VERMONT LABOR RELATIONS BOARD

CHAMPLAIN VALLEY UNION HIGH SCHOOL UNION TEACHERS' ASSOCIATION	)	
v.	)	DOCKET NO. 81-43
CHAMPLAIN VALLEY UNION HIGH SCHOOL BOARD OF SCHOOL DIRECTORS	)	

MEMORANDUM AND ORDER DECLINING TO ISSUE UNFAIR LABOR PRACTICE COMPLAINT

On September 11, 1981, the Champlain Valley Union High School Teachers' Association ("Association") filed an unfair labor practice charge against the Champlain Valley Union High School Board of School Directors ("School Board"). The Association alleges the School Board violated 21 VSA §1726(a)(5) in its refusal to bargain over a unilateral change in working conditions involving several of its employees; specifically through its unilateral reduction of hours and salaries of the employees.

For a number of years prior to the 1980-81 school year the Director of Guidance, Guidance Counselors, Librarian, and DUO Director worked a set number of working days over and above the normal annual number of work days for teachers. They were paid per diem for the extra days. The School Board reduced the number of 1980-81 per diem days for each position for budgetary reasons.

There is a question of timeliness before the Board. 21 VSA §1727(a) provides:

> No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board...the Board may waive the six-month period if it finds that (a) the aggrieved person did not understand that an unfair labor practice had been perpetrated against him; or (b) the offending person had actively concealed his or its perpetration of that unfair labor practice.

The alleged unfair labor practice occurred upon implementation of the policy reducing the hours and salaries of the involved employees. Mount Abraham Union High School Board of School Directors, 4 VLRB 224, at 229. The change became effective at the beginning of the 1980-81 school year, in September, 1980. The unfair labor practice charge was not filed until over a year later, on September 11, 1981; clearly well beyond the six-month period provided for in the statutes.

The Association was obviously aware the alleged unfair labor practice occurred because on September 16, 1980, it initiated a grievance over the issue. Thus, there is no reason for waiving the six-month period on the grounds that the Association did not understand that an unfair labor practice had been perpetrated or that the School Board concealed its perpetration of the unfair practice.

Nonetheless, the Association apparently wants us to waive the six-month time period because it pursued a grievance on the matter. On June 1, 1981, Arbitrator John P. McCrory ruled the grievance was not arbitrable. The Association, having exhausted the procedures for relief contained in the collective bargaining agreement, filed this unfair labor practice charge.

The filing of a grievance on the matter does not toll or relax the responsibility to file an unfair labor practice charge within six months of the occurrence of the alleged unfair practice. New York City Transit Authority, 10 PERB Para. 3077 (NY PERB, 1977). State of New

Jersey v. Council of New Jersey State College, Local NJSFT, PERC No. 77-14, 2 NJPER 308 (1976); Affirmed, 153 NJ Super. 91 (1977); Petition for Certification Denied 78 NJ 326 (1978). The statute states the reasons for which the Board may waive this six-month time period. Filing a grievance on the matter is not included among those reasons.

It is true this Board has, in the past, required the exhaustion of contractual remedies and not ruled on the unfair labor practice when we believed the dispute involved the interpretation of a contract and the employee(s) had an adequate redress for the alleged wrongs through the grievance procedure. See Burlington Education Association, Inc. and Burlington Board of School Commissioners; 3 VLRB 335 (1978); Vermont State Colleges Faculty Federation, VFT, AFT Local #3180, AFL-CIO v. Vermont State Colleges, 3 VLRB 192 (1980); Esther Swett and Vermont State Colleges Faculty Federation Local #3180, VFT, AFT, AFL-CIO, 3 VLRB 344 (1980). However, such determinations are properly made by the Board, not the parties. Had this charge come to us within the statutory filing period, we would have made a judgment whether to act on the charge or defer to the grievance procedure. In cases where there is a question whether the alleged wrong is an unfair labor practice or a grievance, the charging party is required to meet the six-month statutory filing period for unfair labor practices, regardless of whether a grievance has been filed on the matter. To hold otherwise would encourage parties to engage in forum-shopping, and lead a party dissatisfied with an arbitrator's decision to file an unfair labor practice charge. A rule creating such a situation would inevitably lessen the effectiveness of the grievance procedure and subvert the collective bargaining process.

For the foregoing reasons, we decline to issue an unfair labor practice complaint.

Dated this 15th day of October, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson