

VERMONT LABOR RELATIONS BOARD

UNION DISTRICT 32 HIGH SCHOOL)	
ASSOCIATION, AFT LOCAL 3333,)	
AND JETHRO DANZIGER)	
)	
V.)	DOCKET NO. 81-32
)	
UNION DISTRICT 32 BOARD OF)	
SCHOOL DIRECTORS)	

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR LABOR PRACTICE COMPLAINT

On July 1, 1981, the Union District 32 High School Association (hereinafter "Association") filed an unfair labor practice charge, pursuant to 21 VSA §1726(a)(1), with the Vermont Labor Relations Board, alleging that the Union District 32 Board of School Directors (hereinafter "School Board") committed an unfair labor practice in refusing to submit the grievance of Jethro Danziger to binding arbitration. The Association requests the Board order Management to hear the grievance in accordance with the contractual grievance procedure, including, if necessary, arbitration as a final step.

Danziger is a full-time teacher who has also been serving as English Department Head. On April 2, 1981, Danziger was informed by School Principal Lyman Amsden he would not be reappointed as Department Head for the 1981-82 school year. The Association filed a grievance, alleging that the non-reappointment of Danziger as Department Head was a violation of the collective bargaining agreement negotiated by the Association and the School Board covering all teachers employed by the District. Throughout the grievance process, Management (Principal Lyman Amsden, Superintendent

Robert Arlin, and the School Board) consistently took the position there was no grievance under the teachers' contract because the position of the Department Head was not covered by that contract. The position, they contended, was wholly covered by the terms of the negotiated Department Head Agreement, and that Agreement did not provide for a grievance procedure. The Association requested the arbitrability question and the merits of the case be submitted to an arbitrator for final determination. Superintendent Robert Arlin, contending the matter was not arbitrable, refused to submit to arbitration.

We believe the Association, by petitioning this Board, has not selected the proper forum in which to resolve the dispute. At issue is enforcement of a collective bargaining agreement and arbitrability of a grievance. Arguably, the failure to follow the grievance procedure is an unfair labor practice in that one party is unilaterally breaching a collective bargaining agreement. 21 VSA §1726(a)(1). However, such questions are best and commonly resolved by either an arbitrator or the courts. Our research has produced no instances of labor relations boards asserting jurisdiction over similar cases. Even if this Board should determine the issue here be submitted to arbitration, our order could do little to resolve the controversy. The arbitrator would be empowered to review that conclusion and ultimately the issue would reach the courts. Thus, if we hear the matter, litigation would be extended.

In any event, we feel this Board is not the best forum for the resolution of arbitrability questions. The issue should be presented elsewhere. The following, based on decisions by our Supreme Court, are illustrative of avenues pursued by parties to resolve the arbitrability question in circumstances similar to the one at hand.

1. The Teachers' Association asked the American Arbitration Association to appoint an arbitrator. The AAA appointed an arbitrator and the School Board refused to participate in the proceedings. An ex parte hearing was held and, subsequently, the arbitrator decided in the grievant's favor. The School Board refused to abide by the arbitrator's award. The grievant then brought an action in Superior Court to enforce the award. John Fairchild v. West Rutland School District, 135 Vt. 282 (1977).

2. The School Board brought court action seeking to restrain the Teachers' Association from submitting the dispute to arbitration. Danville Board of School Directors v. Flora Fifield and Danville Teachers' Association, 132 Vt. 271 (1974). Brattleboro Union High School Board v. Windham Southeast Education Association, et al., 137 Vt. 1 (1979).

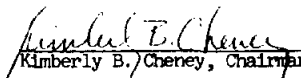
3. The Teachers' Association, prior to submission to arbitration, sought a court declaration that the grievance was arbitrable. Brattleboro Union High School Board v. Windham Southeast Education Association, et al., 137 Vt. 1 (1979).

4. The School Board, upon issuance of the arbitrator's award, sought to have it vacated. Woodstock Union High School Board of Directors v. Woodstock Union High School Teachers' Organization, 136 Vt. 256 (1978).

For the foregoing reasons, the Board declines to issue an unfair labor practice complaint pursuant to 21 VSA §1727(a).

Dated this th23 day of July, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman