VERMONT LABOR RELATIONS BOARD

TRACY WILSON	)	
	)	
v.	)	DOCKET NO. 91-31
	)	
WILLIAMSTOWN STAFF ASSOCIATION	)	

MEMORANDUM AND ORDER

At issue is whether the Vermont Labor Relations Board should issue an unfair labor practice complaint in this matter. On April 5, 1991, Tracy Wilson ("Complainant") filed an unfair labor practice charge, alleging that the Williamstown Staff Association ("Association") violated its duty of fair representation in connection with a pay reduction which she will receive during the 1991-1992 school year. The Association filed a response to the charge on April 22, 1991.

For purposes of deciding whether to issue an unfair labor practice complaint, we consider the following undisputed factual circumstances as determined by the pleadings:

The Association is the exclusive bargaining representative of all custodians, instructional and non-instructional aides and secretaries employed by the Williamstown School District. The collective bargaining agreement negotiated by the Association and the Williamstown Board of School Directors for the 1990-1991 school year provided that the wage schedule for aides would be $5.00 an hour at Step 1 and $6.00 an hour at Step 2. The agreement further provided that two aides, with the last names of Bessette and Fielder, would be paid "off schedule rates" of $6.25 an hour and $6.70 an hour respectively, and that these off

schedule rates "will be eliminated by attrition." The 1990-1991 agreement also provided that secretaries would be paid at the Step 1 rate of $7.29 per hour.

Just prior to the start of the 1990-1991 school year, Complainant was hired into an aide position as an Administrative Assistant. A handwritten wage change from $5.00 an hour to $7.29 an hour was initialed by the School Superintendent on Complainant's individual employment contract which she entered into with the Employer, and Complainant was paid $7.29 an hour during the 1990-1991 school year. At all times relevant, Complainant has been a member of the bargaining unit represented by the Association, but has not been a member of the Association.

In January, 1991, the Association and the School Board reached agreement on a collective bargaining agreement covering the 1991-1992 and 1992-1993 school years. The agreement provided that the wage schedule for instructional/administrative assistants for the 1991-1992 school year would be: Base - $6.50 an hour; Step 1 - $6.80 an hour; Step 2 - $7.35 an hour. The agreement further provided that secretaries would be paid at a Base rate of $7.50 an hour and $8.00 an hour at Step 1 during the 1991-1992 school year.

In March, 1991, the Employer offered Complainant an individual employment contract for the 1991-1992 school year at $6.80 an hour, which is the applicable pay rate for Step 1 Administrative Assistants pursuant to the collective bargaining agreement. Complainant spoke with the Williamstown School Board on March 20, 1991, and brought to the School Board's attention the

fact that she would be receiving a $.49 per hour reduction in pay while all other employees received a pay raise. A suggestion was made to change Complainant's job title from Administrative Assistant to Secretary so that she could receive a pay raise, but the School Board indicated that approval would be needed from the Association for such a change.

On March 26, 1991, Complainant spoke with the Association concerning this requested title change. Complainant explained to the Association that it was not right that she should be the only staff member to receive a pay cut. The Association decided not to agree to the title change, and so informed Wilson by letter of March 27, 1991.

In considering these factual circumstances, we turn to deciding whether to issue an unfair labor practice complaint. Complainant charges that the Association did not fairly represent her in light of the fact that she is receiving a pay reduction for the 1991-1992 school year while all other staff represented by the Association are receiving a pay increase. Complainant cites her educational background and job duties as evidence that she is entitled to a higher rate of pay.

The Association contends that Complainant originally was hired "off scale", and that the Association has chosen not to contest this overpayment after the fact. However, the Association indicates that it does stand on the principle of fairness, and that Complainant's duties are well within the range of duties performed by other Assistants. Thus, the Association contends,

she should be paid in accordance with the wage scale negotiated in the collective bargaining agreement. The Association maintains that to do anything else would be to treat all other employees unfairly.

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 . . .

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.

In a case like the one before us, where at issue is how the terms of a collective bargaining agreement affect an individual employee, the Board has noted that, in the give and take of the negotiations process, the complete satisfaction of all who are represented is hardly to be expected. Lary v. Upper Valley Teachers' Association, 3 VLRB 416, 420-421 (1980). Differences inevitably arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees, the mere existence of which does not make them invalid. Id.

We exercise our discretion pursuant to 21 VSA §1727(a) to decline to issue an unfair labor practice complaint. We conclude that the Association did not violate its duty to equitably and fairly represent all employees, including Complainant. This is so even though the Association negotiated a collective bargaining agreement which contained wage increases for all employees except Complainant, who received a wage reduction.

We cannot conclude that this result reflected an unreasonable, arbitrary or discriminatory action by the Association. The decision by the Association to agree to a wage salary schedule which eliminated the payment of an "off schedule rate" to one of its represented employees, and which ensured that all represented employees would be paid according to a defined step plan, was consistent with the duty of the Association to fairly represent all employees. The expressed view of the Association that to do anything else would result in the treatment of all employees other than Complainant unfairly is a

reasonable, non-discriminatory position in light of its obligation to fairly represent all employees. The result of the negotiated salary schedule clearly operates to the detriment of Complainant. This is unfortunate for her, but does not demonstrate unfair representation.

In her unfair labor practice charge, Complainant appears to allege that the duties she performs are beyond that of her Administrative Assistant position. However, the Employer hired her into the Administrative Assistant position, she indicates that her duties have not changed since she was hired, and the Association maintains that she is performing duties well within the range of those performed by other assistants. Under these circumstances, we will not question whether she is working outside of her classification in this unfair labor practice case. Complainant may have other avenues of redress to contest her classification, but this is not the appropriate forum.

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 9th day of July, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Leslie G. Seaver

Carroll P. Comstock