

VERMONT LABOR RELATIONS BOARD

HYDE PARK ELEMENTARY)	
SCHOOL BOARD)	
)	
v.)	DOCKET NO. 99-7
)	
LAMOILLE NORTH)	
EDUCATION ASSOCIATION)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On February 24, 1999, the Hyde Park Elementary School Board ("School Board") filed an unfair labor practice charge against the Lamoille North Education Association ("Association"). The Association filed a response to the charge on March 8, 1999. The School Board responded to the Association's response on March 11, 1999. The Association filed an additional response on March 15, 1999. On March 18, 1999, the School Board filed an amendment to the unfair labor practice charge. The Association filed a response to the amendment on March 19, 1999.

The Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. 21 V.S.A. §1727(a). In exercising this discretion, the Board will not issue a complaint unless the charging party sets forth sufficient factual allegations for the Board to conclude that the charged party may have committed an unfair labor practice. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

In exercising our discretion whether to issue an unfair labor practice complaint, we address the allegations made by the School Board in turn. First, the

School Board alleges that the Association has refused to bargain in good faith, in violation of 21 V.S.A. §1726(b)(4), in negotiations with the School Board to reach a collective bargaining agreement covering teachers represented by the Association, and in negotiations to reach an agreement covering support staff represented by the Association. Specifically, the School Board alleges that the Association has refused to consider or discuss a change in payment of health insurance during negotiations sessions and at the fact-finding hearing held on December 15, 1998.

The record before us provides no support for the School Board's allegation in this regard concerning support staff negotiations. The report by the fact-finder subsequent to the fact-finding hearing indicated that the parties had reached agreement on health insurance provisions at the fact-finding hearing. This tentative agreement precludes a conclusion that the Association may be engaging in bad faith bargaining on this issue concerning support staff negotiations.

The record is not as clear concerning negotiations covering teachers. In response to the charge, the Association alleges that it both considered and discussed health insurance, and made a specific health insurance proposal. We are unable to conclude whether the School Board's or the Association's version of events is more accurate without additional factual exploration. We determine it is most appropriate to issue a complaint on this issue so that factual exploration can occur at a hearing before the Board.

The School Board next contends that the Association has restrained and coerced the School Board in the selection of the School Board's representatives for the purposes of collective bargaining, in violation of 21 V.S.A. §1726(b)(2).

Specifically, the School Board faults the Association for undertaking a political campaign to oppose the reelection of two members of the School Board who serve as negotiators in contract negotiations with the Association.

Each party to a collective bargaining relationship has both the right to select its representatives for bargaining and the duty to deal with the chosen representative of the other party. However, this does not affect the political and free speech rights of members and representatives of the Association to express their views on the desirability of candidates for elected School Board positions. Such activity is protected by 21 V.S.A. §1728, which provides that "(t)he expression of any views, argument or opinion, or the dissemination thereof, whether in printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or promise of benefit." The Association has to deal with whomever the School selects as its bargaining representative, but Association members and representatives may indirectly affect the selection process through an election by seeking to influence the composition of the Board.

The School Board further contends that the Association has engaged in the functional equivalent of a strike within 30 days of the delivery of a fact-finder's report, in violation of 21 V.S.A. §1730, by unlawfully engaging in the political campaign to oppose the reelection of the two School Board members during work hours through use of computers, telephones and communication equipment. The School Board alleges that the political campaign is being undertaken, in part, during school hours when the members of the Association are expected to be providing educational services to students or related services within the school.

The School Board has failed to set forth a sufficient factual basis for us to conclude that the Association may be engaging in a prohibited strike. 21 V.S.A. §1722(16) defines a “strike” as “conduct by an employee or employee organization or its agents which produces, induces or encourages a work stoppage, slowdown or withholding of services; such conduct includes recognizing a picket line or other conduct which interferes with or impedes the orderly functions and services of a municipal employer.” The School Board has made no factual allegations specifying instances where Association members have engaged in a concerted refusal or failure to perform certain tasks, or engaged in a concerted slowdown when performing required tasks, which has interfered with or impeded school functions or services. In the absence of such allegations, the School Board has set forth an insufficient basis for us to conclude that the Association may be conducting an illegal strike. Valley City Furniture Co., 110 NLRB 1589 (1954); *enforced*, 230 F.2d 947 (5th Cir. 1956). Highlands Hospital Corp. dba Highlands Regional Medical Center, 278 NLRB 1097 (1986). NLRB v. Blades Mfg. Corp., 344 F.2d 998 (8th Cir. 1965).

In declining to issue an unfair labor practice complaint on the strike issue, we are not making a judgment as to whether the alleged actions of Association members are appropriate or inappropriate in a broader context. Our determination is limited to addressing the allegation brought by the School Board - whether the Association is engaging in a prohibited strike.

The School Board also alleges that the Association has violated its duty to bargain in good faith over who is an appropriate member of the bargaining unit represented by the Association. It is well settled that an issue concerning the

composition of a bargaining unit is not a mandatory subject of bargaining. Rutland School Chapter, AFSCME Local 1201, Council 93 v. Board of Education of the City of Rutland, 17 VLRB 348, 351 (1994). The Labor Relations Board has ultimate control of the bargaining unit, and to insist on a change in the composition of the bargaining unit improperly disrupts the bargaining process. *Id.* A unit clarification petition is the appropriate mechanism to invoke the Board's jurisdiction to decide a unit composition question, not an unfair labor practice charge. *Id.* at 352. Accordingly, we decline to issue an unfair labor practice complaint on this issue.

The School Board further alleges that the Association committed an unfair labor practice by filing an unfair labor practice charge against the School Board, VLRB Docket No. 98-81, knowing that the claims in the charge were out of time or baseless. Suffice it to say that this allegation by the School Board is without merit. We note that we have found sufficient merit in the charge made by the Association to issue a complaint against the School Board in Docket No. 98-81, and have scheduled a hearing to determine whether the School Board has committed an unfair labor practice.

In the amendment to the unfair labor practice charge filed on March 18, 1999, the School Board alleges that the Association engaged in regressive bargaining in violation of the law by first indicating acceptance of the fact finder's recommendation concerning teacher salary increases for the 1998-99 school year and then, at a subsequent March 10, 1999, meeting, increasing the Association's salary proposal for that year beyond that recommended by the fact finder. In responding to this allegation, the Association acknowledges that its salary proposal for the 1998-99

school year made at the March 10 meeting exceeded the fact finder's recommendation by proposing an increase in base salaries by \$1000, but that the Association corrected this offer in a March 15 notification to the School Board. The March 15 notification stated that "the offer for the teachers should have read the fact finder's report for the 1998-99 school year and a second year 1999-00 with a base increase of \$1000 . . .", and "we have continually asserted our position of accepting the fact finding report and would be remiss not to make this correction."

Given this correction the Association has made in its proposal for the 1998-99 school year, there would be no purpose served by issuing an unfair labor practice complaint. Any problem with the Association's proposal for the 1998-99 school year identified by the School Board in its amendment to the unfair labor practice charge has been corrected, and we would not order more as a remedy.

NOW THEREFORE, based on the foregoing reasons:

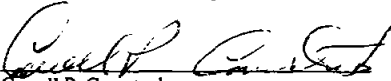
- 1) The Lamoille North Education Association may have committed an unfair labor practice in violation of 21 V.S.A. §1726(b)(4) with respect to bargaining over health insurance for teachers, and an unfair labor practice complaint is issued on this issue. A hearing on this issue shall be held on April 15, 1999, at 9:00 a.m., in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont; and
- 2) We decline to issue an unfair labor practice complaint on all other allegations made by the Hyde Park Elementary School Board, and it is hereby


ORDERED that the unfair labor practice charge filed by the School Board is dismissed on those issues.

Dated this 23rd day of March, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Carroll P. Comstock


Richard W. Park