VERMONT LABOR RELATIONS BOARD

REED HAVILAND	)	
	)	
v.	)	DOCKET NO. 90-18
	)	
LLOYD KELLEY, ROBERT ATKINSON,	)	
KATHY HUMPHRIES, CHERYL WOODRUFF	)	
AND JEAN OAKMAN	)	

MEMORANDUM AND ORDER

On February 26, 1990, Reed Haviland filed an unfair labor practice charge against Lloyd Kelley, Superintendent of the Rutland Southwest Supervisory Union; Jean Oakman, Principal of Wells Village School; and Robert Atkinson, Kathy Humphries and Cheryl Woodruff, members of the Wells School Board ("Respondents"). Therein, Haviland alleged that Respondents violated 21 VSA §1721, §1726 and §1728, and the laws of the State relating to executive sessions, by discharging him for not wearing a seatbelt while driving a school bus. Respondents filed a response to the charge on March 15, 1990, contending, among other things, that Haviland has not been discharged.

For purposes of deciding whether to issue an unfair labor practice complaint, we accept Haviland's factual allegations as true and, thus, operate under the assumption that Haviland was discharged for refusing to wear a seatbelt while driving a school bus. We decline to issue an unfair labor complaint in this matter. Haviland alleges violations of §1721, §1726 and §1728 of the Municipal Employee Relations Act ("MERA"), 21 VSA §1721, et seq., to support his allegations.

§1721 describes the purpose and policy of MERA. Nothing in this section supports Haviland's contention that he cannot be discharged for refusing to wear a seatbelt.

§1726(a)(1) provides that it is an unfair labor practice for an employer "to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by this chapter or by any other law, rule or regulation". Haviland apparently contends that because the Vermont General Assembly has not passed a law requiring seatbelt usage on school buses, then the Wells School Board can take no action against him for refusing to wear a seatbelt. The fact that no law exists requiring seatbelt usage on school buses does not result in an employer lacking authority to require seatbelt usage for bus drivers as a condition of employment. Haviland has no fundamental legal right to refuse to wear a seatbelt while driving a school bus. Thus, Respondents did not interfere with, restrain or coerce him in the exercise of any rights within the meaning of §1726(a)(1) in this regard. We also find nothing in the materials filed by Haviland which indicates that he was interfered with, restrained or coerced in the exercise of any rights within the meaning of §1726 (a) (1) as a result of any actions of Respondents in executive session.

§1728 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. Added 1973, No. 111, §1.

Haviland has pointed out no "expression of any views, argument or opinion" by Respondents which contain any "threat of reprisal or promise of benefit". Thus, we cannot conclude that this section may have been violated.

Now, therefore, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED that this matter is DISMISSED.

Dated this 22nd day of March, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh

Charles H. McHugh, Chairman

Catherine L. Frank

Catherine L. Frank

Leslie G. Seaver

Leslie G. Seaver