VERMONT LABOR RELATIONS BOARD

ARLINGTON EDUCATORS ASSOCIATION, VERMONT-NEA/NEA	)	
v.	)	DOCKET NO. 94-79
ARLINGTON BOARD OF SCHOOL DIRECTORS	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint. On December 22, 1995, the Arlington Educators Association, Vermont-NEA/NEA ("Association"), filed an unfair labor practice charge against the Arlington Board of School Directors ("School Board").

Therein, the Association alleged that the School Board committed an unfair labor practice in violation of 21 V.S.A. Section 1726(a)(1) and (5), and 16 V.S.A. Sections 2001, 2007, and 2008, by interfering with teachers' rights to bargain, refusing to bargain in good faith, and improperly imposing terms and conditions of employment on the teachers. Specifically, the Association alleged that the School Board committed an unfair labor practice in June, 1994, by retroactively deducting money from teachers' salaries, to cover an imposed co-payment for health insurance beginning January 1, 1994, pursuant to a unilateral imposition by the School Board of terms and conditions of employment for the 1993-94 school year. The School Board filed a response to the unfair labor practice charge on January 9, 1995.

The pertinent factual background for the purpose of deciding whether to issue an unfair labor practice complaint; based upon the charge filed by the Association, the pertinent collective bargaining

agreements, and the document containing the terms and conditions of employment unilaterally imposed by the School Board; is as follows:

a) In December, 1992, the Association and the School Board entered into a collective bargaining agreement covering the 1992-93 school year. Article VI of the agreement provided that "each teacher shall be entitled to participate in the Board paid group health insurance plan for single, two person or family coverage". The School Board paid 100 percent of insurance coverage.

b) When the parties were unable to reach agreement on a successor agreement to the 1992-93 agreement, they used the services of a mediator and a fact finder to assist them in reaching agreement. Agreement still was not reached and, in April of 1994, approximately two months after issuance of the fact finder's report, the School Board voted to impose terms and conditions of employment on teachers for the 1993-94 school year. The Association received a copy of the imposed terms on April 11, 1994. Article VI of the unilaterally imposed policy provided in pertinent part as follows:

> 6.2 The District shall provide, at the option of the teacher, a single, two person, or family membership in the Blue Cross/Blue Shield plan JY-MCH (VSBIT Plan B). Effective January 1, 1994, the District shall contribute 90% and the teacher shall contribute 10% toward the premium cost of said coverage.

c) The Association made preparations for a possible strike, but at a May 3, 1994, mediation session, an agreement was reached which left unchanged the imposed terms for the 1993-94 school year and contained agreed upon terms for the 1994-95 and 1995-96 school years. Article VI of the 1994-1996 agreement provided in pertinent part as follows:

6.2 A. The District shall provide, at the option of the teacher, a single, two person, or family membership in the Blue Cross/Blue Shield plan JY-MCH (VSBIT Plan B) or an alternative VSBIT plan selected by the Association; the teachers shall have the option of selecting coverage from one of these plans. The District shall contribute toward the premium cost of either plan, said contribution to equal ninety percent (90%) of the cost of VSBIT B or the actual cost of the alternative plan, whichever is lower. Teachers shall contribute the remaining premium costs, if any, by payroll deduction.

B. In the event that the District receives a premium rebate(s) from VSBIT, teachers will receive a portion of said rebate under the conditions noted herein.

i. The rebate must be attributable to a period of time during which teachers were required to contribute towards premium costs (i.e., from January 1, 1994 on).

ii. The total share for teachers will equal the percentage of contributions required of teachers by this Agreement (i.e., 10%).

iii. The District will distribute rebates to individual teachers in the amount(s) designated by the Association.

d) After the 1994-96 Agreement was reached, the School Board announced it would implement the unilaterally imposed terms and conditions of employment for the 1993-94 school year by retroactively deducting money from teachers' salaries to cover the imposed co-payment for health insurance beginning January 1, 1994. The Association objected to the retroactive deduction of monies, but the Board rejected the Association's position. The 10% co-payment for health insurance for the period beginning January 1, 1994, was deducted from the pay of teachers in the first paycheck received by teachers subsequent to June 15, 1994.

Based on this factual background, the School Board contends, among other things, that the issue raised by the Association is moot. This is because, the School Board contends, the specific terms of the 1994-96 agreement make it clear that teacher premium contributions imposed retroactively (beginning January 1, 1994) for the 1993-94 school year no longer was an issue in dispute with the Association once agreement was reached over the 1994-96 agreement.

We agree with the School Board. The Board has dismissed cases as moot or not justiciable where a bargaining issue forming the basis of an unfair labor practice charge has been brought to an agreed conclusion before Board review as a result of a collective bargaining agreement reached by the disputing parties. Milton Staff Association, Vermont-NEA/NEA Local 130 v. Milton Board of School Directors, 17 VLRB 176, 178-79 (1994). Windsor Southwest Education Association v. Windsor School District Board of School Directors, 11 VLRB 217 (1988). These cases are consistent with the general principle that jurisdiction is conferred on the Board only where an actual controversy between the parties exists. Milton, 17 VLRB at 178-79.

Here, too, we conclude that the charge should be dismissed as not justiciable because no actual controversy exists between the parties. The underlying dispute as to whether the School Board was permitted to retroactively impose health insurance contribution terms on teachers for the 1993-94 school year was resolved by the terms of the 1994-96 collective bargaining agreement reached by the parties. In conjunction with providing that teachers will receive a portion of any health insurance premium rebate received by the

School Board from VSBIT, Section 6.2Bi of the agreement states: "The rebate must be attributable to a period of time during which teachers were required to contribute towards premium costs (i.e., from January 1, 1994 on)."

This language establishes that, as part of the 1994-96 agreement, the Association expressly accepted the January 1, 1994, effective date for teacher contributions towards premium costs in exchange for a share of the premium rebates that subsequently may be received by the School Board for the period of time teachers would be contributing towards the premium costs. Thus, the dispute concerning retroactive imposition of health insurance contribution terms on teachers has been brought to an agreed conclusion before Board review. The Association cannot plausibly contend that one element of an bargaining exchange (i.e., teacher contributions) should not be valid while the other part of the exchange (i.e., premium rebates to teachers) must remain in effect.

Unlike the situation in Caledonia North Education Association v. Burke Board of School Directors, 18 VLRB 45 (1995), this is not a case where the school board retroactively imposed increased health insurance terms on teachers in the absence of any successor agreement accepting such unilateral action. The 1994-96 agreement here indicates that the Association expressly agreed to accept January 1, 1994, as the effective date for premium contributions, thus allowing the retroactive imposition by the School Board.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the unfair labor practice charge filed by the Arlington

Educators Association, Vermont-NEA/NEA, against the Arlington Board of School Directors is DISMISSED.

Dated this 28th day of March, 1995, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Carroll P. Comstock