briefs on January 29, 2007.

FINDINGS OF FACT

1. Prior to July 1, 2004, the Patricia Hannaford Career Center was a component of Union School District #3 (“UD #3”). UD #3 is a school district which is included within the Addison County Supervisory Union.
2. Prior to July 1, 2004, UD #3 included Middlebury Union High School (“MUHS”), Middlebury Union Middle School (“MUMS”), and the Hannaford Career Center. Teachers employed at MUHS, MUMS and Hannaford Career Center worked under contract with UD #3. All these teachers were part of one bargaining unit represented by the Middlebury Union High School Teachers Association (“MUHSTA”). MUHSTA negotiated a collective bargaining agreement covering these teachers with the UD #3 Board of School Directors. As of July 1, 2004, there was a collective bargaining agreement in effect between MUHSTA and UD #3 covering these teachers that covered the period August 22, 2003 – August 21, 2006 (Association Exhibit 1).
3. Prior to July 1, 2004, the Hannaford Center did not have its own board of school directors. It was governed by the UD #3 Board of School Directors. The Hannaford Center did have an advisory board. In 2000 and 2001, efforts were initiated to seek to separate the Hannaford Center from the UD #3 school district and establish a Hannaford Center school district. The process of separating the Hannaford Center from UD #3 took several years, and included legislative review and approval. Final approval came from the voters in each of the towns in Addison County served by the Hannaford Center. Ultimately, the establishment of the Hannaford Career Center Regional Technical School District separate from the UD #3 district was approved by all interested parties.

The Hannaford Career Center Regional Technical School District Board of Directors was established to govern the district.

4. The Hannaford Center Board of Directors separated governance of the Hannaford Center from UD #3 effective July 1, 2004. In so doing, the Hannaford Board resolved “to honor all existing collective bargaining recognition and agreements with faculty and staff and administration for the duration of those agreements” (Employer Exhibit A, Association Exhibit 2).

5. By memorandum dated November 4, 2004, the co-presidents of MUHSTA notified the Hannaford Board of Directors that: a) MUHSTA “shall remain as the recognized bargaining agent for the teachers of the . . . Hannaford Regional Technical School District”; and b) MUHSTA “recognizes the (Hannaford Board of Directors) as the bargaining agent for the . . . Hannaford Regional Technical School District” (Association Exhibit 3, Employer Exhibit B).

6. The co-presidents of MUHSTA sent a letter dated September 20, 2005, addressed to both the chairperson of the UD #3 Board and the chairperson of the Hannaford School Board. Therein, MUHSTA requested the commencement of negotiations for a collective bargaining contract (Employer Exhibit C).

7. In response to this letter, April Jin, Chairperson of the Hannaford School Board, sent a letter dated September 29, 2005, informing MUHSTA: “We intend to only negotiate for PHTSD. We are a new school district and a new employer”. Peter Ryersbach, the MUHSTA chief negotiator, understood from this letter that the Hannaford Board wished to negotiate separately (Employer Exhibit D).

8. The MUHSTA co-presidents sent a letter dated October 13, 2005, to the chairpersons of the UD #3 Board, the Hannaford Board and the Addison Central Supervisory Union Board. The letter provided:

MUHSTA looks forward to negotiating a successor collective bargaining agreement to the current master agreement that will expire in July of 2006 and covers professional staff from MUHS, MUMS and PHCC, Diversified Occupation and School Psychologists. It is our hope and intention to bargain with a merged board committee as MUHSTA has only one negotiations committee. If the boards are unwilling to negotiate with MUHSTA as a merged committee, we want you to understand that our negotiations committee will be presenting identical proposals to each board. MUHSTA is one association and we intend to have one master agreement. We hope you will consider this proposal to work collaboratively on our new master agreement (Employer Exhibit F).

9. The MUHSTA co-presidents sent a letter dated October 31, 2005, to the chairpersons of the UD #3 Board, the Hannaford Board and the Addison Central Supervisory Union Board. The letter provided in pertinent part:

. . . this letter is MUHSTA's request to start formal meetings of MUHSTA's Negotiating Team with each Board's Negotiating Team. The first meeting is to establish ground rules, which we hope would be the same for all negotiations, and we suggest that for this meeting all the teams meet together. We will also set times for future meetings, and set an agenda for the next meeting. If we negotiate together or separately, it will be easier to set up future meeting dates if we all sit together. . . (Employer Exhibit E)

10. The Hannaford Board declined to participate in a joint meeting with other boards to establish ground rules. The negotiations teams for MUHSTA and the Hannaford Board met on January 3, 2006, to discuss ground rules for negotiations. There was no final agreement on ground rules at the January 3 meeting. The parties planned to meet again on January 31, 2006, to attempt to finalize the ground-rules and exchange bargaining proposals.

11. Scott Cameron, the attorney representing the Hannaford Board, sent an e-mail message on January 23, 2006, to Sean Leach, the Vermont-NEA Uniserv Director

assisting MUHSTA in negotiations. Therein, Cameron posed the following questions:

“Do the representatives of the Hannaford teachers agree that voting on the ratification of the tentative agreement will be restricted to teachers employed at the Patricia A.

Hannaford Career Center? If not, please explain who will be eligible to vote for

ratification of the tentative agreement?” In a January 31, 2006, e-mail response, Leach stated:

As you know, legally, MUHSTA holds the exclusive rights to the HCC contract. MUHSTA will have to, at some point, modify its by-laws (unless they have done so already) to articulate how the members of MUHSTA want to handle the HCC contract ratification (assuming it does, in fact, become a separate contract from UD #3). In the past, this obviously hasn't been an issue. MUHSTA can either decide to have all members of the association ratify all contracts, have only those members employed by the respective boards ratify the respective contract, or could actually handle each contract either of those ways. It's up to the members to decide. As a point of information, we have some associations that have everyone vote, and some that have only those employed under the specific contract vote. The important thing to help your board understand is that MUHSTA holds the rights to the contract and MUHSTA decides who ratifies it. (Association Exhibit 4, Employer Exhibit H)

12. Cameron sent a copy of Leach's response to Fred Baser, chairperson of the Hannaford Board negotiating committee. The Hannaford Board and MUHSTA negotiating committees met on January 31, 2006. At the beginning of the meeting, the parties agreed to and signed off on ground rules for negotiations. Baser then discussed the e-mail exchange between Cameron and Leach. He indicated that the Hannaford Board was not willing to go forward with negotiations if teachers other than Hannaford teachers would be voting on ratification of the contract. Peter Ryersbach, chief negotiator for MUHSTA, indicated that the Hannaford Board may be committing an unfair labor practice by taking such a position (Association Exhibit 5, Employer Exhibit I).

13. In February 2006, the Employer questioned whether the teachers employed at the Hannaford Center had formed a bargaining unit supported by a majority of Hannaford teachers. Cameron sent a letter to Leach dated February 16, 2006, providing in pertinent part:

...
The threshold issue for the Board of School Directors of PAHCC is whether the teachers employed at the Career Center have, in fact, formed a bargaining unit. Many months ago I informed you that it would be most helpful if the Board were to receive a communication (whether from Vermont-NEA, or MUHSTA, or any representative of the PAHCC teachers) stating unequivocally that the teachers employed at PAHCC had formed a bargaining unit; that the bargaining unit was supported by a majority of the teachers employed at the Career Center; and that the bargaining unit requested voluntary recognition from the School Board. The School Board has never received any such communications from the PAHCC teachers, either orally or in writing.
... (Association Exhibit 7, Employer Exhibit K)

14. The MUHSTA presidents sent a letter dated March 2, 2006, to Hannaford Board Chairperson April Jin stating:

Enclosed are copies of the petition signed unanimously by the teachers of Patricia A. Hannaford Regional Technical School District in which they state that they reaffirm their decision to form a bargaining unit. While we thought that the School Board had previously voluntarily recognized a bargaining unit of the PAHCC teachers, we want to put this issue to rest once and for all and have circulated this petition.

Please consider this a formal request for voluntary recognition pursuant to Title 16 Chapter 57 V.S.A. If you have any questions, please contact us (Association Exhibit 8; Employer Exhibit N).

15. Attached to this letter was a copy of a petition signed by all Hannaford teachers which provided: "We, the undersigned employees employed by the Patricia A. Hannaford Regional Technical School District School Board, do hereby reaffirm our decision to form a bargaining unit and petition the Board for recognition of the Middlebury Union High School Teachers' Association – Hannaford Regional Technical

Center Unit/Vermont-NEA/NEA as our exclusive representative for the purposes of collective bargaining, pursuant to 16 V.S.A.” (Association Exhibit 8, Employer Exhibit N)

16. The presenting of this petition did not initially result in the Hannaford Board voluntarily recognizing MUHSTA as the exclusive bargaining representative of a bargaining unit consisting of Hannaford teachers. After further exchanges of letters and e-mail messages between representatives of MUHSTA and the Hannaford Board, Jin informed Leach by letter dated April 14, 2006, that the Board agreed to recognize the bargaining unit of Hannaford teachers and acknowledged the selection of MUHSTA as the bargaining representative of the Hannaford teachers (Association Exhibits 9 – 12, Employer Exhibits P - T).

17. The Hannaford Board continued to take the position that it would not begin negotiations until it was assured that teachers other than Hannaford teachers would not vote on ratification of the collective bargaining contract. The Association continued to take the position that ratification of the contract was an internal MUHSTA matter concerning which the Hannaford Board had no input. The Association proposed that the Hannaford Board engage in negotiations while the parties awaited a ruling from the Labor Relations Board on the ratification issue. The Hannaford Board declined to accept this proposal (Association Exhibits 6 – 7, 9 -17; Employer Exhibits J, K, P - X).

18. During this period of time, MUHSTA was negotiating with the UD #3 Board for a successor collective bargaining contract to the one which would expire in August of 2006. MUHSTA’s original bargaining proposal to the UD #3 Board, which was submitted to the UD #3 Board sometime after mid-February 2006, proposed a

merged contract between MUHSTA and several school boards, including UD #3 and the Hannaford Board. MUHSTA further proposed that MUHSTA be recognized as the representative of a single bargaining unit consisting of MUHS, MUMS, Hannaford and certain Addison Central Supervisory Union teachers. The UD #3 Board requested that MUHSTA withdraw all aspects of its proposals which related to the Hannaford Board and the Hannaford teachers. In late March, MUHSTA agreed to remove all references to the Hannaford Board and Hannaford teachers from its proposal to UD #3. The MUHSTA and UD #3 negotiating teams initialed this agreement on April 9 and 10, 2006 (Employer Exhibit O; Employer Exhibit Z, Appendix D).

19. MUHSTA and the Hannaford Board have not met in a negotiations session since January 31, 2006. There has been no exchange of bargaining proposals between the parties except for ground rules.

20. The MUHSTA Constitution has not been amended to reflect the separation of the Hannaford school district from the UD #3 district. The Constitution provides that the “membership may adopt amendments to this Constitution by a two-third majority of those voting at any regular meeting . . .” (Employer Exhibit Y, Appendix 3).

21. MUHSTA has not decided how ratification of a tentative collective bargaining contract covering Hannaford teachers will take place.

22. The UD #3 school district has over 100 teachers. The Hannaford school district has 24 teachers.

OPINION

The Association alleges that the Employer has violated its duty to bargain in good faith pursuant to 21 V.S.A. Section 1726(a)(5) by conditioning bargaining of a collective bargaining contract, and refusing to bargain, unless it is assured that only teachers in the bargaining unit of Hannaford teachers will be allowed to vote on ratification of any tentative agreement reached between the Association and the Employer.

The Employer raises a two-fold defense to the charge. The Employer first contends as a threshold matter that the Board may find that the bargaining unit recognized by the Employer of Hannaford Center teachers does not, in fact, exist. The Employer contends that the Association continues to try to negotiate in the interests of the merged unit of Middlebury Union High School, Middlebury Union Middle School and Hannaford Center teachers that existed prior to the establishment of the Hannaford Center as a separate employer effective July 1, 2004.

We disagree that the bargaining unit of Hannaford Center teachers does not exist in fact. Any doubt as to the existence of this unit was eliminated by a March 2006 petition signed by all Hannaford teachers, and submitted to the Hannaford School Board. The petition stated that the teachers “reaffirm our decision to form a bargaining unit and petition the Board for recognition of the Middlebury Union High School Teachers’ Association – Hannaford Regional Technical Center Unit/Vermont-NEA/NEA as our exclusive representative for the purposes of collective bargaining”.

We recognize that the Association expressed a desire at the outset of negotiations in the fall of 2005 to negotiate with a merged employer committee, and negotiate a master agreement, encompassing both the UD #3 school district and the Hannaford

School Board. However, when the Hannaford School Board indicated it desired to negotiate separately, the Association accepted that decision and was prepared for separate negotiations. Further, when the UD #3 School Board requested that the Association withdraw all aspects of its bargaining proposals to the UD #3 Board that related to the Hannaford Board and the Hannaford teachers, the Association ultimately agreed to that request.

The Association may decide to otherwise present proposals to the Hannaford School Board that are identical to those presented to the UD #3 Board. However, this does not result in a *de facto* merged unit of Hannaford and UD #3 teachers. The initial presentation of proposals in no way reflects a lack of willingness to negotiate in good faith.

The Employer and the Association are obligated to bargain in good faith. The duty to bargain in good faith is an obligation to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 8 VLRB 193, 206 (1985); *Affirmed*, 148 Vt. 26, 30 (1987). This implies an open mind and a sincere desire to reach an agreement, as well as a serious intent to adjust differences and to reach an acceptable common ground. Id. Chittenden South Education Association, Hinesburg Unit v. Hinesburg School District and the Hinesburg School Board, 8 VLRB 219, 236 (1986). However, parties are not required to make concessions as evidence of good faith but may hold a bargaining position to the point of impasse, so long as that position is based on sound reasons and is not taken to frustrate bargaining. Hinesburg, 8 VLRB at 237. Enosburg, 8 VLRB at 208. These standards indicate that the impact of initial bargaining proposals should not be

overstated on the subsequent course of negotiations. In sum, we reject the assertion by the Employer that the bargaining unit recognized by the Employer of Hannaford Center teachers does not, in fact, exist.

Nonetheless, the Employer presents the alternative defense to the unfair labor practice charge that the Association's control and domination of the ratification process through the inclusion of non-bargaining unit members as the majority voting block within that process is illegal under Vermont law. The Employer takes the position that it will not begin negotiations until it is assured that teachers other than Hannaford teachers would not vote on ratification of the collective bargaining contract.

The Association takes the position that ratification of the contract is an internal Association matter concerning which the Hannaford Board had no input. The Association alleges that the Employer has violated its duty to bargain in good faith by conditioning bargaining of a collective bargaining contract, and refusing to bargain, unless it is assured that only teachers in the bargaining unit of Hannaford teachers will be allowed to vote on ratification of any tentative agreement reached between the Association and the Employer.

We have not previously addressed the issue of ratification of contracts by teacher organizations. In considering the Employer's contention that the Association's ratification process is illegal under Vermont law, we note that the Labor Relations for Teachers Act contains no provision explicitly addressing ratification of contracts by teachers' organizations. Section 2009 of the Act provides that "final ratification of any agreement on behalf of the school board shall remain the sole responsibility of the school board". However, there is no parallel requirement for teachers' organizations, and there is

no provision of the Teachers Act addressing the issue of ratification of a contract by teachers' organizations.

We look to experience under the National Labor Relations Act for guidance. Under the National Labor Relations Act, the employer and the representative of its employees are obligated to bargain with each other with respect to “wages, hours and other conditions of employment”. NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342, 349 (1958). The duty is limited to those subjects, however, and as to other subjects, each party is free to bargain or not to bargain, and to agree or not to agree. Id. Procedures relating to ratification of a collective bargaining agreement have been found under the NLRA to not constitute required bargaining over “wages, hours and other conditions of employment”, but instead to be a matter which needs to be negotiated only by mutual agreement. Houchens Market of Elizabethtown, Inc. v. NLRB, 375 F.2d 208, 212 (6th Cir. 1967). Movers & Warehousemen’s Association v. NLRB, 550 F.2d 962, 965-966 (4th Cir. 1977).

We find these standards persuasive in interpreting the Teachers Act which, like the National Labor Relations Act, has adopted the distinction between mandatory and permissive subjects of bargaining. The Labor Relations for Teachers Act requires the school board and the recognized teacher organization to meet together at reasonable times, upon request of either party, and negotiate in good faith on all matters properly before them. 16 V.S.A. Section 2001. The Teachers Act provides for negotiations "on matters of salary, related economic conditions of employment, an agency service fee, procedures for processing complaints and grievances relating to employment, and any

mutually agreed upon matters not in conflict with the statutes and laws of the State of Vermont". 16 V.S.A. Section 2004.

The ratification of contracts does not fall within the mandated bargaining subjects under the Teachers Act of “matters of salary, related economic conditions of employment, an agency service fee, (and) procedures for processing complaints and grievances relating to employment”, just as contract ratification does not fall within the mandated bargaining subjects under the National Labor Relations Act of “wages, hours and conditions of employment”. Instead, contract ratification falls within the permissive area of bargaining under the Teachers Act of “mutually agreed upon matters”.

Accordingly, the Association was free to bargain or not to bargain concerning ratification of the contract. Given that contract ratification is a permissive subject of bargaining, the Employer is not permitted to condition bargaining on the Association agreeing to a contract ratification procedure that is acceptable to the Employer. The Employer is required, pursuant to Section 2001 of the Teachers Act, to “meet . . . at reasonable times . . . and negotiate in good faith on all matters properly before” the Employer and the Association. It is a violation of this section, and a “refusal to bargain in good faith” in violation of 21 V.S.A. Section 126(a)(1) for the Employer to condition bargaining on Association agreement on an issue that they are free to bargain or not bargain. This is what the Employer has done here by refusing to bargain with the Association unless it is assured that only teachers in the bargaining unit of Hannaford teachers will be allowed to vote on ratification of any tentative agreement.

In so concluding, we emphasize that we are making no decision on whether or not it is appropriate for persons outside of an affected bargaining unit to vote on ratification

of a contract. We are concluding that contract ratification procedures are not a mandatory subject of bargaining, and that an employer cannot refuse to bargain based on such a non-mandatory subject of bargaining.

Given the context of this case, the appropriateness of teachers outside the Hannaford unit voting on the ratification of a contract is not ripe for decision. The Association has made no decision on how contract ratification will proceed. The Association constitution is out of date and needs to be revised since it does not reflect the separation of the Hannaford school district from the UD #3 district and the establishment of the separate bargaining unit of Hannaford teachers. The Association has made no decision at this point on revisions to its constitution, and otherwise has made no decision on how ratification of tentative contracts covering Hannaford teachers will proceed. Thus, there has been no decision that employees outside the Hannaford teachers bargaining unit will vote on contract ratification involving Hannaford teachers.

Given these circumstances, the Board would be issuing a declaratory opinion by determining the appropriateness of persons outside an affected bargaining unit voting on the ratification of a contract, as we would be declaring the rights of the parties and ruling on a question of law prior to the fact. Hinesburg School District and Board of School Directors v. Vermont-NEA, et al, 9 VLRB 1, 3 (1986). The Board does not have the authority to issue declaratory opinions in cases involving teachers. Id. The Board, as a public administrative body, has such adjudicatory jurisdiction as is conferred on it by statute. Id. Neither the Labor Relations for Teachers Act nor the unfair labor practice provisions of the Municipal Employee Relations Act, which apply to teachers, give the Board authority to issue declaratory opinions. Id.

Accordingly, we make no ruling on whether it is appropriate for employees outside an affected bargaining unit to vote on the ratification of a contract. The Association and the Employer should proceed forthwith to begin the long-delayed negotiation of a collective bargaining contract covering Hannaford teachers. In negotiations, the parties are required to negotiate in good faith with each other. The Association is obligated to fairly represent the Hannaford teachers in negotiations. If the Employer, Association and/or Hannaford teachers allege violation of these obligations in negotiations, they may invoke the unfair labor practice jurisdiction of the Board. We will decide issues when they are ripe for decision.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The unfair labor practice charge filed by the Middlebury Union High School Teachers Association-Hannaford Regional Technical Unit/Vermont-NEA/NEA (“Association”) in this matter is sustained. The Patricia Hannaford Regional Technical School District (“Employer”) violated its duty to bargain in good faith pursuant to 21 V.S.A. Section 1726(a)(5) by refusing to bargain with the Association unless the Employer is assured that only teachers in the bargaining unit of Hannaford teachers will be allowed to vote on ratification of any tentative agreement reached by the Association and the Employer covering Hannaford teachers;

2. The Employer shall cease and desist from refusing to bargain with the Association, and shall forthwith engage in negotiations with the Association for a collective bargaining contract covering the bargaining unit of Hannaford teachers; and

3. The Employer shall forthwith post copies of the Findings of Fact, Opinion and Order issued herein at all places normally used for employer-employee communications.

Dated this ____ day of March, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Acting Chairperson

Joan B. Wilson

James J. Dunn