

VERMONT LABOR RELATIONS BOARD

UNITED PAPERWORKERS)	
INTERNATIONAL UNION)	
)	DOCKET NO. 96-81
v.)	
)	
TOWN OF WILMINGTON)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint under the Municipal Employee Relations Act, 21 V.S.A. Section 1726, *et seq* ("MERA"). On October 25, 1996, the United Paperworkers International Union ("Union") filed an unfair labor practice charge alleging that the Town of Wilmington ("Town") committed an unfair labor practice in violation of 21 V.S.A. Section 1726(a)(1) and (2). The Town filed a response to the charge on November 14, 1996. The Union filed a response to the Town's response on November 18, 1996.

The Union alleges that the Town interfered with the rights of employees to form a union through statements made by members of the Town Selectboard and the Town Manager at an October 14, 1996, Selectboard meeting. The meeting was attended by Town employees, and occurred less than 48 hours before the Town employees voted in an October 16 election conducted by the Labor Relations Board to determine whether the employees wished to be represented by the Union for exclusive bargaining purposes. The employees voted 10-3 in the election to not be represented by the Union.

The Union alleges that the following statements made by Selectboard members and the Town Manager at the October 14 meeting constituted unfair labor practices:

- "All it comes down to is the element of trust. If the union is involved, they're not really a part of the community. It makes it more difficult to talk."

- "I just feel like dealing with a union is a more adversarial thing."

- "We believe that Town employees can do a better job for themselves."

- "This procedure has not yet been tried and we would prefer that it get a fair trial."

- "Employees can come to the Board at any time to negotiate."

Two of the above statements (i.e., the third and fourth listed statements) were contained in a prepared statement which the Selectboard read at the meeting. The prepared statement in its entirety provided:

Thank you for meeting with us. Your spokesperson was quoted as saying that we would prefer not to have a union. That is true. Last March and April, we adopted a format to discuss pay, benefits, regulations and other appropriate topics. This was developed with the input of police department employees and was offered to all town employees. This procedure has not yet been tried and we would prefer that it get a fair trial.

We believe that town employees can do a better job for themselves.

We believe that we are good employers and that there is no need for you to go to outsiders to represent you.

We do not think a union is in the best interest of the town or of town employees. The union is a group of strangers whose first loyalty is to the union and not to employees or to the town of Wilmington.

Remember, the union cannot guarantee you anything. If you elect to have the Paperworkers Union represent you, the town will live up to its obligations which would be to bargain with the union but by law does not have to meet any union demand. With or without a union, the Town will pay fair wages consistent with its ability to pay (emphasis in original).

The Union requests as a remedy for the Town's actions that the Board either issue an order certifying the Union as the bargaining representative of employees or order a new election. In exercising our discretion whether to issue an unfair labor practice complaint in cases such as this where a union claims an employer improperly interfered with employees' rights to form a union, the Board has sought to establish a just and workable standard of review for evaluating representation election propaganda. IUOE Local 98 and Town of Springfield, 3 VLRB 221, 225-26 (1980). The task is to balance the rights of the parties to wage free and vigorous election campaigns against the rights of employees to make an untrammelled choice of their bargaining representative. Id. The Board has adopted the approach established by the National Labor Relations Board in Shopping Kart Food Market, 228 NLRB 1311 (1977), which assumes that employees are mature individuals, capable of recognizing and discounting campaign propaganda for what it is. Id. In determining whether employer communications with employees during an election campaign rise to the level of an unfair labor practice, we need to perform our analysis within the framework of Section 1728 of MERA, which provides:

The expression of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or promise of benefit.


In scrutinizing the statements by members of the Town Selectboard and the Town Manager which the Union alleges improperly interfered with employee rights to form a union, we find no "threat of reprisal or promise of benefit" which would constitute an unfair labor practice. The statements consist of opinions of Town officials that Town employees and the Town would have better relations in the


absence of a union, the presence of an "outside" union in the workplace would result in more adversarial relations, and procedures already in place should be attempted before the employees opted to be represented by a union. These expressed views fall within the prescribed limits of employer speech; they contain no threats of reprisal if employees opt to form a union and no improper promises of enhancements in wages, hours and other conditions of employment to stifle the union organizing campaign and disrupt employees' free choice for or against unionization. Employees maintained the ability to adequately assess the credence to give employer views, and exercise their free choice whether they wished to be represented by the Union.

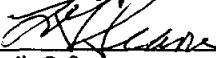
NOW THEREFORE, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED that the unfair labor practice charge filed by the United Paperworkers International Union is DISMISSED.

Dated this 6th day of February, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Louis A. Toepfer


Leslie G. Seaver


Carroll P. Comstock


Richard W. Park