

VERMONT LABOR RELATIONS BOARD

HINESBURG SCHOOL DISTRICT AND
BOARD OF SCHOOL DIRECTORS

v.

VERMONT-NATIONAL EDUCATION
ASSOCIATION
CHITTENDEN SOUTH EDUCATION
ASSOCIATION
CHITTENDEN SOUTH EDUCATION
ASSOCIATION, HINESBURG UNIT
BURLINGTON EDUCATION ASSOCIATION
AND ITS AGENTS

DOCKET NO. 85-26

MEMORANDUM AND ORDER

On August 30, 1985, the Labor Relations Board issued a Memorandum and Order in this matter in which it declined to issue an unfair labor practice complaint against Respondents. Among the various issues raised in the charges had been the Hinesburg School Board's allegation the Chittenden South Education Association, Hinesburg Unit ("Association") had failed to fairly represent the replacement teachers at Hinesburg. In its Memorandum and Order, the Board referenced its decision issued that day in Docket No. 85-15, 8 VLRB 219, that the School Board did not have a right to permanently replace the striking Hinesburg teachers who were unfair labor practice strikers, and had to discharge replacements upon strikers' unconditional application to return to work. Under these circumstances, the Board provided the Association was "not required to represent such illegally-hired employees."

On November 6, 1985, the School Board filed a Request for Clarification in this matter, and filed an Amended Request for Clarification on November 18, 1985. Respondents filed a letter in response to these requests on November 20, 1985.

The School Board's Requests were triggered by two separate requests it received for negotiation of a collective bargaining agreement; one from the Hinesburg Organized Teachers, an organization of the replacement teachers who at this point are still teaching at Hinesburg, and the other from the Association. In light of these requests, and in light of the fact 28 of the 29 striking Hinesburg teachers remain on strike and 23 have requested reinstatement, which requests have been denied by the School Board, the School Board asked the Board to not only clarify its earlier decision but to also define the respective rights of the School Board, Association and Hinesburg Organized Teachers organization.

Specifically, the School Board asks the Board to resolve the following questions:

1. Does the Association continue to represent the bargaining unit at Hinesburg which is currently filled with two teachers who were employed by the School prior to the strike and the remainder being teachers hired since the strike began?
2. If so, what are the Association's and School Board's obligations to each other vis-a-vis collective bargaining?
3. Is the School Board bound to recognize the new organization at Hinesburg seeking to bargain over employment conditions?
4. Can a referendum be held pursuant to 16 VSA Sec. 1992 to determine the representational rights of the Association and the new organization? If so, who would be entitled to vote in such a referendum?

Insofar as these questions are asking the Board to determine whether the Association has a duty to represent the replacement teachers, we believe that question was clearly answered in our August 30 Memorandum and Order; namely that the Association is not required to represent such illegally hired employees.

The remainder of the questions framed by the School Board are asking the Board to resolve whether the Association and/or the Hinesburg Organized Teachers organization represent teachers, a question of representation which was not contemplated in our August 30 Memorandum and Order. Essentially then, these questions are not seeking to clarify the August 30 Order, but are asking the Board to make a declaratory judgment; since it is asking us to declare the rights of the parties and rule on a question of law prior to the fact.

The Board does not have the authority to give declaratory judgments in cases involving teachers. The Board, as a public administrative body, has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563,570 (1977). Neither the Labor Relations for Teachers Act nor the unfair labor practice provisions of the Municipal Employee Relations Act, which apply to teachers, give the Board authority to give declaratory judgments. Further, the Board is not given such authority under the Declaratory Judgments Act. 12 VSA §4711.

Even if the Board did have such authority, it could not be exercised in this case since one of the parties at interest, the Hinesburg Organized Teachers organization, is not represented before the Board.

The Board cannot be in a position to decide a question before the

fact. The School Board has to take action on the questions raised in its requests here. Then, if a party believes the School Board has committed an unfair labor practice by such action, the party may file an unfair labor practice charge with the Board. Only at that point would the Board have jurisdiction to resolve the raised questions.

It may be unfortunate we cannot give a declaratory judgment in this case since it may reduce to some degree labor relations divisiveness. However, we are not given that authority by the legislature.

Now therefore, based on the foregoing reasons, the Hinesburg School Board's Request for Clarification and Amended Request for Clarification are DENIED.

Dated this 7th day of January, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley