

VERMONT LABOR RELATIONS BOARD

JOHN ADAMS, ET AL.)	
)	
v.)	DOCKET NO. 83-6
)	
MIDDLEBURY UNION HIGH SCHOOL)	
TEACHERS' ASSOCIATION)	

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR
LABOR PRACTICE COMPLAINT

On January 21, 1983, 10 teachers at Addison County Vocational Center ("Complainants") filed an unfair labor practice charge against the Middlebury Union High School Teachers' Association ("MUHSTA"). The allegations made in the charge were verified February 2, 1983. MUHSTA filed a response to the charge on March 3, 1983.

The crux of the charge is that by setting a dues structure which requires that individuals joining MUHSTA also have to join Vermont-NEA and NEA (the National Education Association and its state affiliate) MUHSTA has established a rule which violates the following relevant provisions of Vermont statutes:

21 VSA §1726(b)(1):

It shall be an unfair labor practice for an employee organization or its agents:

To restrain or coerce employees in the exercise of the right guaranteed to them by law, rule or regulation. However, this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the

acquisition or retention of membership therein,
provided such rules are not discriminatory.

16 VSA §1982(a):

Teachers shall have the right to or not to join, assist or
participate in any teachers' organization of their choosing.

The Board conducted an investigation into the charge. The operative facts follow: Since 1971, MUHSTA has negotiated on behalf of a bargaining unit consisting of the approximately 70 teachers at Middlebury Union High School and the approximately 15 Addison County Vocational Center teachers. Prior to 1974, MUHSTA was affiliated with Vermont-NEA and NEA, but teachers could belong to MUHSTA without also belonging to Vermont-NEA and NEA. In 1974, however, Vermont-NEA and NEA established a rule whereby they would not consider MUHSTA affiliated with them unless teachers were required to join Vermont-NEA and NEA when they joined MUHSTA. The MUHSTA membership voted to accept this requirement.¹ Four of five of the vocational center teachers have joined MUHSTA under the requirement. The remainder, the Complainants, prefer to belong to the American Vocational Association (AVA) rather than Vermont-NEA and NEA. In October 1982, the

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We have been provided with the Constitution of MUHSTA and the affiliation rules of Vermont-NEA and NEA. Article III, Section 2 of the MUHSTA constitution provides that active membership in MUHSTA shall include membership in Vermont-NEA and NEA, and Article X provides MUHSTA will affiliate with Vermont-NEA and the NEA "under their rules". Article XIII, Section 1 of the Vermont-NEA Bylaws provides that any organization affiliated with Vermont-NEA shall require membership in Vermont-NEA and the NEA. NEA Bylaw 8-7 provides that the affiliate shall require membership in the NEA and its State affiliate.

Complainants attempted to join MUHSTA without paying dues to Vermont-NEA and NEA, and the dues were rejected. This unfair labor practice charge followed.

In determining whether the membership requirement violates 21 VSA §1726(b)(1), we are guided by case law under the National Labor Relations Act (NLRA). Section 8(b)(1) of the NLRA contains the same provisions as §1726(b)(1) except that it does not contain the proviso "provided such rules are not discriminatory".

In interpreting this language, the US Supreme Court stated in Scofield v. NLRB, 394 US 423 (1969):

§8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

Here, there is no apparent contention the membership requirement rule was not properly adopted back in 1974.

The membership requirement rule also "reflects a legitimate union interest"; namely to receive the services which Vermont-NEA and NEA provide. It is necessary dues be imposed so these services may be provided. A.L. Zwerdling (Labor Relations Law in the Public Sector, 2nd Ed., Edwards, Clark, Craver, Pub. by Bobbs-Merrill Co., USA 1979) has enumerated some of the more costly functions of parent unions supported by dues:

1. Payment of salaries and expenses for staff engaged in negotiation and administration of the contract;

2. Payment of general office and overhead expenses;
3. Maintenance of a research department which prepares local representatives for contract negotiations, prepares economic data, drafts contract language, and evaluates contract proposals;
4. Maintenance of a legal department or retained counsel which represents employees in arbitration, disciplinary proceedings, and negotiations; communicates significant legal developments in other parts of the country; and assists in significant legal cases;
5. Provision of training in grievance handling - including arbitration and communication of local employee needs to their immediate employer or relevant government bodies and to their community;
6. Provision of information on activities of affiliates around the country, and their varying solutions to common problems;
7. Provision of assistance in federal and state legislative efforts with respect to public employees - including revenue sharing, civil rights, minimum wage laws, unemployment compensation, pension legislation, health insurance, public jobs programs, and occupational health and safety.

Complainants contend the membership requirement impairs statutory labor policy in two ways. First, they claim the requirement constitutes a rule which is discriminatory in violation of 21 VSA §1726(b)(1). In a related context, the Vermont Supreme Court has defined discrimination as the "unequal treatment of individuals in the same circumstances under the applicable rule". Fairchild and the Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 362 (1982). No such discrimination results from the membership requirement since all employees in the bargaining unit must meet the same requirement of joining Vermont-NEA and NEA when they join MUHSTA. The MUHSTA membership has voted to affiliate with Vermont-NEA and NEA to receive the services which these organizations provide, services which benefit all employees in the bargaining unit, including Complainants. The membership requirement and accompanying

higher dues reflect an honest recognition of payment required for services rendered and we fail to see how it discriminates against Complainants. This is particularly so since Complainants are not required to join MUHSTA. And, if they do not, they still must be represented "without regard to organizational affiliation or membership". 16 VSA §1991(c). Also, Complainants would not be precluded from joining the AVA if they joined MUHSTA, since Article III, Section 4 of the MUHSTA Constitution, provides: "Members are encouraged to join other professional organizations".

The second violation of statutory labor policy claimed by the Complainants is the membership requirement violates 16 VSA §1982(a) since that provision gives teachers the right "not to join... any teachers' organization of their choosing", and the membership requirement mandates they join Vermont-NEA if they join MUHSTA. We disagree. Complainants are not required to join either MUHSTA, Vermont-NEA or NEA, but if they do choose to join MUHSTA, they must accept affiliation with Vermont-NEA and NEA, since MUHSTA is an affiliate of Vermont-NEA and NEA by its own rules and regulations. If employees do not agree with this affiliation, they simply do not have to join MUHSTA. Thus, they are "free to leave (or never join) the union and escape the rule".²

²Courts and labor relations boards have generally been reluctant to interfere with dues requirements of affiliated unions. In Ranes v. Office Employees International Union, Local No. 28, 317 F2d 915 (7th Cir., 1963), a case arising under the Labor-Management Reporting and Disclosure Act of 1959, 29 USCA §411 (LMRDA), which is not applicable here, the Court recognized that international unions have traditionally

It is apparent that Complainants have chosen the wrong avenue to pursue their claims. Instead, they can join MUHSTA and seek to change its membership requirement from within or challenge the exclusivity of MUHSTA as their bargaining representative through the selection of representation procedures of 16 VSA §1991-1992.

exercised primary jurisdiction over the affairs of their affiliated local unions, including the control of the local dues structure, and that Congress in enacting LMRDA did not intend to strip international unions of their traditional power to control the minima and maxima rates of dues. The Court held the local members' assertion of their rights to veto the valid act of an international in raising dues was wholly illogical. Accord: Mori v. International Brotherhood of Boilermakers, 653 F2d 1279 (9th Cir., 1979). In United Brotherhood of Carpenters and Joiners of America v. Brown 343 F2d 872 (10th Cir., 1965), the Court held a local union was bound under the LMRDA by a District Council's by-laws providing for the payment by the local of per capita taxes to the District Council where the International union constitution authorized the General President to form a district council and ordered locals to affiliate with it, and the local did so affiliate.

In a case arising under the NLRA [Case No. SR-726, 46 LRRM 1492 (1969)], the General Counsel of the National Labor Relations Board held the requirement that members of local unions not affiliated with a district council pay "foreign dues" in order to retain their membership was not unlawful since Section 8(b)(1)(A) of the Act permits a union to prescribe its own rules for acquisition or retention of membership.

In ultimately affirming a decision of the Pennsylvania Labor Relations Board, the Commonwealth Court of Pennsylvania held that the matter of the union's affiliation with the statewide and national organizations and the commensurate increase in annual dues was an internal union affair and thereby rejected a teacher's claim that he was required to pay dues only to the local union. Pennsylvania Labor Relations Board v. Eastern Lancaster County Education Association, 427 A2d 305 (1981). A hearing officer of the New York Public Employment Relations Board held that the Taylor Act did not confer on the Board the authority to oversee the amount of dues a union charges its members. Civil Service Technical Guild and Prasad, 15 PERB 4520 (Susan Comenzo, Hearing Officer, 1982).

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

Dated this 19th day of May, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William C. Kemsley Sr.
William C. Kemsley, Sr.

James S. Gilson
James S. Gilson