VERMONT LABOR RELATIONS BOARD

CASTLETON EDUCATION ASSOCIATION, VERMONT-NEA	)	
v.	)	DOCKET NO. 89-71
CASTLETON-HUBBARDTON BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 6, 1989, the Castleton Education Association, Vermont-NEA ("Association") filed an unfair labor practice charge against the Castleton-Hubbardton Board of School Directors ("School Board"). The Association alleged that the School Board refused to bargain in good faith and made a unilateral change in related economic conditions of employment by unilaterally extending the length of the teachers' work day.

On November 21, 1989, after investigation of the charge, the Vermont Labor Relations Board issued an unfair labor practice complaint against the School Board. On February 20, 1990, a hearing was held before Board members Charles McHugh, Chairman; Catherine Frank and Leslie Seaver. Donna Watts, Associate General Counsel for Vermont-NEA, represented the Association. John Zawistoski, Attorney with Ryan, Smith and Carbine, represented the School Board. Requested Findings of Fact and Memoranda of Law were filed by the parties on March 7, 1990.

Subsequent to the hearing, on March 7, 1990, the School Board filed a Motion to Dismiss. A Motion in Opposition was filed by the Association on March 14, 1990.

FINDINGS OF FACT

1. The Castleton-Hubbardton School district is comprised of two schools, the Castleton Elementary School ("Elementary School") which contains Grades K through 6, and the Castleton Village School ("Village School") which contains Grades 7 and 8. The School District is governed by the School Board. Daniel Collins has been the principal of the Castleton-Hubbardton School District since July, 1988.

2. The Association is the exclusive bargaining agent for all teachers of the Castleton-Hubbardton School District.

3. The School District and the Association were parties to a collective bargaining agreement ("1986-89 Agreement") which covered the period July 1, 1986 to June 30, 1989. The 1986-89 Agreement contained no provision defining the length of the teachers' work day (Association Exhibit 1).

4. During December of 1988, the parties began negotiations for a successor agreement to the 1986-89 Agreement. An impasse was declared on May 22, 1989. On July 24, 1989, the parties entered into mediation, but failed to reach a full agreement. On November 7, 1989, a fact-finding hearing was held. The fact-finding report was issued on December 29, 1989. Subsequent to the hearing in this matter, the parties reached an agreement, which agreement has been ratified by both parties.

5. During the negotiations for the successor agreement, the length of the work day for teachers was not a subject of bargaining raised by either party (Association Exhibit 2).

6. The Addison-Rutland Supervisory Union, of which the Castleton-Hubbardton School District is a part, promulgates a teachers' handbook which describes specific requirements for teachers.

For some period of years, including the 1988-89 and 1989-90 school years, the handbook has provided that "(t)eachers should be at school at least 15 minutes before and 15 minutes after school except for some special reason" (School Board's Exhibit C).

7. During all times relevant herein, students at the Elementary School and Village School have been required to be in their classrooms by 8:30 a.m. The students are transported to school on buses generally arriving between 8:00 a.m. and 8:20 a.m. (School Board's Exhibit B).

8. During the 1988-89 school year, the first 15 minutes the Elementary School students were required to be in their classrooms, 8:30 a.m. to 8:45 a.m., were devoted to Sustained Silent Reading. At 8:45 a.m., instruction began for the day. Teachers were not required to be in their classroom until 8:45 a.m. Prior to 8:45 a.m., the students were supervised in their classrooms by aides and teachers assigned to bus duty. There were more classrooms at the Elementary School than there were aides and teachers assigned to bus duty, which meant some classrooms were unsupervised if teachers had not arrived in their classrooms by 8:30 a.m.

9. During the 1988-89 school year, it was Principal Collins' understanding, pursuant to the requirement in the teachers' handbook that teachers should be at school at least 15 minutes prior to school, that teachers at the Elementary School and Village School were required to be in the school building by 8:15 a.m. Collins observed that approximately one-half of the teachers were in their classrooms by 8:15 a.m. and most teachers were in their classrooms by 8:30 a.m.

10. Due to an altercation which took place between students during sustained silent reading, Collins became concerned during the 1988-89 school year about safety and appropriate supervision of students. Discussion on the adequacy of early morning supervision of students occurred between the teachers, Collins and the School Board during the Spring of 1989. Discussion occurred on whether teachers should be required to be in their classrooms prior to 8:45 a.m. During these discussions, Collins became aware that at least some teachers believed that they did not have to be in the school building until 8:30 a.m., an issue which Collins sought to clarify during the rest of the school year through research and discussions. No final resolution on the issue of supervision of students occurred during the 1988-89 school year.

11. During a faculty meeting in August of 1989, Principal Collins announced that teachers would be required, for the coming school year, to be in their classrooms at 8:15 a.m. There is no requirement that they have to be in the building earlier than 8:15 a.m. The policy is in effect during the 1989-90 school year.

12. During the 1989-90 school year, the option of conducting sustained silent reading between 8:30 a.m. and 8:45 a.m., as opposed to other times during the day, was left to each individual teacher. Some teachers decided to change the sustained silent reading period to other times during the day.

13. During both the 1988-89 and 1989-90 school year, teachers were required to stay at school until 3:30 a.m. or whenever the last bus transporting students left school, whichever occurred later. Also, teachers had a duty-free lunch period and a preparation period during these years.

14. The Association has presented no evidence indicating the time teachers at the Village School believed they were required to be in the school building during the 1988-89 school year.

OPINION

The Association alleges that the School Board refused to bargain in good faith and made a unilateral change in economic conditions of employment, in violation of 21 VSA §1726(a)(5) and 16 VSA §2001 and §2004, by unilaterally extending the length of the teachers' work day in the Castleton-Hubbardton School District.

Before addressing the merits, we need first rule on a motion to dismiss filed by the School Board. The School Board contends that, because the parties have reached agreement on a new collective bargaining contract since the hearing in this matter, then the matter is moot.

The Board and the Supreme Court have dismissed cases as moot or not justiciable where a teachers' association and a school board reached agreement on a collective bargaining contract pending the outcome of an unfair labor practice charge prompted by actions occurring during contract negotiations. North Country Education Association v. Brighton School Board, 135 Vt. 451 (1977). Windsor Southwest Education Association v. Windsor School District Board of School Directors, 11 VLRB 217 (1988). However, here the subject of the unfair labor practice charge - i.e. a change in the length of the workday - was not a subject of bargaining raised by either party during contact negotiations. Unlike North Country, supra, and Windsor, supra, the charge was not prompted by actions occurring during contract negotiations and the new contract does not resolve the issue. An actual controversy still exists between the parties which

requires resolution. Thus, we deny the School Board's motion to dismiss this matter. We turn to deciding the merits.

The unilateral imposition of terms of employment during the time an employer is under a legal duty to bargain in good faith is the very antithesis of bargaining and is a per se violation of the duty to bargain. Burlington Firefighters Association v. City of Burlington, 142 Vt. 433, 435-436 (1983). Absent a waiver of bargaining rights, an employer is required to bargain if the employer seeks any changes in mandatory bargaining subjects during the time an agreement is in effect if contract negotiations are ongoing or not ongoing. Burlington Firefighters Association, Local 3044, IAFF v, City of Burlington, 10 VLRB 53, 59 (1987). Mt. Abraham Education Association v. Mt. Abraham Union High School Board, 4 VLRB 224, 231 (1981).

Under the Labor Relations for Teachers Act, "matters of salary, related economic conditions of employment and procedures for processing complaints and grievances relating to employment" are mandatory bargaining subjects. 16 VSA §2004.

The length of the teachers' workday is a mandatory subject of bargaining pursuant to 16 VSA §2004 because it is a "related economic condition of employment" to salary; salary being established dependent partly on the number of hours a teacher works. North Country Education Association v. Board of School Directors of North Country School District, 5 VLRB 395, 408 (1982).

The Association contends that the School Board unilaterally imposed a change in the length of the teachers' workday during the 1989-90 school year by requiring teachers at the Elementary School and

the Village School to be in the school building by 8:15 a.m. The Association contends that this represented a 15 minute increase in the length of the workday from the 1988-89 school year when, it is alleged, teachers were not required to be in the school building until 8:30 a.m.

As the initiator of the unfair labor practice charge, the Association has the burden of demonstrating whether any change was effected. Burlington Firefighters Association v. City of Burlington, 4 VLRB 379, 389 (1981). Rev'd In Part On Other Grounds, 142 Vt. 434 (1983). To meet that burden here, the Association must demonstrate that the School board changed an establish practice. VSEA v. State of Vermont (re: Involuntary Transfer of Gonyaw, 7 VLRB 8, 31-32 (1984). An established practice is one that management has accepted and employees have relied upon for a significant period of time. Id, at 31. Local 98, IUOE v. Town of Rockingham, 7 VLRB 363, 375 (1984).

The Association clearly has not met its burden of demonstrating a change occurred at the Village School, since the Association has presented no evidence indicating the time teachers at the Village School believed they were required to be in the school building during the 1988-89 school year. In the absence of such evidence, we are unable to conclude that any change in practice occurred during the 1989-90 school year when teachers were required to be in the school by 8:15 a.m.

We conclude that the Association also has failed in its burden of demonstrating a change in an established practice at the Elementary School. While some teachers at the Elementary School believed during the 1988-89 school year that they were not required to be in the

school building until 8:30 a.m., 15 minutes prior to the time they had to be in the classroom, the school principal had a different understanding.

He understood that teachers were required to be in the school building at 8:15 a.m., 15 minutes prior to the time students had to be in the classroom. His understanding was based on a reasonable interpretation of the teachers' handbook, which provided that "teachers should be at school at least 15 minutes before... school". His understanding also was buttressed by his observation that many teachers were in their classrooms by 8:15 a.m. When Collins became aware during the 1988-89 school year that some teachers believed they did not have to be in the building until 8:30 a.m., he did not accept this practice, but sought to clarify the issue through research and discussion.

Under these circumstances, the Association has failed to demonstrate that management accepted as an established practice that the teachers' workday began at at 8:30 a.m., rather than 8:15 a.m., during the 1988-89 school year. Accordingly, the Association has failed to demonstrate that requiring teachers to begin their workday at 8:15 a.m. during the 1989-90 school year was a unilateral change in an economic condition of employment.

A change did occur during the 1989-90 school year. Teachers were required to be in the classroom at 8:15 a.m., rather than 8:45 a.m. as had been the case during the 1988-89 school year. However, the Association has not demonstrated that this was anything more than a change within the workday, rather than a change to the length of the workday.

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the unfair labor practice complaint in this matter is DISMISSED.

Dated this 29th day of March, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Leslie G. Seaver