VERMONT LABOR RELATIONS BOARD

BURLINGTON EDUCATION ASSOCIATION v. BURLINGTON BOARD OF SCHOOL COMMISSIONERS, LUTHER GUTKNECHT, SUPERINTENDENT OF SCHOOLS AND RICHARD PARK, DIRECTOR OF PERSONNEL	)	DOCKET NO. 84-28

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR
LABOR PRACTICE COMPLAINT

On May 21, 1984, the Burlington Education Association ("Association") filed an unfair labor practice charge against the Burlington Board of School Commissioners, Luther Gutknecht, Superintendent of Schools and Richard Park, Director of Personnel ("Respondents"). The Association alleged Respondents violated 21 VSA §1726(a)(1), (2) and (5), when they interfered with the rights of the Association and bargained in bad faith with the Association's negotiators through a May 4, 1984, letter sent by the Burlington Board of School Commissioners Negotiating Committee to all the teachers in the Burlington School District. The letter was sent after the declaration of impasse in negotiations for a successor collective bargaining agreement to the agreement which will expire on June 30, 1984, and prior to the parties engaging in mediation to resolve the impasse.

The letter provided:

> Since impasse has been declared in the negotiations of a new contract and a session with a federal mediator has been scheduled, the Board believes that some information might be helpful to the teaching staff in evaluating the status of negotiations.

1. Since last fall, more hours have been spent at the bargaining table and more constructive changes to the contract have been worked out than during any bargaining year in recent memory.

2. The Board has offered to increase base salary for next year such that, with step movement, individual teachers would experience pay raises ranging from approximately 7% to over 14%. The average increase would be in excess of 8.5%.

3. Although impasse has been declared, the Board remains flexible on outstanding monetary issues.

4. The aggregate total school department budget for the fiscal year commencing July 1, 1984 will increase by less than 6% over that of the current fiscal year.

5. The consumer price index (C.P.I.) for urban wage earners increased by approximately 3.8% during calendar year 1983.

6. The Board and the teachers have reached tentative agreement or nearly reached tentative agreement on several items which will provide monetary non-salary benefits to teachers, especially those teachers with the most seniority in the system.

The Board looks forward to mediation with the hope that with good faith negotiating on both sides, coupled with a mutual concern for the well-being of the school district, all outstanding issues can be settled either at the mediation session or within a short time thereafter.

The Association maintains this letter was designed to circumvent the Association's negotiators and lower the esteem of the negotiators with its membership in violation of 21 VSA §1726(a). Respondents, in a response filed with the Board on June 6, 1984, deny the letter was so designed and maintain it was merely a factual statement to the teachers for informational purposes only. At the outset, we note that Board Member James S. Gilson has disqualified himself from participation in this matter.

In determining whether to issue an unfair labor practice complaint, we view the central issue as whether Respondents violated their duty "to bargain collectively in good faith with the exclusive bargaining agent"

pursuant to 21 VSA §1726(a)(5). In making this determination, we must also consider 21 VSA §1728, which provides:

> The expression of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or promise of benefit.

The language of §1726(a)(5) and §1728 is virtually identical to the provisions of Section 8(a)(5) and Section 8(c) of the National Labor Relations Act (NLRA), and we look to Federal decisions interpreting these provisions of the NLRA for guidance in interpreting the parallel provisions pertinent here. Burlington Fire Fighters' Association vs. City of Burlington, 142 Vt. 434 (1983). In re Southwestern Vermont Education Association and Mount Anthony Board of School Directors, 136 Vt. 490 (1978). Ohland v. Dubay, 133 Vt. 300 (1975).

The National Labor Relations Board and Federal appeals courts have concluded that Section 8(a)(5) of the NLRA does not, on a per se basis, preclude an employer from communicating, in non-coercive terms, with employees during collective bargaining negotiations. The fact that an employer chooses to inform employees of the status of negotations, or of proposals previously made to the union, or of its version of a breakdown in negotiations will not alone establish a failure to bargain in good faith. National Labor Relations Board v. Tex-Tan, Inc., 318 F2d 472 (5th Cir., 1963). Oneita Knitting Mills, 205 NLRB 500 (1973). PPG Industries, Inc., 172 NLRB 450 (1968). Proctor and Gamble Mfg. Co., 160 NLRB 334 (1966). cf. NLRB v. General Electric Co., 418 F2d 736, 762 (2nd Cir., 1973).

Here, the letter sent by the School Board Negotiating Committee to the teachers contains "no threat of reprisal or promise of benefit", 21 VSA §1728, and standing by itself is a legitimate form of employer expression. On its face, the letter is non-coercive and simply presents various pieces of information which the School Board deems relevant in negotiations and a statement of economic bargaining proposals offered to the Association. It is apparent the School Board was making no attempt through the letter to denigrate the Association or undercut its authority as bargaining representative of the teachers. This is indicated by the statements in the letter that "the Board remains flexible on outstanding monetary issues" and "(t)he Board looks forward to mediation with the hope that with good faith negotiating on both sides... all outstanding issues can be settled..."

Given the non-coercive nature of the letter, and no further allegations of employer conduct indicating overall bad-faith bargaining, we decline to issue an unfair labor practice complaint. We do not need to decide whether a letter from an employer to employees during negotiations would be evidence of an unfair labor practice under different circumstances.

Now therefore, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and the unfair labor practice charge filed by the Burlington Education Association is hereby ORDERED DISMISSED.

Dated this 25th day of June, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.