VERMONT LABOR RELATIONS BOARD

RICHFORD TOWN TEACHERS ASSOCIATION	)	
v.	)	DOCKET NO. 90-15
RICHFORD TOWN BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 9, 1990, the Richford Town Teachers Association ("Association") filed an unfair labor practice charge against the Richford Town Board of School Directors ("School Board"). Therein, the Association alleged that the School Board violated 21 VSA §1722(4), (9) and (17); §1725(a) and §1726(a)(5) through refusing to bargain in good faith with the Association, by refusing to discuss mandatory subjects at the table, engaging in surface bargaining, engaging in deliberate stalling tactics so as to avoid concluding a written agreement, and sending School Board representatives to the bargaining table who had no authority to settle.

On March 7, 1990, the Association filed an amended unfair labor practice charge against the School Board. Therein, the Association alleged that the School Board violated 21 VSA §1721, §1726(a)(1) and (4), §1728 and §1731(a) by unilaterally withdrawing from the mediation process because the Association had filed the unfair labor practice charge with the Board on February 9, 1990.

On March 15, 1990, the Labor Relations Board issued an unfair labor practice complaint, adopting for purposes of the complaint the allegations contained in the charge and amended charge. A hearing on

this matter was held on April 18, 1990, at the Labor Relations Board hearing room in Montpelier, before Board Members Louis Toepfer, Acting Chairman; William Kemsley, Sr. and Catherine Frank. Junius Calitri, Labor Relations Consultant/Negotiator, represented the School Board. Donna Watts, Vermont-NEA Associate General Counsel, represented the Association.

Briefs were filed by the parties on May 2, 1990.

FINDINGS OF FACT

1. The Association is the exclusive bargaining representative of the Richford Elementary School educational support personnel.

2. The Richford Town School District ("District") is a municipal employer within the meaning of 21 VSA §1735 and a school district within the meaning of 16 VSA §§1981. The District is governed by the School Board.

3. The Association and the School Board entered into negotiations for the first collective bargaining agreement for the educational support personnel unit in February, 1989.

4. The District has been represented in bargaining for this contract by Junius Calitri, Labor Relations Consultant/Negotiator, at times and by Joseph Larose, School Board Chairperson, at other times as spokespersons. The School Board's bargaining team has at various times been composed of only Calitri, only Larose, or both of them.

5. The Association has been represented by Kay Trudell, Vermont-NEA UniServ Director, at times and by Association members at other times as spokespersons. The Association's bargaining team has consisted of Kay Trudell and Association members.

6. The Association and the School Board have engaged in a total of nine bargaining sessions. At the first session, on February 8, 1989, the parties exchanged proposals. The entire first session was spent negotiating over ground rules, which were agreed upon by the parties (Exhibit 3).

7. Subsequent bargaining sessions were held on February 23, 1989; March 29, 1989; April 11, 1989; May 3, 1989; and May 17, 1989. At these sessions, Trudell and Calitri were the principal spokespersons for their respective bargaining teams. Larose, who had open heart surgery in March, 1989, was not present at the February 23 and March 29 sessions. He was present at the subsequent three sessions. Association members were present at all the bargaining sessions.

8. The collective bargaining agreement proposed by the Association contained 17 articles and three appendices, and was 31 pages long. The School Board proposal contained seven articles and was three pages long. Much of the time at the February 23, March 29 and April 11 bargaining sessions was spent "walking through" the respective proposals, with the party making the proposal explaining its provisions. The total amount of time the parties spent in these three sessions was approximately six hours (Exhibits 4, 5).

9. By the conclusion of the April 11 session, the parties had explained all their respective proposals. The parties then had a bargaining session on May 3 of approximately one and one-half hours, which ended when the Calitri and Larose walked out of the session when Trudell questioned whether the Board was bargaining in good faith.

10. The bargaining sessions through May 3, 1989, were often marked by acrimonious exchanges between Calitri and Trudell. By that point, the parties had tentatively agreed on only minor provisions (i.e. clause recognizing Association as bargaining representative of employees, arrangements as to printing, paying for and distributing the contract when agreed to, and the procedure for notification to the other party). Both the Association and School Board indicated an unwillingness up to that point to move very much, if at all, off their original proposals (Exhibits 4, 5).

11. At the next bargaining session on May 17, 1989, the Association proposed shortly after the session commenced that the parties schedule future bargaining sessions without Calitri and Trudell present during the sessions. Larose responded that he would let the Association know whether the School Board agreed to this, and the session adjourned.

12. On May 19, 1989, Larose informed the Association that the School Board was willing to negotiate without Calitri. On June 12, 1989, Larose met with the Association's bargaining team, minus Trudell, for approximately 30 minutes. At this session, no bargaining took place. Larose explained that the School Board was preoccupied with trying to get the budget passed and there was nothing the School Board could do about bargaining until the budget passed. Larose told the Association that after the June 20, 1989, budget vote, the School Board would have a special meeting and then get back to the Association concerning negotiations. The Association expressed no objection to delaying negotiations until after the June 20 budget vote.

13. On June 20, 1989, the budget was defeated for a second time.

14. During the summer recess, neither Larose or any other School Board member contacted the Association. The Association did not contact the School Board concerning resuming negotiations until August 26, 1989, when the Association contacted Larose and requested the resumption of bargaining (Exhibit 8).

15. Subsequently, a bargaining session was held on September 20, 1989, in the continued absence of Trudell and Calitri. Larose was present for the School Board. The session lasted approximately one and one-half hours. Larose indicated that the School Board could not progress in negotiations without an approved budget. Ann Lavery, spokesperson for the Association, indicated that the parties could agree on non-mandatory items. Larose indicated that there were several Association proposals which he agreed to in concept,but that he could not finally agree to anything and would have to bring proposals back to the School Board for approval. Larose indicated he would call a special School Board meeting to discuss the Association's proposal on September 26, 1989, and then get back to the Association. At the September 20 meeting, the Association did not agree to any proposals of the School Board.

16. A subsequent bargaining session was held on October 25, 1989, in the continued absence of Calitri and Trudell. Larose informed the Association that the School Board wished to return to the use of a professional negotiator, but if the Association would bring a reasonable proposal to the table, the Board would consider it. No substantive proposals were discussed at this session, which lasted one-half hour.

17. On November 6, 1989, Trudell received a letter from the District's Assistant Superintendent. The letter indicated that the School Board "has determined that the current process of 'informal negotiations' with the Richford support staff-unit is not accomplishing a settlement", and that Calitri would serve as the School Board's negotiator for future bargaining sessions (Exhibit 9).

18. The Association and School Board have had no further bargaining sessions since October 25, 1989. The Association declared impasse in negotiations for the collective bargaining agreement in December, 1989. Trudell informed Calitri that the Association wished to bypass mediation and proceed directly to the fact-finding stage of impasse resolution. Calitri informed Trudell that the School Board did not wish to bypass the mediation stage.

19. Subsequently, Trudell and Calitri discussed whether to proceed to mediation or directly to fact-finding. On or around January 25, 1990, the Association and School Board agreed to proceed to mediation, and agreed that David Randles would serve as mediator.

20. Trudell contacted Randles for a mediation date and was given January 31, 1990. When Trudell contacted Calitri on January 25 regarding this date, Calitri indicated that six days notice was inadequate time to schedule all the School Board members and adequately prepare for mediation.

21. Subsequent to this conversation, mediation was rescheduled to two mutually agreeable dates, February 24, 1990 and March 31, 1990 (Exhibit 11).

22. The unfair labor practice charge in this matter was filed on February 9, 1990.

23. By letter to Trudell dated February 20, 1990, which was received by Trudell on February 23, Calitri informed Trudell as follows:

> The Richford Town Board of School Directors hereby notifies you of its indignation at the filing of an unfair labor practice charge with the Vermont Labor Relations Board made on February 9, 1990.
>
> The Richford Board and the Richford Teachers Association Support staff unit had already agreed to mediation on the outstanding issues between the parties.
>
> The filing of the charges subsequent to our agreement to mediate has had a distinct chilling effect on our efforts to reach an agreement and might be considered an unfair labor practice itself.
>
> You are hereby informed the Richford School District will hold in abeyance any efforts to mediate under the threat of an ULP charge until the issue is resolved or the charge withdrawn.
>
> (Exhibit 14)

24. Mediation sessions did not take place, as scheduled, on February 24, 1990, and March 31, 1990.

OPINION

The Association first contends that the School Board, prior to the declaration of impasse by the Association in December, 1989, committed an unfair labor practice through refusal to bargain in good faith with the Association by refusing to discuss mandatory subjects at the bargaining table, engaging in surface bargaining, engaging in deliberate stalling tactics so as to avoid concluding a written agreement, and sending School Board representatives to the bargaining table who had no authority to settle.

The Municipal Employees Relations Act (MERA) requires representatives of the employer and employees to meet at any reasonable time and bargain in good faith with respect to wages, hours and conditions of employment and execute a written contract incorporating any agreement reached; provided, however, that neither party shall be compelled to agree to a proposal nor to make a concession. 21 VSA §1725(a). It is an unfair labor practice for an employer to refuse to bargain collectively in good faith with the exclusive bargaining agent. 21 VSA §1726(a)(5).

Where the language of MERA and the National Labor Relations Act (NLRA) are virtually identical, we look to Federal court decisions interpreting the NLRA for guidance. In re Local 1201, AFSCME, 143 Vt. 512, 515 (1983). Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 434, 435 (1983). §1725(a) and §1726(a)(5) of MERA substantively parallel the language of Section 8(a)(5) and Section 8(d) of NLRA. Thus, we look to case law under those sections for guidance to determine whether the School Board refused to bargain in good faith.

The duty to bargain in good faith is an "obligation... to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement". NLRB v. Montgomery Ward and Co., 133 F2d 676, 686 (CA 9, 1943). This implies "an open mind and sincere desire to reach an agreement", Id., as well as a "serious intent to adjust differences and to reach an acceptable common ground". NLRB v. Insurance Agents Union, 361 US 477, 485 (1960).

Employer bad faith bargaining may be manifested in many ways. The employer may intend to subvert the authority of the bargaining representative, avoid settlement altogether, or attempt to effect an agreement on terms substantially dominated by management. Rutland School Board v. Rutland Education Association, 2 VLRB 250, 273 (1979). The totality of the employer's conduct must be analyzed and the context in which the bargaining took place must be evaluated to determine if bad faith exists. Id., at 273, 276. Continental Insurance Co. v. NLRB, 495 F2d 44, 48 (CA 2, 1974).

There is no duty on the part of an employer to be represented at the bargaining table by a person with competent authority to enter into a binding agreement with the employees. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 148 Vt. 26, at 31 (1987). Rather, use of a negotiator without authority to bind the employer is merely some evidence, to be considered in conjunction with other conduct, of employer bad faith. Id.

In applying this precedent, we decline to find the School Board in violation of its duty to bargain in good faith with respect to actions occurring prior to the declaration of impasse by the Association in December, 1989. We agree that the conduct of

negotiations between the Town and the Association was not conducive to adjusting differences and reaching an acceptable common ground. NLRB v. Insurance Agents Union, supra. However, this was the result of actions of the Association as well as the School Board. Given this context in which bargaining occurred, we decline to find just one of the parties to have committed an unfair labor practice in this regard.

The Association contends that the School Board refused to discuss the mandatory bargaining subject of establishment of a grievance procedure culminating in arbitration. We conclude that the lack of adequate discussion in this area, as well as others, is attributed to acrimonious exchanges and unwillingness to move off their original proposals engaged in by both parties, rather than a failure to discuss the issue at all.

Similarly, any surface bargaining and stalling tactics which occurred cannot be attributed to the School Board alone, as both parties significantly impeded the progress of negotiations through unproductive acrimonious exchanges and an apparent lack of intent to adjust their differences and compromise on their bargaining proposals. The evident delays at times between bargaining sessions were acquiesced in by the Association, and cannot fairly be used as evidence of bad faith bargaining by the School Board. Also, we do not believe the School Board can be faulted for not agreeing to a mediation session with six days notice. A party engaged in contact negotiations certainly is entitled to a reasonable period of time prior to mediation to decide which issues to pursue to mediation and to discuss strategy. Under the circumstances, we cannot fault the School Board for seeking more than six days to adequately prepare for mediation.

Further, we reject the Association's claim that the School Board committed an unfair labor practice by sending School Board representatives to the bargaining table who had no authority to settle. It is true that the respective School Board negotiators, Junius Calitri and Joseph Larose, did not have authority to enter into a binding agreement with the Association. However, standing by itself, this does not demonstrate employer bad faith bargaining. Enosburg, supra, at 31. As discussed above, the joint actions of the Association and School Board resulted in a bargaining context which seriously inhibited productive bargaining, and we conclude that the lack of authority of the School Board negotiators to bind the School Board to a contract was accompanied by insufficient other conduct by the School Board for us to conclude the School Board committed an unfair labor practice.

In its amended charge filed herein, the Association contends that the School Board committed another unfair labor practice by unilaterally withdrawing from the mediation process because the Association had filed an unfair labor practice charge at issue on February 9, 1990. We agree.

Under the National Labor Relations Act, it has been found that a party commits an unfair labor practice by demanding that unfair labor practice charges against it be withdrawn as a condition to negotiating. Kit Manufacturing Co., 142 NLRB 957, enforced in part, 335 F2d 166 (9th Cir., 1964), cert. denied, 380 US 910 (1965). American Laundry Machine Co., 76 NLRB 981 (1948), enforced 174 F2d 124 (6th Cir., 1949). Essentially, the School Board here is conditioning further negotiations upon the withdrawal of the charge by informing the Association that it was "hold(ing) in abeyance any efforts to

mediate under the threat of an ULP charge until the issue is resolved or the charge withdrawn".

Among the stated purposes of MERA are "to prescribe the legitimate rights of both municipal employees and municipal employers in their relations with each other" and "to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other". 21 VSA §1721. Among the rights and procedures established by MERA are the ability to file and pursue unfair labor practice charges, 21 VSA §1726, and, in the event of a contract negotiations impasse, to proceed to mediation to "endeavor... to obtain an amiable settlement". 21 VSA §1731. It would be inconsistent with the purpose of MERA, to provide orderly and peaceful procedures to resolve disputes over legitimate rights, for us to permit one party to unilaterally frustrate an effort to settle a contract negotiations dispute due to the other party exercising a legitimate right to allege an unfair labor practice. In fact, engaging in mediation may assist the parties in resolving the problems which led to the filing of the unfair labor practice charge. Thus, we conclude that the School Board committed an unfair labor practice in violation of 21 VSA §1726(a)(1) by unilaterally withdrawing from the mediation process.

As a remedy for this unfair labor practice, the Association requests that we issue an order requiring the School Board to cease and desist from its conduct, proceed to mediation and pay the late cancellation fee in full if such a fee is charged to the parties by the mediator.

21 VSA §1727(d) provides that, if the Board decides that an employer is engaging in any unfair labor practice, then the Board "shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action as the Board shall order". We believe that the requested remedy is appropriate pursuant to §1727(d).

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1) The Richford Town Board of School Directors ("School Board") shall cease and desist from unilaterally withdrawing from participation in the mediation process due to the filing of the unfair labor practice charge by the Richford Town Teachers Association ("Association") on February 9, 1990;

2) The School Board and the Association forthwith shall proceed to mediation to endeavor to obtain an amicable settlement of their impasse in negotiations for a collective bargaining agreement; and

3) The School Board shall pay in full any late cancelation fee charged by mediator David Randles as a result of the School Board unilaterally withdrawing from the mediation process.

Dated this 31st day of May, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer, Acting Chairman

William G. Kemsley, Sr.

Catherine L. Frank