

VERMONT LABOR RELATIONS BOARD

ORLEANS CENTRAL EDUCATION)	
ASSOCIATION)	
)	
v.)	DOCKET NO. 91-13
)	
IRASBURG BOARD OF)	
SCHOOL DIRECTORS)	

FINDINGS OF FACT, OPINION AND ORDER

On February 6, 1991, the Orleans Central Education Association ("Association") filed an unfair labor practice charge against the Irasburg Board of School Directors ("School Board"). Therein, the Association alleged that the School Board violated 16 VSA §2001 and §2007, and 21 VSA §1726(a)(1) and (5), through conduct engaged in with respect to collective bargaining negotiations between the Association and the School Board. The Employer filed an informal response to the charge on February 19, 1991. Timothy Noonan, Executive Director of the Vermont Labor Relations Board, met with the parties on April 23, 1991, in furtherance of the Board's investigation of the charge and to informally attempt to resolve the issues in dispute. The issues in dispute were not resolved.

On May 2, 1991, the Labor Relations Board issued a Memorandum and Order and Unfair Labor Practice Complaint in this matter. 14 VLRB 149. Therein, the Board dismissed the unfair labor practice charge on all issues, except whether the Irasburg Board of School Directors violated its duty to bargain in good faith, pursuant to 21 VSA §1726(a)(1) and (5) and 16 VSA §2001, by the failure of Paul Lefebvre, Member of the Irasburg Board of School Directors, to vote to ratify a tentative agreement, after agreeing that he would positively recommend its ratification.

On that issue, the Board issued an unfair labor practice complaint, and a hearing was held before Board members Charles McHugh, Chairman, Louis Toepfer and Carroll Comstock in the Board hearing room, 13 Baldwin Street, Montpelier, Vermont, on May 16, 1991, at 1:00 p.m. Attorney Anthony Lamb of Paul, Frank & Collins represented the Employer. Donna Watts, Associate General Counsel for Vermont-NEA, represented the Association.

The Association filed a Memorandum of Law on May 21, 1991. The School Board did not file a brief.

FINDINGS OF FACT

1. The Association is the exclusive bargaining representative for teachers employed by the Irasburg, Orleans, Barton, Brownington, Glover, Albany, Lake Region Union High School and Orleans Central Supervisory Union Boards of School Directors. These employers comprise the Orleans Central Supervisory Union.

2. The Association and the above employers which comprise the Orleans Central Supervisory Union decided to engage in coordinated bargaining for successor collective bargaining agreements to the 1988-1990 agreements. The Association appointed a negotiations team comprised of teachers from the various schools. Each of the school boards which comprise the Orleans Central Supervisory Union had a representative on the merged management negotiations team. Paul Lefebvre, Chairperson of the Irasburg Board of School Directors, was the Irasburg Board's representative on the negotiations team.

3. At a mediation session with mediator/fact finder David Randles, which began the evening of September 7, 1990, and ended

shortly after midnight on September 8, the parties reached a tentative collective bargaining agreement. Lefebvre was present at this mediation session. The Memorandum of Agreement setting forth the terms of settlement was signed and dated September 8, 1991, and provided in pertinent part as follows:

In full and complete settlement of the above captioned matter the parties have reached the following terms of settlement which constitute a memorandum of agreement. Said memorandum shall be positively recommended for ratification by the signatories hereunder.

Lefebvre signed the Memorandum of Agreement on September 8, 1990 (Association Exhibit 1).

4. After the parties signed the Memorandum of Agreement, Randles called the parties together and complimented them on developing a mature and trusting relationship. Randles also expressed to the parties their obligation to positively recommend the agreement for ratification.

5. At a meeting of the Irasburg Board of School Directors on October 18, 1990, the three Board members (i.e., Lefebvre, David Turner and Rolinda Chase) went into executive session to discuss the tentative agreement. During discussion of the tentative agreement in executive session, Lefebvre indicated that the agreement was the "best we were going to get." Turner indicated he was opposed to the tentative agreement. Subsequently, Chase also indicated opposition to the agreement. Upon hearing that the other two Board members were going to reject the agreement, Lefebvre indicated that he too would vote against the agreement for "Board solidarity." The School Board

then came out of executive session and unanimously voted not to ratify the agreement (Association Exhibit 3).

6. Subsequently, the School Board notified the Association of the rejection of the agreement. The Association and the three members of the Irasburg Board of School Directors since have resumed negotiations, which have included a second and subsequent mediation and fact finding process (Association Exhibit 2).

MAJORITY OPINION

The Association alleges that the Irasburg Board of School Directors interfered with employee rights and violated the duty to bargain in good faith when its Chairperson, Paul Lefebvre, failed to affirmatively and aggressively urge ratification of the tentative agreement and failed to vote for ratification.

The determination whether the actions of Lefebvre in connection with the School Board vote whether to ratify the tentative agreement, after agreeing that he would positively recommend its ratification, constituted a refusal to bargain in good faith turns on the meaning of "positively recommend."

At the outset, we note that a serious question exists whether Lefebvre's duty to positively recommend the ratification of the tentative agreement necessarily, and without more, included voting to ratify the agreement. If we were to rule that his duty did not extend to voting to ratify the agreement, questions arise as to whether this would diminish the importance of a tentative agreement presumably reached after much effort and lengthy negotiations and whether it would result in a negotiator being required to give only superficial support to a tentative agreement.

However, we need not reach that issue. At the very least, once the Association met its burden of establishing that Lefebvre did not vote to ratify the agreement, the presumption arises that Lefebvre had violated his obligation to positively recommend the agreement. Then, the burden to establish that Lefebvre did positively recommend the ratification is on the School Board.

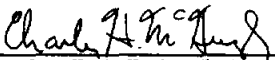
The burden of proof is on the School Board because whatever took place in executive session is information that is solely within the special knowledge of the School Board. The proceedings of the executive session are not part of a public record except as is revealed by the participants.

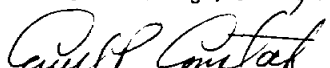
Lefebvre did not testify at the hearing before us. The only evidence as to what transpired is the limited testimony of School Board member David Turner. His testimony as to what occurred in executive session is insufficient for us to conclude that the School Board met the burden of establishing that Lefebvre did positively recommend the ratification of the Contract. Lefebvre was required to do more at the School Board meeting than just state that the tentative agreement was "the best we were going to get," and then vote against the tentative agreement when the other School Board members expressed opposition. This did not constitute positively recommending a tentative agreement presumably reached after much effort and lengthy negotiations.

As a remedy, the Association requests that the School Board be directed to cease and desist from its unfair labor practice and ratify and implement the tentative agreement. 21 VSA §1727(d) directs the Board to issue an order requiring the party who has

committed an unfair labor practice to "cease and desist from the unfair labor practice and to take such affirmative action as the board shall order."

We conclude that directing the School Board to ratify and implement the tentative agreement is not an appropriate remedy. In exercising our broad powers to remedy unfair labor practices, we are mindful that our orders are to be remedial, "make whole" orders, not punitive. Board of School Commissioners of the City of Rutland and City of Rutland School District v. Rutland Education Association, et al, 2 VLRB 250, 286-287 (1980). An order directing the School Board to ratify and implement the tentative agreement would go beyond a remedial, "make whole" order since it would place the Association in a better position than it would have been if the unfair labor practice had not been committed. If Lefebvre had not committed an unfair labor practice and had positively recommended the tentative agreement and voted for its ratification, the agreement still would have been rejected by the School Board by a 2-1 vote. Accordingly, we believe it is more appropriate in this case to apply the normal remedy for failure to negotiate in good faith of ordering the offending party to cease and desist from the unfair labor practice and to bargain in good faith. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 8 VLRB 193, 215-217 (1985).

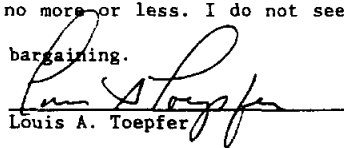

Charles H. McHugh, Chairman


Carroll P. Comstock

DISSENTING OPINION

I disagree with my colleagues. Their opinion that Paul Lefebvre failed to present a high enough degree of enthusiasm in presenting the tentative agreement to the other members of the School Board takes the Labor Relations Board into a quicksand in determining the degree of enthusiasm that is sufficient. Furthermore, the sincerity of whatever enthusiasm is expressed is simply not measurable.

When Lefebvre told the other members of the School Board that the tentative agreement was "the best we are going to get," he did all that he agreed to do, no more or less. I do not see how this can be declared bad faith bargaining.

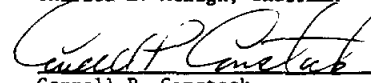

Louis A. Toepfer

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is **HEREBY ORDERED** that the Irasburg Board of School Directors shall **CEASE AND DESIST** from violating its duty to bargain in good faith, pursuant to 21 VSA §1726(a)(1) and (5) and 16 VSA §2001, as discussed herein, and shall take the **AFFIRMATIVE ACTION** of bargaining in good faith with the Orleans Central Education Association.

Dated this 14th day of June, 1991, at Montpelier, Vermont.


Charles H. McHugh, Chairman


Carroll P. Comstock