VERMONT LABOR RELATIONS BOARD

CALEDONIA NORTH EDUCATION ASSOCIATION	)	
v.	)	DOCKET NO. 94-38
BURKE BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 29, 1994, the Caledonia North Education Association ("Association") filed an unfair labor practice charge against the Burke Board of School Directors ("School Board"). Therein, the Association alleged that the School Board had violated 21 V.S.A. Section 1726(a)(1), (a)(5), and (a)(6) by: 1) failing to appropriate sufficient funds to implement step salary increments for its teachers for the 1993-94 school year; 2) wrongfully imposing decreased salary and increased health insurance contributions on teachers for the 1993-94 school year because imposition was done retroactively, the imposed terms had not been the subject of negotiations, and the School Board did not negotiate in good faith; 3) threatening to cancel the health insurance of any teachers who failed to pay a claimed arrearage in health insurance contributions for the 1993-1994 school year; and 4) refusing to negotiate with the Association for the 1994-95 school year and unilaterally imposing terms and conditions of employment for that year.

The Labor Relations Board issued an unfair labor practice complaint on September 7, 1994. A hearing was held on October 13, 1994, in the Labor Relations Board hearing room in Montpelier before Labor Relations Board Members Charles McHugh, Chairman; Leslie

Seaver and Carroll Comstock. Attorney Anthony Lamb represented the School Board. Joel Cook, Vermont-NEA General Counsel, represented the Association.

The Association filed Proposed Findings of Fact and Memorandum of Law on October 26, 1994. The School Board filed Proposed Findings of Fact and Memorandum of Law on October 28, 1994.

FINDINGS OF FACT

1. The School Board is responsible for overseeing the Burke Elementary School in the Town of Burke. The Burke School District is one of several school districts within the Caledonia North Supervisory Union. The Association is the exclusive bargaining agent for the approximately 18 teachers employed by the School Board.

2. During the spring term of the 1991-92 school year, the Association and the School Board entered into a collective bargaining agreement for the 1991-1993 school years. The agreement provided that teachers would not receive a vertical step increment based on years of experience for the 1991-92 and 1992-93 school years but that a certain amount would be added to each step, and that "(s)tep movement shall be restored at the completion of the 1992-1993 school year". Article 18, Duration, of the agreement provides in pertinent part as follows:

> 18.1 The provisions of this Agreement will be effective as of July 1, 1991, and will continue and remain in full force and effect until June 30, 1993. Said Agreement will automatically be renewed and will continue in effect for additional periods of one (1) year unless either the Board or the Association gives written notice to the other not later than October 1, prior to the expiration date or any anniversary thereof its (sic) desire to reopen this Agreement and negotiate over the terms of a successor Agreement.

> 18.2 In the event that negotiations for a successor Agreement have not been completed by the time this Agreement expires, the parties hereby agree to extend the provisions of said Agreement beyond its expiration date until such time as negotiations have been completed, and a new contract has been ratified by the parties.
>
> (Association Exhibit 1)

3. In the Fall of 1992, negotiations commenced for a successor agreement to the 1991-93 agreement. The School Board and the Association agreed that negotiations would be conducted on a merged basis with the other school districts within the Caledonia North Supervisory Union (i.e., East Haven, Lyndon, Newark, Sutton, Union District #37). Each School Board retained the authority and responsibility to ratify any agreement with teachers of its district. Negotiations were conducted between a negotiations team consisting of representatives of all teachers within the Supervisory Union and a team comprised of representatives of each of the School Boards within the Supervisory Union.

4. The budget proposed by the School Board for the 1993-94 school year, which was approved at the 1993 Burke School District annual meeting, contained a 2 percent increase in salaries and benefits, including health insurance. The School Board made its budget proposal knowing that a 2 percent increase would be insufficient to meet teacher step salary increments for the 1993-94 school year.

5. There were ten negotiations sessions held between December 1992 and the end of the school year in June 1993. An impasse in negotiations was reached in late June, 1993. During negotiations prior to impasse, the Association proposed a two-year

agreement, and the negotiations team for the School Boards proposed a one year agreement for the 1993-94 school year (School Board Exhibits 1, 10).

6. Beginning with the first pay check for the 1993-94 school year, the School Board paid to Burke teachers their salary under the 1992-93 salary schedule, adjusted for vertical step movement based on years of experience and horizontal step movement based on educational attainment. Each pay check throughout the 1993-94 school year, until July 1, 1994, reflected this payment of step increments.

7. After declaration of impasse, the parties proceeded to mediation, and met with mediator Gary Altman on October 25, 1993. The parties agreed that, if mediation was unsuccessful, Altman also would serve as fact-finder. At the October 25 mediation session, the Association changed its proposal on duration of the agreement to one year. Mediation failed to resolve all matters in dispute.

8. The parties proceeded to fact-finding. The parties agreed to submit briefs in lieu of a fact-finding hearing. Although both parties were proposing a one year agreement in fact-finding, Altman requested that the parties present him with their views on the second year of an agreement.

9. The parties submitted fact-finding briefs on December 17, 1993, to Altman. Among other proposals, the Association proposed for the 1993-94 school year that the value of all salary steps be increased to $1350 from the then existing $1121, that an additional step be added, and that step increases be provided. The Association proposed, with respect to medical insurance, that the current JYMCP

coverage (VISBIT Plan B) be maintained. The School Board paid 100 percent of the premiums under this plan. The Association further proposed that the administrative fee paid by teachers for medical insurance, which ranged between $100 - 300 for each teacher less VISBIT monies rebated, be eliminated. These proposals on salary and medical insurance were unchanged from the Association's original salary proposal in negotiations. Among other proposals, the School Boards proposed that teacher salaries for the 1993-94 school year be increased by 2 percent, with teachers deciding how the increase would be allocated. The School Boards proposed that medical coverage be changed to VISBIT Plan E, which involved a $250 deductible, and that the School Boards continue to pay 100 percent of the premiums for this plan. The initial bargaining proposal by the School Boards had called for a salary freeze for 1993-94, and that medical coverage be changed to VISBIT Plan E with school boards continuing to pay 100 percent of the premiums for this plan. In addressing the fact-finder's request to discuss the second year of an agreement, the Association took the position that teachers should receive step salary increments, while the School Boards stated that "the Board's position on the duration will depend upon proposed cost of additional years" (Association Exhibits 2, 5, 6, 7; School Board Exhibit 8).

10. At the Burke town meeting in March 1994, the school budget proposed by the Burke School Board for the 1994-95 school year, which included a salary freeze for teachers, was defeated.

11. As part of the fact-finding process, Altman provided the parties with a draft of his fact finding recommendations, and met

with the parties on approximately March 14, 1994, to discuss his recommendations and attempt to resolve outstanding issues. During this meeting, the parties had discussions about terms and conditions of employment for a second year of a contract, but neither party formally proposed that the contract be for two years. The parties did not reach agreement at this meeting.

12. Altman issued his fact finding report on March 21, 1994. Among Altman's recommendations were that the existing health insurance coverage not be changed. He also recommended that teachers be granted step salary increases for the 1993-94 school year (or $350 if they were not to receive a step increase), and a 3.5 percent increase in total compensation for the 1994-95 school year (Association Exhibit 7).

13. After issuance of the fact finding report, the parties agreed to a further attempt at mediation. The parties met with federal mediator John Knight on April 29, 1994. Mediation was successful in achieving agreements between the Association and all School Boards except the Burke School Board, covering the 1993-94 and 1994-95 school years. During this mediation session, the Burke School Board proposed a 2 percent salary increase for teachers for the 1993-94 school year, with no step increases, and a salary freeze for the 1994-95 school year. The School Board also proposed that teachers pay 10 percent of health insurance premiums under the existing VISBIT Plan B and the School Board pay the remaining 90 percent of premiums, with teachers receiving the insurance rebate for the first year of the agreement. After the School Board made proposals concerning the 1994-95 school year, the Association

responded with proposals covering that year. The Association and the Burke School Board did not reach agreement (School Board Exhibit 14).

14. In May 1994, there was a vote in Burke to reconsider the March 1994 defeat of the proposed school budget. The proposed budget was defeated on reconsideration.

15. On June 1, 1994, the School Board sent the Association a copy of the 1991-93 agreement altered to reflect the present position of the School Board. This was enclosed with a cover letter stating that the altered agreement "includes everything that has been agreed to date as well as their position on any unsettled issues." Included among the positions of the School Board were the following: a) "there will be no step movement from an individual's position after the 1992-93 salary schedule", and "the salary scale will increase by 2%" for the 1993-94 school year, b) "(f)or the school year 1994-95 and until further negotiations, there will be no step movement or increases in the salary schedule unless otherwise negotiated", c) teachers would pay 10 percent of the total cost of the health insurance premium under the existing VISBIT Plan B, d) the "provisions of this Agreement will be effective as of July 1, 1993, and will continue and remain in full force and effect until June 30, 1994" (Association Exhibit 8).

16. On approximately June 7, 1994, a meeting was held between teachers and the School Board to discuss negotiations.

17. Immediately after the meeting, Association President Linda Broadwater handed the School Board a letter dated June 6,

1994, requesting that the School Board begin negotiations for the 1994-95 school year (Association Exhibit 16).

18. In a June 8, 1994, phone conversation, Association representative Joyce Foster, Vermont-NEA Uniserv Director, restated this request to begin negotiations for the 1994-95 school year to Anthony Lamb, School Board Attorney. Lamb indicated that the School Board position covered the 1993-94 and 1994-95 school years. Foster responded that the School Board could only impose terms and conditions of employment for one year.

19. On June 17, 1994, the Association reiterated its request that the School Board begin negotiations for the 1994-95 school year (Association Exhibit 16).

20. The last work day for teachers for the 1993-94 school year was June 18, 1994.

21. The School Board met on June 20, 1994, and adopted the following motion by Weeza Sanderson:

> I move that the Board adopt as the contract for the 1993-94 and 1994-95 school year, the previously negotiated agreement together with all negotiated changes and, pursuant to 16 V.S.A. 2008, the Board's final position on all issues in dispute. I incorporate into this motion the copy of the agreement prepared by our counsel.
>
> (Association Exhibit 15)

22. Teachers became aware of this action by the School Board by the following day.

23. By letter dated June 27, 1994, Lamb informed Foster that the School Board had voted to adopt a "contract" for the 1993-94 and 1994-95 school years "that includes the existing contract together

with all matters previously agreed to as well as the Board's final position on matters in dispute" (School Board Exhibit 19).

24. On July 5, 1994, Lamb sent a letter to Foster which provided in pertinent part:

> The purpose of this letter is to confirm the position of the Burke Board with regard to the present contract situation.
>
> It was the intent of the Board to impose contract for the 1993-94 and 1994-95 school years. The motion that was made was to continue all existing provisions of the contract, together with any agreed upon changes as well as the Board's last position on any matter in dispute . . . I enclose a copy of what we believe is the final version of the contract.
>
> I would note that we have adjusted the last few payroll checks to reflect the final salaries. We have chosen not to withhold health insurance contributions for 1993-94. However, we have done so without prejudice to the right of the Board to collect them in the future. We will expect teachers to either authorize the withholding of their prospective share of the premium or to make payment themselves in order to continue coverage.
>
> . . .
> (Association Exhibit 17)

25. Attached to this letter was a document titled "Agreement Between the Burke Boards (sic) of School Directors and the Caledonia North Teachers Association/Vermont-NEA/NEA 1993 - 1995". In Section 18.1 of this document, the duration was changed from an expiration date of June 30, 1994, to June 30, 1995. In other respects, the terms of the document are consistent with the School Board's June 1 statement of its position as set forth in Finding of Fact #15. The salary schedule provision of the document contained the following statement:

> Teachers shall be "level step placed" at their position in the 1992-93 school year and . . no vertical step movement shall be realized thereafter for the years

1993-94 and 1994-95. For 1993-94 the salary schedule will be 2% more than 1992-93.

(Association Exhibit 21).

26. On July 4, 1994, the School Board paid teachers the balance of what the School Board considered was owed teachers for the 1993-94 school year. Individual pay checks were adjusted to reflect, for the entire 1993-94 year, the elimination of the step payments made and the addition of 2 percent to 1992-93 salary levels. The result, in all but three cases, was a reduction of pay of between $196 and $646 for teachers from what they had received as a result of the step payments. Three teachers received an increase in pay, in each case over $700, once the adjustments were made; this was because these teachers were on the highest step of the pay plan and did not receive step increments during the 1993-94 school year. The adjustments resulted in the School Board saving $4,396 in salaries and $2,573 in insurance costs for the 1993-94 school year (School Board Exhibits 2, 3).

27. Accompanying the July 4 wage payment to teachers was a notice which provided:

> Dear Teacher,
>
> The most recent Teaching Contract requires a 10% contribution towards the premium cost of your health care. The Caledonia North Teachers Association through its legal counsel, Joel Cook, of the Vt.-NEA, has informed the Board that there is no agreement which would let the Board automatically withhold the money from your pay check. The Board intends to honor the position of the Union with regards to with holding. Accordingly, in order to keep your health insurance in effect you must pay the arrearage and subsequently pay your share of the monthly premium on a timely basis. Failure to pay promptly may result in the cancellation of your insurance.

If you would like to have the amount due withheld automatically, please return a copy of this letter signed below.

I authorize the withholding of Health Insurance premium contributions from my pay check.

_____

(Association Exhibit 20)

28. As a result of this notification, some teachers were intimidated. They considered withdrawing authorization to Association representatives to contest the School Board's unilateral imposition of terms and conditions of employment by filing an unfair labor practice charge with the Labor Relations Board.

29. At some point subsequent to this notification, the School Board indicated to the Association that the School Board would not withhold from teacher paychecks the retroactive health insurance premium contributions, pending resolution of this matter before the Labor Relations Board.

30. The Burke School Board ended the 1993-94 school year *with an approximate 15,000 deficit.*

OPINION

The Association alleges that the School Board violated 21 V.S.A. Section 1726(a)(1), (a)(5), and (a)(6) by: 1) failing to appropriate sufficient funds to implement step salary increments for its teachers for the 1993-94 school year; 2) wrongfully imposing decreased salary and increased health insurance contributions on teachers for the 1993-94 school year because imposition was done retroactively, the imposed terms had not been the subject of negotiations, and the School Board did not negotiate in good faith;

3) threatening to cancel the health insurance of any teachers who failed to pay a claimed arrearage in health insurance contributions for the 1993-1994 school year; and 4) refusing to negotiate with the Association for the 1994-95 school year and unilaterally imposing terms and conditions of employment for that year. We discuss each of these issues in turn.

I. Failure to Appropriate Sufficient Funds for 1993-94 School Year

The Association contends that the budgeting and appropriation for the 1993-94 school year by the School Board of 2 percent for teacher salaries, which was insufficient to meet its obligation to pay step increases to teachers under the then-existing collective bargaining agreement, was done in disregard and violation of 21 V.S.A. Section 1726(a)(6). Section 1726(a)(6) provides that it shall be an unfair labor practice for an employer "to refuse to appropriate sufficient funds to implement a written collective bargaining agreement".

We disagree with the Association that the School Board has violated this provision by budgeting 2 percent for teacher salaries for the 1993-94 school year, which budget was approved by the voters in March 1993. The Association is critical of the School Board for not budgeting sufficient monies to cover salary step increments for teachers for the 1993-94 school year.

However, at the time the School Board proposed the budget, it was not clear that such step increments would be effective during the 1993-94 school year. The parties were in the midst of negotiating a successor collective bargaining agreement to the 1991-93 agreement, and the School Board was proposing a salary freeze for

the 1993-94 school year. The parties had not yet reached impasse at that point, and the School Board did not act unreasonably by failing to anticipate that six months down the road it would be paying step increments to teachers as the parties awaited post-impasse mediation. The School Board had to develop some figure for teacher salaries, and we cannot conclude under the circumstances that a 2 percent increase was an unreasonable estimate at the time.

Further, the amount budgeted for salaries is not a firm and final figure necessarily indicating where the parties will settle in negotiations. It is not unusual for a lower percentage to be budgeted for salary increases for a school year than the percentage increase ultimately negotiated for that year. Chittenden South Education Association, Hinesburg Unit v. Hinesburg School District and Hinesburg School Board, 8 VLRB 219, 236-37 (1985); Affirmed, 147 Vt. 286 (1986). In such circumstances, the employer makes adjustments in other budget line items to ensure that the obligation to pay the difference between the amounts budgeted for salaries and the amounts negotiated is met. In sum, we conclude that the School Board did not violate 21 V.S.A. Section 1726(a)(6) by budgeting 2 percent for teacher salaries for the 1993-94 school year.

II. Refusal to Bargain in Good Faith Prior to Unilateral Imposition by School Board

The Association contends that the totality of the School Board's conduct over the entire course of negotiating a successor agreement to the 1991-93 agreement demonstrates an absence of good faith, in violation of 21 V.S.A. Section 1726(a)(5).

The Labor Relations for Teachers Act requires the school board and the recognized teacher organization to meet together at reasonable times, upon request of either party, and bargain in good faith on all matters properly before them; 16 V.S.A. Section 2001; and to enter into a written agreement incorporating therein matters agreed to in negotiation. 16 V.S.A. Section 2005. It is an unfair labor practice for the employer, pursuant to 21 V.S.A. Section 1726(a)(5), to "refuse to bargain collectively in good faith with the exclusive bargaining agent".

The duty to bargain in good faith is an obligation to participate actively in discussions so as to indicate a present intention to find a basis for agreement. Richford Teachers Association v. Richford Town Board of School Directors, 13 VLRB 154, 162 (1990). This implies an open mind and sincere desire to reach an agreement, as well as a serious intent to adjust differences and to reach an acceptable common ground. Hinesburg, 8 VLRB at 236. 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. Id.

In applying these standards to the facts of this case, we conclude that the Association has presented insufficient evidence for us to conclude that the School Board failed to negotiate in good faith prior to imposing terms and conditions of employment on teachers. For the most part, the Association is critical of actions taken by the School Board upon unilateral imposition, or following imposition. The exception is the claim of insufficient budgeting of monies for teacher salaries for the 1993-94 school year which, as

previously discussed, we have rejected as demonstrating an unfair labor practice by the School Board.

We note that, while the evidence indicates that the School Board made minimal movement throughout negotiations on economic issues, the Association made even less movement. We cannot find the School Board at fault given the Association's similar stance. Hinesburg, 8 VLRB at 237. Also, it is significant that negotiations occurred in the context of continuing fiscal difficulties; it is apparent that this substantially contributed to little movement on economic issues in the negotiations process.

Further, the fact that the School Board did not reach agreement in negotiations with the Association, in contrast to all other school boards with whom they were participating in merged negotiations, does not demonstrate, without more, bad faith bargaining. In sum, we conclude that insufficient evidence exists for us to conclude that the School Board did not negotiate in good faith prior to its unilateral imposition of terms and conditions of employment.

III. Unilateral Imposition by School Board Pursuant to 16 V.S.A. Section 2008

The Association contends that the School Board committed an unfair labor practice by the retroactive imposition of decreased salary and increased health insurance contribution terms on teachers for the already completed 1993-94 school year. The Association alleges that the School Board action constituted an improper unilateral change in conditions of employment and a refusal to bargain in good faith in violation of 21 V.S.A. Section 1726(a)(5).

Although the amount of monies at issue in this matter is relatively minor - i.e., approximately $7000 in reduced pay and increased health insurance contributions for teachers - we recognize that our decision on this issue has precedential effect and significant ramifications for teacher - school board negotiations throughout Vermont.

At issue is the application of 16 V.S.A. Section 2008, which provides: "All decisions of the school board regarding matters in dispute in negotiations shall, after full compliance with chapter, be final." The question squarely presented here is whether the School Board, in imposing finality pursuant to Section 2008, was able to retroactively impose financial terms of employment on teachers which resulted in teachers paying back to the School Board salary and financial benefits already received by teachers, or whether the School Board was entitled only to impose such terms prospectively.

At the outset, we note that the timing of the School Board's imposition was proper. Section 2008 allows a school board to make final decisions regarding matters in dispute after the parties have failed to reach agreement through the process of negotiation, mediation and fact finding. Hinesburg, 147 Vt. at 290. A school board may not invoke finality until 30 days after receipt of the fact finder's report. Hinesburg, 8 VLRB at 240. Here, the School Board invoked finality pursuant to Section 2008 at its June 20, 1994, meeting; the subsequent July 5, 1994, correspondence with the Association was the implementation of the June 20 decision of the School Board to invoke finality on matters in dispute. The June 20

imposition of finality occurred more than 30 days after the receipt of the fact finder's report, so the timing of imposition of finality was proper.

Further, the salary rates and health insurance contribution rates actually imposed by the School Board are properly considered "matters in dispute in negotiations", pursuant to Section 2008, on which the School Board may impose finality. Unilateral adoptions must be reasonably comprehended within an employer's last offer on a given issue. Hinesburg, 8 VLRB at 241; 147 Vt. at 290. Here, the salary rates and health insurance contribution rates imposed by the School Board were identical to the School Board's last offer to the Association.

The timing of the imposition and the salary and insurance rates imposed being proper, this leaves the central issue of whether the salary and insurance terms could be imposed retroactively. In deciding whether the School Board was able to retroactively impose financial terms of employment on teachers which resulted in teachers paying back to the School Board salary and financial benefits already received by teachers, it is necessary to examine the purpose behind the established standards regulating unilateral imposition of conditions of employment by employers.

The general rule is that the unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith is the very antithesis of bargaining and is a per se violation of the duty to bargain. Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 434, 435-36 (1983). This rule was established by the by the U.S. Supreme Court in NLRB v.

Katz; 369 U.S. 736, 742-43 (1962); and adopted as applicable to public sector bargaining in Vermont by the Vermont Supreme Court. Burlington, 142 Vt. at 435-36.

In Katz, the Court indicated that this rule was directed at prohibiting "behavior which is in effect a refusal to negotiate, or which directly obstructs or inhibits the actual process of discussion, or which reflects a cast of mind against reaching agreement." 369 U.S. at 747. A similar purpose has been articulated in Vermont. In adapting the Katz rule to public sector negotiations disputes in Vermont, the Board has decided that genuine deadlock is not reached until the parties have exhausted the mandated dispute resolution procedures and it is not appropriate for management to make unilateral changes until then. VSEA v. State of Vermont (Re: Implementation of "6-2" Schedule at Vermont State Hospital, 5 VLRB 303, 315-321 (1982). In discussing the underlying purpose behind such a standard, the Board has relied on the need to induce meaningful bargaining and balance the bargaining powers of the parties. Id.

The Board has specifically applied the standards regulating unilateral changes by employers to conclude that a school board commits an unfair labor practice by failing to pay teachers experience step increases during the school year following the expiration date of the collective bargaining agreement which provided for such increases, in the absence of a successor agreement and prior to the completion of the fact finding process. Windham Southwest Education Association v. Readsboro Board of School

Directors, 15 VLRB 268 (1992). Chester Education Association, 1 VLRB 426 (1978).

Here, the School Board complied with its obligation to pay step increases during the school year pending the completion of the dispute resolution process. The School Board then acted effectively to erase the payment of step increases by retroactively imposing its salary terms. Individual pay checks of teachers were adjusted to reflect, for the entire 1993-94 year, the elimination of the step payments made and the addition of 2 percent to 1992-93 salary levels. Most teachers ended up paying monies back to the School Board as a result of these salary adjustments. It was this action by the School Board, along with retroactive imposition of increased health insurance premium contributions for teachers, which resulted in the Association filing the charge now before us.

Consideration of the purposes behind the unilateral change rules which we have adopted leads us to conclude that the School Board should not be able to retroactively impose financial terms of employment on teachers which resulted in teachers paying back to the School Board salary and financial benefits already received by teachers. If we were to permit such action by a school board, we would be inhibiting the actual process of discussions, and discouraging meaningful bargaining.

The implied threat to teachers of potentially having to pay back school boards for salaries and financial benefits already received creates the potential of management having a much stronger ability to effect an agreement on terms substantially dominated by management once the parties are operating under an expired

agreement. Such a result is contrary to a system of good faith bargaining established by the Labor Relations for Teachers Act, and something we have guarded against in our unfair labor practice jurisprudence. Cavendish Town Elementary School Teachers Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16 VLRB 378, 388-390 (1993). Rutland School Board v. Rutland Education Association, 2 VLRB 250, 273 (1978).

The balance of power would shift substantially to the unfair advantage of management. Management would be able effectively to get around the status quo doctrine established in such cases as *Readsboro* and *Chester*, and eviscerate the significance of maintaining the status quo until the completion of mandated dispute resolution procedures. The receiving of step salary increases and maintenance of health insurance premium contribution rates in the case before us was an entitlement of teachers under the legal requirement of maintaining the status quo, and management should not be able to take action to effectively eliminate this entitlement. This leads us to the conclusion that school boards should be able to impose financial terms of employment on teachers which constitute an economic loss to them only prospectively, not retroactively.

The School Board argues against such a result because of the claimed practice between the parties in past negotiations to have negotiated salary increases be retroactive to the beginning of the school year. Retroactive salary increases reached as part of an agreement by the parties are much different than salary rates imposed by management. There is a preference implicit in Vermont's public sector statutes for agreements collectively reached by the

parties over unilateral imposition of terms of employment by management. Parties reaching an agreement are granted much more flexibility and freedom than is an employer unilaterally imposing final terms. 16 V.S.A. Section 2008 confers on a school board the final definitive determination in negotiations provided the employer acts in good faith and the negotiations process survives our scrutiny. Hinesburg, 8 VLRB at 247. A negotiations process in which there was retroactive imposition of salary and health insurance terms, as occurred in this case, does not survive our responsibility to enforce good faith bargaining.

Our ruling here should not have an unfair impact on school boards. It is true in this case that the School Board is required to pay step increases for an entire school year even though its consistent bargaining position throughout negotiations was not to pay such step increases for that year. Nonetheless, this case is a classic example of a negotiations process which simply has not worked as well as intended by the Legislature.

The parties were not only unable to reach a collective bargaining agreement, but the negotiations process dragged on until the end of the school year for which they were negotiating. Unilateral imposition by the School Board occurred approximately 19 months after the parties began negotiating. In the future, school boards can avoid results similar to this case by taking affirmative steps, in conjunction with the teacher organizations with which they are negotiating, to ensure negotiations proceed in a more expeditious fashion. Both parties have a good faith obligation to

not unduly prolong the negotiations process. It is in neither party's long-term interests to hinder the progress of negotiations.

In reaching our decision here, we note that we are not holding that school boards may not retroactively impose financial terms of employment on teachers which result in economic gain to teachers or have an economically neutral effect. A school board, if acting otherwise in good faith and consistent with statutory requirements, lawfully may impose retroactively salary rates, or health insurance contribution rates, on teachers which result in no requirement for the teacher to pay monies back to the school board. Such retroactive imposition does not constitute the threat to meaningful bargaining, unfairly shift the balance of power, or cause effective rescission of a legal entitlement, as does retroactive imposition resulting in an economic loss to teachers. In short, the School Board may not take away economic entitlements unilaterally, but may unilaterally decide to provide greater economic benefits to teachers or impose terms which have an economically neutral effect.

Also, we are not prohibiting school boards from prospectively imposing financial conditions of employment on teachers which result in their pay or other financial benefits being reduced, so long as the school board otherwise is acting in good faith and consistent with statutory requirements. This means in this case that the School Board's unilateral imposition of lower salary rates without provision for step salary increases, and a higher health insurance premium contribution rate, was valid insofar as it had prospective application.

In sum, we conclude that the School Board violated its duty to bargain in good faith by retroactively imposing decreased salary and increased health insurance premium contribution terms on teachers for the 1993-94 school year. The unilateral imposition by the School Board in this regard is valid only prospectively from the June 20 date of imposition of finality.

IV. Threat by School Board to Cancel Health Insurance

The Association contends that the School Board violated 21 V.S.A. Section 1726(a)(1) by threatening to cancel the health insurance of any of its teachers for failing to pay what the School Board characterized as an arrearage for the health insurance contribution which the School Board imposed for the 1993-94 school year. Section 1726(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed by this chapter or by any other law, rule or regulation".

The Association contends that teachers had the right, pursuant to 21 V.S.A. Sections 342 and 344, to not authorize the withholding from their pay checks of the alleged debt of health insurance premium contributions. The threat by the School Board to cancel the teachers' health insurance for failure to pay the claimed arrearage had no legal support, the Association maintains; that nowhere is there any authorization for an employer to cancel a prospective benefit for failure of an employee to pay the employer a contested debt. The Association contends that the School Board's behavior had the effect of intimidating its employees, and of inducing so much fear in them that they seriously considered compromising their

statutorily-protected right to challenge the School Board's imposition of terms of employment.

The School Board responds that, if the teachers are required to pay a portion of their health insurance premium, then the School Board was entitled to terminate their health insurance if they did not pay it. In any event, the School Board seeks to diminish the significance of its action because, once the Association complained about the action, the School Board agreed to not take further action until such time as the Labor Relations Board ruled whether the imposition was appropriate.

In a case alleging that an employer action was motivated by interfering with employees in the exercise of their rights, a key factor is whether there was a climate of coercion. Grievances of McCort, ___ Vt. ___ (slip op. at 16, 1994). A climate of coercion is one in which the employer's "conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights". Id. The critical inquiry is not whether the coercion succeeded or failed, but whether the employer's conduct reasonably tended to interfere with or restrain an employee's exercise of protected rights. Id.

We conclude that the School Board action did result in a climate of coercion. The threat to cancel the important benefit of health insurance coverage, if the claimed arrearage in premium contributions was not paid promptly, reasonably would tend to cause employees to be intimidated and question whether they wished to pursue their statutorily protected right to contest the School Board's unilateral imposition. In fact, some teachers here were

intimidated, and they considered withdrawing authorization to Association representatives to contest the School Board's unilateral imposition of terms and conditions of employment by filing an unfair labor practice charge with the Labor Relations Board.

The School Board has not presented any legitimate business reason for the manner in which they threatened teachers with the loss of their insurance coverage. Health insurance coverage obviously is an important employee benefit which cannot be summarily taken away by the School Board without carefully following correct legal procedures. The School Board has provided no legal support for its threat to employees that failure to pay the arrearage "promptly may result in cancellation of your insurance".

Certainly, the School Board could have taken less draconian measures than were used here. The fact that the School Board ultimately, upon complaint of the Association, did resort to the more reasonable action of deferring collection of the claimed arrearage until the decision of this Board on the legality of the School Board's retroactive imposition affects the remedy which we can order, but does not eliminate the coercive effect of the School Board threat at the time it was made and for the duration in which it remained in effect. In sum, we conclude that the School Board threat to cancel teachers' health insurance coverage interfered with employee rights to pursue their unfair labor practice charge before this Board in violation of 21 V.S.A. Section 1726(a)(1).

V. School Board Refusal to Negotiate and Unilateral Imposition for 1994-95 School Year

The final claim by the Association is that the School Board committed an unfair labor practice by refusing to negotiate with the Association for the 1994-95 school year, coupled with its imposition of terms and conditions of employment for that year. The Association contends that the School Board action constituted an improper unilateral change in conditions of employment and a refusal by the School Board to bargain in good faith in violation of 21 V.S.A. 1726(a)(5).

The School Board responds that no refusal to bargain took place for 1994-95 because the Association and the School Board presented proposals for 1994-95 in the mediation and fact finding processes. Further, even assuming that no bargaining took place for 1994-95, the School Board contends that the Association request for bargaining was untimely because the Association failed to give timely notice pursuant to the expired agreement, before October 1, 1993, of its desire to bargain for the 1994-95 school year.

We first discuss whether the Association waived its rights to bargain for the 1994-95 school year by making an untimely request to bargain for that year. In determining whether a party has waived its bargaining rights, the Board has required that it be demonstrated a party consciously and explicitly waived its rights. VSEA v. State of Vermont, 5 VLRB at 326. Mt. Abraham Education Association v. Mt. Abraham Union High School Board, 4 VLRB 224, 231 (1981). In such matters, the Board is further guided by the Vermont Supreme Court,

which defines a waiver as the "intentional relinquishment of a known right". In re Grievance of Guttman, 139 Vt. 574 (1981). A party can intentionally relinquish a known right by failing to assert it in a timely manner. VSEA v. State of Vermont, 6 VLRB 217 (1983).

In applying these standards, we conclude that the Association did not waive its right to bargain for the 1994-95 school year. The 1991-93 collective bargaining agreement provided that the agreement would be "automatically renewed and will continue in effect for additional periods of one year unless either the Board or the Association gives written notice to the other not later than October 1, prior to the expiration date or any anniversary date thereof (of) its desire to reopen this Agreement and negotiate over the terms of a successor Agreement".

The Association did give timely notice by October 1, 1992, of its desire to negotiate a successor agreement to the 1991-93 agreement. The Association initially proposed that a two year agreement be negotiated, which would have meant that the second year of the agreement would have been the 1994-95 school year. The Association maintained this position officially until after October 1, 1993, which would have been the notification date for the 1994-95 school year had there been an agreement expiring at the end of the 1993-94 school year. Under these circumstances, it is most appropriate to consider the Association's request for bargaining for a successor agreement to the 1991-93 agreement as a request to negotiate an agreement to cover the 1993-94 and 1994-95 school years.

The fact that the Association ultimately, in the October 25, 1993, mediation session, officially changed its position to seeking a one year agreement covering the 1993-94 school year does not mean that they had to submit an additional request to bargain for the 1994-95 school year. The Association's original bargaining request, and the bargaining history, demonstrate conclusively that the Association was seeking at all relevant times to negotiate a successor agreement to the 1991-93 agreement, and the Association never consciously and explicitly waived that right. There was never an intentional relinquishment of the Association right to bargain for the 1994-95 school year.

Given this conclusion, we address the Association's contention that the School Board's unilateral imposition covering two years, the 1993-94 and 1994-95 school years, was not permitted. We have never squarely addressed whether a school board, in imposing finality at the conclusion of a round of negotiations pursuant to 16 V.S.A. Section 2008, may unilaterally impose terms and conditions of employment for two school years. Today, we decide that this may not be done.

The Labor Relations For Teachers Act, like other public sector labor relations statutes in Vermont, is designed to promote the reaching of mutual agreements by employers and employee organizations. If agreement is not reached by the completion of dispute resolution procedures, and the school board imposes finality pursuant to Section 2008 and/or a strike occurs, the negotiations process has failed. A negotiated agreement is the norm and the

preferred result, and a unilateral imposition and/or a strike is the exception and the disfavored result.

If we were to allow school boards to implement for more than one school year, we would be allowing the exception and disfavored result to take precedence over the norm and preferred result. A failed negotiations process should impact terms and conditions of employment for a limited duration. The parties should be required to return to the negotiations table to strive to reach a mutual agreement, rather than have imposed terms apply any longer than necessary. Such a result is most conducive to fostering good faith bargaining, and productive and harmonious labor relations.

The result in this case is that the School Board is prohibited from unilaterally imposing the terms of its imposition of finality for the entire 1994-95 school year. This does not mean that the June 20, 1994, imposition of finality, implemented by communications to the Association on July 5, 1994 of its terms, is without effect. The terms imposed have become the status quo, and establish terms and conditions of employment for the 1994-95 school year until negotiations for the 1994-95 school year are concluded. These new terms include the decreased salary, with no provision for vertical step increases for the 1994-95 school year, and the increased health insurance premium contributions for teachers. The parties are required to negotiate in good faith for the 1994-95 school year until the completion of dispute resolution procedures, if necessary.

VI. Remedy

We turn to discussing what remedy to apply as a result of the School Board's unfair labor practices. 21 V.S.A. Section 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." In exercising our broad powers to remedy unfair labor practices, our orders are to be remedial, "make whole" orders, not punitive. Rutland School Board, 2 VLRB at 286-87.

We first conclude that it is appropriate to order the School Board to rescind the retroactive imposition of decreased salary and increased health insurance contribution rates on teachers for the 1993-94 school year. Also, the School Board is required to make teachers whole, including interest, for the losses suffered as a result of this retroactive imposition. As discussed above, the retroactive imposition was an unfair labor practice and, accordingly, it must be rescinded. Employees must be reimbursed for any economic losses suffered as a result of the retroactive imposition in order to be made whole for the improper School Board action.

However, the imposition of decreased salary rates and increased health insurance premium contribution rates was proper prospectively from the June 20, 1994, of the School Board's unilateral imposition of finality. Other terms of the unilateral imposition were valid, with the proviso that all terms of the unilateral imposition remain effective only until negotiations covering the 1994-95 school year are concluded.

As indicated above, the School Board committed an unfair labor practice by imposing finality for terms and conditions of employment for the 1994-95 school year. The School Board is required

to bargain with the Association concerning the 1994-95 school year through the completion of dispute resolution procedures, if necessary.

We conclude that the appropriate remedy for the School Board's unfair labor practice of threatening teachers with loss of their health insurance coverage, if they failed to pay a claimed arrearage promptly, is a cease and desist order. The School Board ultimately withdrew this threat, meaning teachers did not suffer economic loss for the School Board's actions. Under the circumstances, any remedy beyond a cease and desist order is not practical.

The Association requests that we direct the School Board to compensate the Association for expenses, including attorney's fees, reasonably incurred as a result of filing this charge. The Board has recognized that such a remedy is an appropriate exercise of our remedial powers in certain unfair labor practice cases. Rutland School Board, 2 VLRB at 286-87. Cavendish, 16 VLRB at 393. We conclude that this such a remedy is not appropriate in this case, which presented significant issues of first impression.

Finally, we believe it is appropriate to order the School Board to post the Board's order in this case in all places customarily used for employer-employee communications for a period of ninety days.

ORDER

Based on Findings of Fact of the Vermont Labor Relations Board, the Labor Relations Board has concluded that the Burke Board of School Directors ("School Board") committed unfair labor practices in collective bargaining negotiations with the Caledonia North Education Association ("Association"), and it is hereby ORDERED as the final Order of the Labor Relations Board in this matter:

1. The School Board shall rescind the retroactive imposition of decreased salary rates and increased health insurance contribution rates on teachers for the 1993-94 school year; the imposition of such rates shall be effective prospectively from the June 20, 1994, date of unilateral imposition of finality by the School Board pursuant to 16 V.S.A. Section 2008;

2. The School Board shall cease and desist from threatening to cancel the health insurance of any teacher for failure to pay a claimed arrearage in retroactive health insurance premium contributions;

3. The School Board shall cease and desist from refusing to negotiate with the Association for a collective bargaining agreement covering the 1994-95 school year, and shall engage in collective bargaining negotiations with the Association for the 1994-95 school year; the School Board shall negotiate in good faith through the completion of statutory impasse resolution procedures, if necessary;

4. Pending the completion of negotiations, the terms and conditions of employment applying to teachers shall be as set forth in the July 5, 1994, correspondence implementing the unilateral imposition of terms and conditions of employment by the School Board;

5. The School Board forthwith shall reimburse teachers for monies, plus interest, deducted from teachers' paychecks due to the improper retroactive imposition of decreased salary rates on teachers for the 1993-94 school year. The interest due teachers shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing with the improper deduction and ending on the date the teachers receive such monies; and

6. The School Board shall post copies of this Order in all places customarily used for employer-employee communications for a period of ninety days.

Dated this 17th day of January, 1995, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Leslie G. Seaver

Carroll P. Comstock