

VERMONT LABOR RELATIONS BOARD

AFT LOCAL 3333, VERMONT FED-)	
ERATION OF TEACHERS, AFL-CIO)	
)	
v.)	
)	DOCKET NO. 83-30
UNION DISTRICT 32 HIGH SCHOOL)	
BOARD OF SCHOOL DIRECTORS AND)	
ITS AGENT JOSEPH EMERSON, ESQ.)	
AND VERMONT-NEA REPRESENTING VEA)	
LOCAL 418 AND ITS AGENTS JAMES)	
SUSKIN, ESQ. AND NORMAN BARTLETT)	

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR
LABOR PRACTICE COMPLAINT

On April 27, 1983, AFT Local 3333, Vermont Federation of Teachers ("VFT"), filed an unfair labor practice charge against Union District 32 High School Board of School Directors and its agent Joseph Emerson, Esq. ("School Board"), and Vermont-NEA, representing Local 418, and its agents James Suskin, Esq. and Norman Bartlett ("Vermont-NEA"). The essence of the charge is that Vermont-NEA violated 21 VSA §1726(b)(1) by interfering with the contractual relationship between VFT and the School Board by asserting itself as the collective bargaining representative of teachers at Union District 32 High School, and the School Board violated 21 VSA §1726(a)(1)(2) and (5) by acting with and agreeing to representation of the teachers by Vermont-NEA.

VFT alleges it is the sole bargaining agent of the teachers by virtue of its recognition by the School Board and its participation in negotiations resulting in a collective bargaining agreement covering the teachers effective July 1, 1981-June 30, 1984. VFT admits the teachers

voted to change affiliation from VFT to Vermont-NEA on May 19, 1982, but contends the internal vote was not carried out in accordance with the provisions of the Teachers Labor Relations Act. Accordingly, it is alleged, the assertion by Vermont-NEA that it represents the teachers and the recognition of Vermont-NEA as bargaining representative by the School Board are unfair labor practices.

There is a question of timeliness here; whether VFT has filed its charge within statutory time limits. 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.

At issue is whether VFT understood more than six months prior to filing the charge (i.e., before October 27, 1982) that Vermont-NEA was asserting itself as the collective bargaining representative of teachers and the School Board was recognizing the representation of the teachers by Vermont-NEA. VFT alleges it was not aware of these developments until less than six months prior to filing the charge.

A review of the charge indicates VFT was aware of the alleged unfair labor practices prior to October 27, 1982. Paragraph 7 of the charge states:

On September 14, 1982, the School Board allowed Ms. Ryan (VFT Executive Director) and VFT's Counsel, Michael Schein, Esq., to be present during the closed session hearing of grievant Ed Stout, who was, however, represented by Vermont-NEA Counsel James Suskin, acting on behalf of AFT Local 3333, the U-32 High School Staff Association, and as the "personal" counsel of Mr. Stout. Mr.

Suskin has no private law practice and is not registered as a private counselor with the Vermont Bar Association; rather his practice is limited to Counsel for Vermont-NEA. The School Board heard but did not immediately act upon objections from VFT Counsel Michael Schein, Esq.

This paragraph makes it evident VFT was aware by September 14, 1982, at the latest, that Vermont-NEA was asserting itself as the teachers' representative. On that date, Vermont-NEA's counsel represented a teacher in a grievance "on behalf of AFT Local 3333", with the full knowledge of VFT, since its representatives were present at the hearing. It is also evident VFT was aware on that date the School Board was agreeing to representation of teachers by Vermont-NEA since at the grievance hearing the School Board allowed the Vermont-NEA counsel to represent the involved teacher.

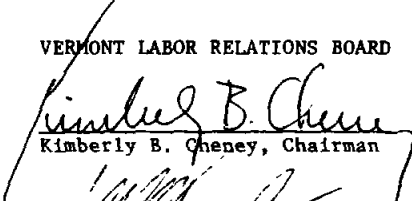
Accordingly, VFT was aware of the alleged unfair labor practice more than six months prior to filing the charge with the Board. 21 VSA §1727(a) states the reasons for which the Board may waive the six-month period. Here, there is no reason for waiving the six-month period since VFT understood the alleged unfair labor practice had been perpetrated against it more than six months prior to filing the charge and the parties did not actively conceal the perpetration of the alleged unfair labor practice. Therefore, we are barred from issuing an unfair labor practice complaint because the charge was untimely filed. Lary v. Upper Valley Teachers Association, VEA/NEA and Rochester Board of School Directors 3 VLRB 416 (1980). Champlain Valley Union High School Teachers Association and Champlain Valley Union High School Board of School Directors, 4 VLRB 315 (1981).

In addition, we note that the principal dispute arising out of this situation, the grievance filed by teacher Westbrook Hemmett and the resultant unfair labor practice charge (#82-61, Hemmett v. NEA-Vermont VEA Local 418 and Board of School Directors, Union District 32), has now been resolved.

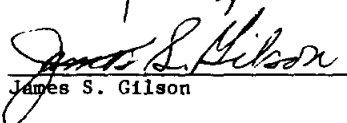
For the foregoing reasons, we decline to issue an unfair labor practice complaint.

Dated this 9th day of June, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson