

VERMONT LABOR RELATIONS BOARD

SHAWN MESSICK	)	
	)	
v.	)	DOCKET NO. 91-35
	)	
LOCAL 1343, AFSCME, AFL-CIO	)	

MEMORANDUM AND ORDER

At issue is whether the Vermont Labor Relations Board should issue an unfair labor practice complaint in this matter. On May 14, 1991, Shawn Messick ("Complainant") filed an unfair labor practice charge, alleging that Local 1343, AFSCME, AFL-CIO ("Union"), violated 21 VSA §1726(b)(3) and (5) by refusing to provide him, as a bargaining unit employee who is not a member of the Union, with information about contract negotiations between the Union and the Village of Essex Junction. The Union is the existing exclusive bargaining representative of Village employees.

For purposes of deciding whether to issue an unfair labor practice complaint, we accept the following factual allegations made by Complainant as true: On April 4, 1991, Complainant asked Jerry Malloy, Union shop steward, for the Union proposals and Village counter proposals with respect to contract negotiations between the Village and the Union. Malloy denied Complainant's requests for the Union proposals and also said: "If you want a copy of the counter proposals, go ask the Trustees for a copy, you're working for them anyway." Complainant told Malloy that, as a member of the bargaining unit, he had a right to this information and that Malloy had an obligation to fairly represent him. Malloy responded by stating: "You are not a bargaining unit member, but just an employee filling a bargaining unit position."

(Parenthetically, we note that Complainant is a member of the bargaining unit, but is not a member of the Union which is the certified exclusive bargaining representative.) Malloy also stated: "I do not have an obligation to supply you with any information." Subsequently, by letter of April 8, 1991, Complainant asked Lindol Atkins, Union President, "to correct Jerry's attitude towards non-union members and to supply me with the bargaining unit proposals and counter proposals from Village." Complainant informed Atkins that he "need(ed) this information to formulate my ideas to you, the bargaining unit representative." Atkins did not respond to Complainant's letter.

The pertinent provisions of the Municipal Employee Relations Act ("MERA") are as follows:

21 VSA §1722(8)

"Exclusive Bargaining Agent" means the employee organization certified by the Board or recognized by the employer as the only organization to bargain collectively for all employees in the bargaining unit, including persons who are not members of the employee organization.

21 VSA §1726

(b) It shall be an unfair labor practice for an employee organization or its agents:

. . . (3) To . . . fail or refuse to represent all employees in the bargaining unit without regard to membership in such organization.

. . . (5) . . . to threaten, coerce or restrain any person with the aim of forcing or requiring any employee to join any employee organization . . .

Thus, MERA makes explicit a duty of fair representation, and a breach of a union's duty of fair representation is an unfair labor practice. Ilges v. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO, 11 VLRB 235, 239 (1988). The union's duty to fairly and equitably represent all employees in its dealing and negotiations with management extends to all members

of the bargaining unit, not just to members of the union. Id. The union's duty of representation means that it must serve the interests of all employees, union and non-union, without hostility or discrimination, exercise its discretion in good faith, and avoid arbitrary conduct. Id. This duty extends to both the negotiations for a contract and the enforcement of the contract provisions. Id.

The factual circumstances in this case are somewhat similar to those which existed in Ilges, supra. Therein, an employee who was represented by a union, but was not a union member, filed an unfair labor practice charge due to the union excluding him from a meeting held to formulate a negotiations proposal. In Ilges, the Board stated:

We . . . conclude that the Union did not interfere with Complainant's rights and unfairly represent him by excluding him from the meeting held to formulate a negotiations proposal. As exclusive bargaining representative, the Union has the responsibility to formulate employees' bargaining positions. How the Union formulates such bargaining proposals is an internal union affair from which non-union employees may be excluded. Just as a contract ratification may be properly limited to union membership, so too the preliminary meetings to formulate proposals which lead to a negotiated contract may be restricted to union members. To fulfill its responsibility to fairly represent all bargaining unit members, unions must allow non-union employees some method of communicating their views to the Union so the Union may ascertain the wishes of non-union employees and take them into account. However, a union does not have to allow non-union employees to attend union meetings where bargaining proposals are formulated. Thus, Complainant's charge that the Union committed an unfair labor practice by excluding him from the meeting is unwarranted and we dismiss the charge.

In this case, we reach the same conclusion. Just as the preliminary meetings to formulate proposals which lead to a negotiated contract may be properly limited to union members, it logically follows that the accessibility to proposals which are

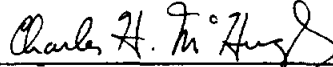
actually developed by the union may be restricted to union members. The Union here must allow non-union employees some method of communicating their views to the Union so the Union may ascertain the wishes of non-union employees and take them into account, but this obligation does not require that Union bargaining proposals are made accessible to non-union employees. It is not necessary that non-union employees have accessibility to Union proposals to communicate their views to the Union on wages, hours and conditions of employment which they may desire as a result of contract negotiations.

We note that we are somewhat troubled by alleged comments made by the Union steward in connection with declining to provide Union bargaining proposals to Complainant. The alleged comments seem to indicate some lack of recognition that the Union has the duty to fairly serve the interests of all employees the Union represents, whether or not they are members of the Union. We exercise our discretion pursuant to 21 VSA §1727(a) not to issue an unfair labor practice complaint on these alleged comments because they were made in connection with properly refusing to provide information to Complainant and there is no indication in the charge that such comments contributed to any improper Union actions against Complainant. However, we caution the Union that it should be more sensitive to its obligation to fairly represent all employees, including those who are not members of the Union.

Now therefore, based on the foregoing reasons, the Vermont Labor Relations Board declines to issue an unfair labor practice complaint in this matter and the unfair labor practice charge filed herein is ORDERED DISMISSED.

Dated this 7th day of June, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Charles H. McHugh, Chairman

/s/ Louis A. Toepfer

Louis A. Toepfer

/s/ Carroll P. Comstock

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