VERMONT LABOR RELATIONS BOARD

MILTON EDUCATION AND SUPPORT ASSOCIATION	)	
v.	)	DOCKET NO. 99-57
MILTON BOARD OF SCHOOL DIRECTORS	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On August 26, 1999, the Milton Education and Support Association ("Association") filed an unfair labor practice charge against the Milton Board of School Directors ("Employer"). The Association alleged that the Employer committed an unfair labor practice in violation of 21 V.S.A. Section 1726(a)(5) by unilaterally imposing a substantial increase in work obligations, at no change in pay, on its high school teachers while engaged in negotiations for a successor collective bargaining agreement.

The alleged unilateral change contested by the Association is "block scheduling" instituted by the Employer this school year that requires teachers to teach three teaching "blocks", each of which is 75 minutes in length, without receiving additional compensation. The Association contends that this change does not conform with the parties' current collective bargaining agreement, which provides in Article 9, Section 3, that "(t)he standard full-time professional assignment for members of the bargaining unit shall consist of five (5) teaching periods" and "(a)ll teachers required to teach more than five (5) periods per day shall receive additional compensation of eighteen (18%) percent of their salary". The Association indicates in its charge that, at all times relevant to this

matter, the amount of time in a "period", has been 45 minutes. The Association contends that the Employer unilaterally changed the agreed upon duration of a teaching period and increased the teaching load of teachers by 20% - from five to six teaching periods – without intending to pay them the 18% additional compensation contemplated by the parties' collective bargaining agreement.

On September 24, 1999, the Employer filed a response to the unfair labor practice charge. The Employer contends that this dispute should be deferred to the grievance and arbitration procedure set forth in the collective bargaining agreement between the parties. The Employer indicates in the response that the Association has filed a grievance concerning the issue that is the subject of the unfair labor practice charge.

On October 20, 1999, the Association filed a response in opposition to the Employer's position that this matter should be deferred to the grievance/arbitration procedure set forth in the parties' collective bargaining agreement. The Association confirms in the response that it has filed a grievance challenging the Employer's alleged unilateral change concerning block scheduling. Accompanying the Association's response is an amendment to the unfair labor practice charge adding an allegation that the Employer's alleged unilateral change violated 21 V.S.A. Section 1726(a)(1) by interfering with, restraining or coercing employees in the exercise of their rights.

In previous cases, the Board has declined to rule on unfair labor practice charges where the Board believed the dispute involved an interpretation of a collective bargaining agreement and employees had an adequate redress for the alleged wrongs through the grievance procedure. Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9

VLRB 195 (1986). Fair Haven Graded School Teachers Association, Vermont-NEA v. Fair Haven Board of School Directors, 13 VLRB 101, 109-110 (1990). Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie. 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 arbitration, irrespective of whether it might also be an unfair labor practice. 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, 1 VLRB at 340:

> 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 contract 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 519-520. The exhaustion doctrine does

not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation. Id. at 520. Interpretation of an agreement may involve interpolating from a written text solutions not expressly spelled out in the text. Id. Textual interpretations may be blended with "contracts implied in fact" in the form of established past practices. Id. at 520-21. An arbitrator is ideally poised to consider and resolve such issues; they are issues concerning the "law of the shop" as opposed to the "law of the land". Id. at 521.

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. The issue raised by the Association in the unfair labor practice charge relating to unilateral changes in teaching period assignments is addressed in Article 9.3 of the parties' collective bargaining agreement, and the Association has filed a grievance under the agreement challenging the Employer's teaching period assignments upon its implementation of block scheduling. It is apparent that the dispute involves the interpretation of the collective bargaining agreement, including the blending of textual interpretations with established past practices concerning the duration of teaching periods and number of teaching assignments; such dispute ideally should be considered and resolved in the parties' grievance procedure. Champlain Water District, 156 Vt. at 520-21. The Union appears to have an adequate recourse for the alleged wrongs since the parties' grievance procedure ends in binding arbitration.

Nonetheless, the Association contends that, upon considering the context in which the Employer implemented block scheduling, the Board should not defer to the grievance procedure. The Association notes that the Employer took this action in the context of

ongoing negotiations for a successor agreement and prior to the completion of statutorily mandated impasse procedures. As a result, the Association maintains that the provisions of 16 V.S.A. Section 2008 are implicated. Section 2008 provides that "(a)ll decisions of the school board regarding matters in dispute in negotiations shall, after full compliance with this chapter, be final." The Association contends that it is only through pursuing an unfair labor practice charge that the Association can avoid waiving the ability to challenge a "subsequent attempted imposition" of "finality" by the Employer pursuant to Section 2008. This is because, the Association maintains, only the Labor Relations Board – not an arbitrator – has the jurisdiction to adjudicate such a claim.

We agree that the Labor Relations Board is the proper forum to adjudicate whether a school board has complied with its bargaining obligations prior to imposing finality pursuant to Section 2008, and that an arbitrator has no authority in such matters. However, this does not mean it is inappropriate to defer to the grievance procedure in this case. At issue in the grievance proceeding is whether there has been any contravention of the *current* collective bargaining agreement. The ability of the Association to challenge any improper imposition in negotiations for the *successor* collective bargaining agreement is not affected by deferring to the grievance procedure. If the Association ...es a "subsequent ... ...ted imposition" of "finality" pursuant to Section 2008 is improper, the Association may have such an alleged improper action adjudicated by the Board by filing another labor practice charge. Thus, there is no overriding statute or deferral policy that leads us to not defer to the grievance procedure.

Such deferral does not necessarily bar our later consideration of the matter. The Board retains jurisdiction for the purpose of entertaining a motion that grievance arbitration of the underlying issue 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 Municipal Employee Relations 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 195-196.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED:

a. The Labor Relations Board declines to rule on this unfair labor practice charge at this time and defers this matter to the grievance procedure; and

b. The Labor Relations Board retains jurisdiction in this matter for the purpose of entertaining a motion that grievance arbitration has failed to meet the applicable criteria set forth above, which motion shall be filed within 30 days of issuance of the final arbitration decision of the underlying issues in this matter.

Dated this 5th day of November, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

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