VERMONT LABOR RELATIONS BOARD

KATHLEEN MERCHANT	)	
	)	
v.	)	
	)	
COLCHESTER SCHOOL DISTRICT	)	DOCKET NO. 99-58
	)	
and	)	
	)	
VERMONT-NEA	)	

ORDER

The issue in this case is whether to issue an unfair labor practice complaint. In a charge filed on August 26, 1999, and amended on October 1, 1999, Kathleen Merchant ("Complainant") alleges that the Colchester School District ("Employer") and the Vermont-NEA ("Association") committed unfair labor practices, pursuant to the Municipal Employee Relations Act, 21 V.S.A. Section 1721 *et seq.* ("MERA"). Complainant alleges that the Employer violated 21 V.S.A. Section 1726(a)(1), and the Association violated 21 V.S.A. Section 1726(b)(1) and (3), upon entering into a collective bargaining contract in March 1999, retroactive to July 1, 1998. Complainant contends that the parties committed unfair labor practices because they did not provide for Complainant to receive a wage increase retroactive to July 1, 1998, because she had left employment on February 3, 1999. The Association filed a response to the charge on October 15, 1999. The Employer filed a response on October 18, 1999. In a letter filed

November 15, 1999, Complainant set forth arguments to support her position that an unfair labor practice complaint should be issued.

The pertinent facts here are undisputed. Complainant was an employee of the Colchester School District represented by the Association until she left employment on February 3, 1999. The Employer and the Association were parties to a collective bargaining agreement with an expiration date of June 30, 1998. They did not reach agreement on a successor agreement until March 15, 1999, more than one month after Complainant left employment. The effective dates of the new agreement are from July 1, 1998, to June 30, 2001. The wage increase effective July 1, 1998, applies to each bargaining unit member employed as of March 15, 1999. Since Complainant had left employment on February 3, 1999, she did not receive the retroactive wage increase.

Complainant contends that, since she was employed during the effective dates of the new agreement until February 3, 1999, she is entitled to the retroactive wage increase. She argues that it is not fair to make a contract retroactive but exclude certain employees from the contract when they have been paying dues to the Association during contract negotiations and providing the Employer with more than competent service. She alleges that the Association has failed to represent all its members.

The Association alleges that the unfair labor practice provisions of MERA are not applicable here because Complainant is a former employee who terminated her employment prior to execution of the new agreement. The Employer contends that, based upon the express terms of the agreement reached by the parties, Complainant was not

entitled to any retroactive wage payment since she was not a member of the bargaining unit employed as of March 15, 1999. Additionally, the Employer alleges that Complainant has no legal standing to raise this claim since she was not a member of the bargaining unit represented by the Association when the agreement was reached.

The threshold question presented is whether a former employee has standing, pursuant to the unfair labor practice provisions of MERA, to challenge the terms of a collective bargaining agreement entered into after the former employee has voluntarily left employment. The unfair labor practice provisions cited by Complainant concern unfair practices committed by employers and employee organizations against "employees". 21 V.S.A. Section 1726(a)(1), (b)(1) and (b)(3). Under Section 35.1 of the Board Rules of Practice, the ability to file unfair labor practices against employers and employee organizations is limited to "an employee, organization or employer".

We have never had occasion to decide whether these provisions of MERA and Board Rules of Practice grant standing to a former employee to file unfair labor practice charges under circumstances similar to the case before us. However, there have been decisions under the National Labor Relations Act, interpreting pertinent unfair labor practice provisions of that Act similar to MERA, 29 U.S.C. Section 158, that provide guidance.

In Allied Chemical and Alkali Workers of America, Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971), the United States Supreme Court decided that an "employee" within the meaning of the National Labor Relations Act means only those

who work for another for hire, and that retirees are not employees within the meaning of the Act. As a result, a union was unable to prevail on its claim that the company committed an unfair labor practice when it unilaterally modified benefits of retired employees.

Two other decisions specifically addressed whether the unfair labor practice provisions of the National Labor Relations Act applied to former employees who had voluntarily resigned. In Halstead Metal Products v. NLRB, 940 F.2d 66, 70 (4th Cir. 1991), the court held that an employee who voluntarily resigned was not protected by the National Labor Relations Act from future unfair labor practices. The court further held that the resigned employee only became an employee entitled to protection of the Act when he reapplied for employment. In that decision, the court relied on a decision of the National Labor Relations Board, Model A and Model T Motor Car Corp., 259 N.L.R.B. 555, 568 (1981), in which the Board affirmed an NLRB Administrative Law Judge's holding that the National Labor Relations Act did not protect an employee who had voluntarily resigned from legal action by her former employer.

We find these precedents under the NLRA to be persuasive, and conclude that Complainant lacks standing, pursuant to the unfair labor practice provisions of MERA, to challenge the terms of a collective bargaining agreement entered into after she voluntarily left employment. At the time any alleged unfair practices occurred, she had voluntarily severed her employment with the Employer and her representation by the Association.

She was no longer a member of the bargaining unit represented by the Association with a continuing interest in wages, hours and conditions of employment. As a result, she had lost the ability as an "employee" under MERA to challenge future actions by the Employer and Association in negotiating the collective bargaining agreement.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the unfair labor practice charge filed by Kathleen Merchant against the Colchester School District and the Vermont-NEA is DISMISSED.

Dated this ____ day of February, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____
Catherine L. Frank, Chairperson

_____
Carroll P. Comstock

_____
Richard W. Park

_____
Edward R. Zuccaro