

VERMONT LABOR RELATIONS BOARD

LAMOILLE NORTH EDUCATION)	
ASSOCIATION)	
)	
and)	DOCKET NO. 91-38
)	
FLETCHER BOARD OF SCHOOL)	
DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 18, 1991, the Lamoille North Education Association ("Association") filed an unfair labor practice charge with the Vermont Labor Relations Board, alleging that the Fletcher Board of School Directors ("School Board") committed unfair labor practices in violation of 16 VSA § 2001, 2009, and 21 VSA § 1726 (A) (1) and (5) by: (1) interfering with and restraining employees engaged in the exercise of their rights to collectively negotiate a successor collective bargaining agreement; (2) violating its duty to bargain collectively in good faith with the exclusive bargaining agent by engaging in surface bargaining; (3) sending School Board members to negotiation sessions without the authority to negotiate; (4) refusing to hold a ratification vote on a tentative agreement; and (5) failing to positively recommend or support the tentative agreement.

The Vermont Labor Relations Board issued an unfair labor practice complaint on September 6, 1991. A hearing was held on September 26, 1991, before Board members Charles H. McHugh, Chairman, Catherine L. Frank, and Carroll P. Comstock. Vermont-NEA Uniserv Director Joyce Foster represented the Association. Attorney Paul Sutherland represented the School

Board. At the hearing, both parties stipulated to the substance of a telephone conference call that took place on May 7, 1991, between the parties and David Randles. Parties filed briefs on October 4, 1991.

FINDINGS OF FACT

1. Vermont School Boards Insurance Trust, Inc. ("VSBIT") offers five Blue Cross/Blue Shield ("BCBS") family health care benefit plans for Vermont schools: Plans A, B, C, D, and E. Most school districts in Vermont purchase VSBIT plans. The five VSBIT BCBS plans are outlined for comparative purposes in a pamphlet (School Board Exhibit 5).

2. VSBIT BCBS Plans A and B are both "JY" plans ("J" and "Y" referring to specific benefit plans and riders) and are 100% employer paid. Plan B is a "managed health care plan"; that is, preadmission certification is required. Also, Plans C, D, and E are managed health care plans, in that preadmission certification is required. Managed health care Plans C, D, and E also all require employee coinsurance, whereby the employee contributes a certain percentage of covered medical expenses. Under Plans C, D and E, the Employer pays 80%, and the employee pays 20%. Plans D and E also require that members meet deductibles, \$100 for Plan D and \$250 for Plan E. Plan E requires the highest level of employee contribution, a \$250 deductible and a 80/20 copay (or 250/80/20), and is the least expensive plan for an employer (School Board Exhibit 5).

3. Fletcher Elementary School is one of seven elementary schools in the Lamoille North Supervisory Union. Gayle Utley is

the Superintendent of all schools in the Supervisory Union. The Fletcher Board of School Directors is a five member Board. Dawn Pelkey was the Chair of the School Board during 1990 and until her term expired in May, 1991. The Lamoille North Education Association is the collective bargaining representative for the Fletcher Elementary School teachers.

4. Negotiations for a successor contract to the 1988-1990 contract between the Association and the School Board covering the Fletcher teachers started in February, 1990. Utley, who had extensive teacher negotiations experience, served as the School Board's spokesperson during negotiations. Pelkey and School Board Members Bruce Webb and Martha DeMeo were on the School Board's negotiations team. The negotiations team for the Association was comprised of Association president, Jackie Lomazzo, teachers from the Fletcher school and Vermont-NEA Uniserv Director Kay Trudell, who was spokesperson for the team. In August, 1990, Suzanne Dirmaier, replaced Trudell as Vermont-NEA Uniserv Director and spokesperson for the team.

5. During the period Spring 1990 through Fall 1990, the Association and School Board were unable to arrive at agreement on a contract. The parties met for a mediation session with federal mediator John Knight during the Fall of 1990. An agreement was not reached as a result of this mediation session.

6. The voters of the Fletcher Elementary school district voted five times between March and November, 1990, on the Employer's school budget. Voters defeated the budget three times, and the budget was finally approved in November, 1990, as a result of a vote of approval and an unsuccessful vote to

reconsider the approved budget. Teachers' salaries and health care insurance were the two major issues over which district voters expressed dissatisfaction. Some district residents had lost their jobs and/or health care benefits, and at public meetings residents expressed the belief that teachers also should have to take cuts in salaries and health care benefits.

7. The first mediation session having failed, the parties agreed to the appointment of David Randles as fact finder. On January 11, 1991, the parties met with Randles, and agreed that the session would be a second mediation session, rather than a fact finding session. The discussions at the session focused primarily on two issues: salaries and health care benefits. The Association was requesting a base salary of \$21,000 at the commencement of the session, while the School Board was proposing a base salary of \$17,000, which represented a 4.2% salary increase. With respect to health care benefits, the teachers sought to retain their BCBS JY, one hundred percent School Board paid, family benefit plan. The School Board was offering to provide the current coverage for individual teachers only (not the family plan), or to offer family coverage under a more limited plan, which would include employee contributions and result in significant savings to the School Board.

8. Both teams knew that there were different VSBIT BCBS plans with different deductibles and coinsurance features. Neither team had the VSBIT pamphlet (referenced in Finding # 1) with them on January 11, 1991.

9. During the January 11, 1991, session, the parties were physically separate. The Association team met in a classroom and

the Employer's team met in the library. Randles conferred separately with each party, and shuttled back and forth between the parties. Neither team had the opportunity to hear the other team's discussions with Randles.

10. During the January 11 session, the School Board team discussed different health care packages. Utley offered to call an individual who had participated in a school district study of the different VSBIT plans, Norman Andrews. Utley called Andrews and Andrews offered to get together comparative cost information. Subsequently, during the mediation session, Andrews spoke with Pelkey. Andrews gave Pelkey comparative costs of continuing the current "JY" health care plan and the costs of managed health care Plan E. Andrews told Pelkey that the current plan would have a projected cost to the district of \$36,643 and Plan E would have a projected cost of \$30,573. Thus, Plan E would represent a savings of \$6,070, or approximately 20 percent, to the district. Andrews told Pelkey that there were other plans between "JY" and "E", but Plan E was the focus of Pelkey's conversation with Andrews. Pelkey gave Utley a copy of the figures relayed to her by Andrews (School Board Exhibit 2).

11. Subsequent to reviewing this data, the School Board team determined at the January 11 session that if the Association's team was willing to accept Plan E, they could offer a Step 1 base salary of \$16,700, and an overall 6% salary increase. Utley tried to persuade the School Board members to propose a more generous plan than Plan E, mentioning that health care was a "sacred cow" for teachers. However, the School Board members indicated that there were "sacred cows" on both sides, and the School Board team held firm to offering Plan E.

12. Utley then met with Randles and proposed "managed health care" as well as a 6% overall salary increase. Randles understood from this conversation that the School Board was proposing Plan B.

13. Randles discussed the health care plans and salary proposals with Dirmaier and Utley together. Both Randles and Dirmaier understood that Utley was offering managed health care Plan B.

14. Dirmaier took the information back to her bargaining team that the School Board team was offering "managed health care", which she explained to the team as being Plan B.

15. Randles also met with the Association's team. Randles explained the differences between their present "JY" plan and Plan B. The Association indicated that they would accept the School Board's "managed health care" proposal along with the 6% salary increase.

16. Both teams understood that evening that they had reached a tentative agreement. The Association understood that the health care plan agreed upon was Plan B. The School Board team understood that the health care plan agreed upon was Plan E. All other issues in dispute at the outset of the meeting were resolved.

17. Randles then wrote a Memorandum of Agreement reflecting the teams' understandings, which stated in pertinent part:

...
In full and complete settlement of the...impasse the parties have reached the following terms of settlement which they shall positively recommend for ratification:
...

(3) The current health insurance plan shall be continued, however, it shall be modified to VSBIT managed health care following ratification (Association Exhibit A).

18. Pelkey, Webb, and Utley signed the Memorandum of Agreement for the School Board that evening (DeMeo had left prior to reaching final agreement). Dirmaier and two of the teachers on the Association team signed the Memorandum of Agreement for the Association.

19. Dirmaier agreed to type a draft agreement reflecting the teams' agreement. She did so the following week and sent it to Utley and to the Association. The draft agreement stated in pertinent part:

9.1 The Board will provide and pay the premium, for each teacher who requests coverage, for single, two-person, or family health insurance in the Blue Cross - Blue Shield (365 day semi-private Plan J with Rider Y) Managed Health Care Plan with a \$1,000,000 major medical coverage (School Board Exhibit 1).

20. Although there was no mention of a specific VSBIT BCBS plan, either Plan B or Plan E, the language of the draft Master Agreement describes VSBIT BCBS Plan B.

21. The Association members subsequently met and voted to ratify the agreement.

22. The School Board met on January 23, 1991. The tentative agreement was indicated as an item of discussion on the agenda for the meeting. However, discussion was tabled at the meeting because the Board had not yet received the draft of the agreement from the Association (Association Exhibit B).

23. Utley received the draft agreement at some point after the January 23, 1991, meeting. He did not notice any problems with the health insurance provision. Utley sent the draft agreement to Pelkey.

24. Pelkey received the draft Master Agreement on or about February 7, 1991, and reviewed the draft for accuracy. She

discovered that it was not consistent with her understanding of what was agreed upon concerning the health care plan.

25. At the next scheduled School Board meeting on February 23, 1991, Pelkey asked Utley if the language with respect to health care in the draft agreement could be construed to be Plan E. He indicated that it could not be so construed. Utley wanted the Board to vote on ratification of the agreement, except for the health care provision, but they declined to do this. The School Board instructed Utley to contact the Association regarding the health care issue.

26. Dirmaier contacted Utley several times between the time she sent the draft agreement to him in January, 1991, and April, 1991. She asked about the contract. His response was generally that he had not gotten to the contract yet, and would have to get back to her.

27. Association President Jackie Lomazzo also had several conversations with Utley regarding the contract and asked when the School Board would ratify it. Utley told her he had to deal with a lot of other schools and he had not gotten to the contract yet. Utley has responsibility over eight schools in the Supervisory Union and negotiates contracts with the teacher bargaining units in those schools.

28. Utley informed Lomazzo in mid-April that the School Board was not going to vote to ratify the agreement, that there were problems with the health insurance provision. Lomazzo informed Dirmaier of this discussion. At some point shortly thereafter, Utley and Dirmaier spoke on the phone. Utley told Dirmaier that the Board had understood on January 11, 1991, that

the managed health care plan agreed to was VSBIT BCBS Plan E. Dirmaier and Utley subsequently agreed to arrange a conference call with Randles.

29. The conference call with Randles occurred on May 7, 1991, and included Utley, Pelkey, and Dirmaier. Randles told them that he thought the parties agreed that VSBIT BCBS Plan B would be part of the tentative agreement.

OPINION

The Association contends that the School Board interfered with and restrained employees in the exercise of their rights to negotiate a collective bargaining agreement, and failed to bargain in good faith by: (1) engaging in surface bargaining; (2) sending School Board members to negotiation sessions without the authority to negotiate; (3) refusing to hold a ratification vote on the tentative agreement reached on January 11, 1991; and (4) failing to positively recommend or support the tentative agreement.

The duty to bargain in good faith is an obligation to participate actively in the deliberation so as to indicate a present intention to find a basis for agreement. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 8 VLRB 193, 206 (1985). Affirmed, 148 Vt. 26 (1987). This implies an open mind and a sincere desire to reach an agreement, as well as a serious intent to adjust differences and to reach an acceptable common ground. Id. 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. Essex Junction

Education Association v. Essex Junction Prudential Committee, 14 VLRB 107, 123 (1991). Rutland School Board v. Rutland Education Association, 2 VLRB 250, 273 (1979).

At the outset, we quickly dispose of the Association's claims that the School Board was engaging in surface bargaining and that the School Board sent its members to negotiations sessions without the authority to negotiate. Surface bargaining is characterized by simply going through the motions of bargaining and completely frustrating the process of reaching an agreement. Enosburg Falls, 8 VLRB at 206-209. We conclude that the evidence does not warrant a conclusion that the School Board was simply going through the motions of bargaining. Also, the evidence does not warrant a conclusion that the three School Board members delegated by the School Board to negotiate lacked actual authority to negotiate.

However, in considering the totality of the circumstances of the evening the tentative agreement was reached and the events that followed, we conclude that the School Board, through the actions of its spokesperson, Superintendent Utley, committed an unfair labor practice. As an experienced negotiator with an understanding of the different VSBIT health care plans, Superintendent Utley should have made it clear to mediator David Randles and Association spokesperson Suzanne Dirmaier, on the evening that the tentative agreement was signed, that the managed care plan which the School Board was proposing was Plan E, as opposed to Plan B. It is evident that he did not make this clear since both Randles and Dirmaier understood that the School Board was proposing Plan B.

This does not mean that we believe it is appropriate to hold the School Board to a tentative agreement including Plan B. The provision on health care insurance which was included in the Memorandum of Agreement signed that evening can be construed as being ambiguous, since it indicates that the parties had agreed to "managed health care", without specifying whether the managed health care plan was Plan B or Plan E. Two of the three signatories to the agreement for the School Board, Members Pelkey and Webb, reasonably believed that they were agreeing to Plan E. Under these circumstances, where a majority of the signatories to the agreement for the School Board reasonably believed that they were agreeing to Plan E, we conclude that the Association has not demonstrated by a preponderance of the evidence that there was a meeting of the minds between the parties on agreeing to Plan B. Although this result may seem unfair to the Association, the Association did have some control in avoiding the problem by clearly specifying in the tentative agreement that the managed health care plan agreed to was Plan B.

Although we do not believe it appropriate to hold the School Board to a tentative agreement including Plan B, we do conclude that Superintendent Utley's actions of that evening, previously discussed, taken together with his subsequent actions reached the level of interfering with employee rights to negotiate a collective bargaining agreement and constituting refusal to bargain in good faith. Superintendent Utley exacerbated his failures of the evening the tentative agreement was signed by subsequently failing to timely inform the Association of

problems with the tentative agreement once such problems became evident. He knew by the February 11, 1991, School Board meeting, at the latest, that the parties differed on the supposedly agreed-upon health care plan. Yet, he failed to inform the Association for approximately two months of such problems. He further misled the Association by telling Association representatives that he had not had an opportunity to review the matter, when in fact he and the School Board had reviewed the contract and had discovered a major misunderstanding.

Superintendent Utley's actions have clearly contributed to a substantial delay in the reaching of a collective bargaining agreement between the School Board and the Association. His failures to carefully and timely attend to the necessary tasks to reach an agreement sufficiently indicate a lack of serious intent to adjust differences and reach an acceptable common ground so as to constitute an interference with employee rights to negotiate an agreement and a refusal to bargain in good faith.

There is no appropriate remedy to order in this unfortunate situation other than to order the parties to return to negotiations and for the School Board to bargain in good faith.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Fletcher Board of School Directors shall promptly enter into good faith negotiations with the Lamoille North Education Association

concerning a collective bargaining agreement covering the
Fletcher Elementary School teachers.

Dated this 21st of November, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh
Charles H. McHugh, Chairman

Catherine L. Frank
Catherine L. Frank

/s/ Carroll P. Comstock
Carroll P. Comstock