

VERMONT LABOR RELATIONS BOARD

AFSCME LOCAL 1201,	)	
COUNCIL 93	)	
	)	DOCKET NO. 93-11
v.	)	
	)	
RUTLAND FREE LIBRARY	)	

MEMORANDUM AND ORDER

We need to decide whether to issue an unfair labor practice complaint concerning the refusal to bargain in good faith charge filed by AFSCME Local 1201, Council 93 ("Union") in this matter, or defer to the grievance procedure with respect to this dispute concerning the hours of work and pay of the Program Director of the Rutland Free Library.

Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie under the State Labor Relations Act ("SLRA"). Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 518 (1991). The Board begins its analysis by considering if the issue contained in the charge is subject to grievance arbitration, irrespective of whether or not it might also be an unfair labor practice under SLRA. Id. at 519. If the issue is subject to arbitration, the contract grievance procedure should be applied, barring an overriding statute or deferral policy. Id. In Champlain Water District, the Court cited with approval the following statement by the Board in Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335, 340 (1978):

If this Board hears as an unfair labor practice a complaint which is a grievance without first requiring

the complainant to utilize the dispute resolution procedures agreed to in the collective bargaining agreement, the collective bargaining process would be undermined . . . (A)n exhaustion of contracts remedies doctrine . . . insures the integrity of the collective bargaining process by requiring the parties to collective bargaining agreements to follow the procedures they have negotiated to resolve contract disputes. This policy also encourages the parties to negotiate grievance procedures to resolve contract disputes which is sound labor relations policy. Labor relations stability depends on the parties working together to resolve disputes which directly affect them.

Abstention cannot be equated with abdication of the Board's statutory duty to prevent and remedy unfair labor practices; instead the parties are directed to seek resolution of their disputes under the provisions of their own contract, thus fostering the collective relationship and the policy favoring voluntary arbitration and dispute settlement. Champlain Water District, 156 Vt. at 519-20. National Radio Co., 198 N.L.R.B. 527, 531 (1972). The exhaustion doctrine does not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation, if an overriding statute negates deferral, or if the Board's own deferral guidelines indicate that deferral would not serve the purposes of the statute. Champlain Water District, 156 Vt. at 520.

In applying these standards to this case, we believe it is appropriate to defer to the grievance procedure and not rule on the unfair labor practice charge at this time. Upon review and consideration of the materials filed in this matter, it is apparent that the dispute concerning the pay and hours of work of

the Program Director of the Library involves the interpretation of contract provisions and the Union has an adequate redress for the alleged wrongs through the parties' contractual grievance procedure.

The Board generally will defer to the grievance procedure if there is an adequate redress for the alleged wrongs through the grievance procedure. AFSCME, Local 490, Bennington Department of Public Works and Police Units v. Town of Bennington, 9 VLRB 195 (1986). Here, the Union has recourse to binding arbitration to resolve the underlying issues in dispute and an arbitration proceeding is now pending. Further, there is no overriding statute or deferral policy which leads us to not defer to the grievance procedure. Thus, we believe it is appropriate for the grievance procedure to run its course, and do not rule on the unfair labor practice charge at this time. The contractual remedies should be exhausted before issuance of an unfair labor practice complaint.

Such deferral does not necessarily end our consideration of this matter. The Board retains jurisdiction for the purpose of entertaining a motion that grievance arbitration of the underlying issues in this matter has failed to meet the following criteria necessary for the Board to defer to an arbitrator's award:

1. fair and regular arbitration proceedings;
2. agreement by all parties to be bound;
3. the decision is not repugnant to the purpose and policies of the Act;

4. the arbitrator clearly decided the unfair labor practice issue; and
5. the arbitrator decided issues within his or her competency. Bennington, 9 VLRB at 195-96.

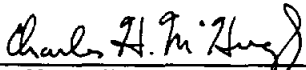
Now therefore, based on the foregoing reasons, it is hereby

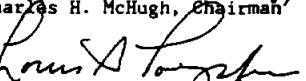
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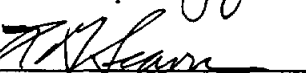
- a. The Labor Relations Board declines to rule on this unfair labor practice charge at this time and defers the matter to the grievance procedure; and
- b. The Board retains jurisdiction in this matter for the purpose of entertaining a motion that grievance arbitration has failed to meet the applicable criteria set out above, which motion shall be filed within 30 days of issuance of the arbitration decision of the underlying issues in this matter.

Dated this 10<sup>th</sup> day of June, 1993, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
Louis A. Toepfer

  
Leslie G. Seaver