

VERMONT LABOR RELATIONS BOARD

ESSEX EDUCATORS ASSOCIATION)
(ESP UNIT))

v.)

ESSEX TOWN BOARD OF)
SCHOOL DIRECTORS)

DOCKET NO. 01-39

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On June 28, 2001, the Essex Educators Association (ESP Unit) ("Association") filed an unfair labor practice charge against the Essex Town Board of School Directors ("School Board"). The School Board filed a response to the charge on July 27, 2001.

Labor Relations Board Executive Director Timothy Noonan met with the parties on September 24, 2001, to investigate the charge and to informally attempt to resolve this matter. At the meeting, the School Board agreed to provide further materials to the Labor Relations Board and the Association in furtherance of the Board's investigation of the charge. The School Board filed these materials on October 1, 2001. Noonan had a subsequent conference call with the parties on October 16, 2001. The parties have not informally resolved this matter or limited the issues in dispute. Thus, the Board needs to decide whether to issue a complaint against the School Board.

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).

The Association first alleges that the School Board's conduct during the Association's organizing campaign to represent support staff employees indicates the beginning of a pattern and practice of behavior by the School Board intended to discourage membership in an employee organization and interfere with the exercise of rights guaranteed by law. There is a question whether the Association raises this allegation in a timely manner. The Municipal Employee Relations Act provides that "(n)o complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board." 21 V.S.A. §1727(a).

At minimum, there must be an alleged violation of unfair labor practice provisions within six months of when the unfair labor practice charge was filed to support the issuance of an unfair labor practice complaint. Miller v. University of Vermont, 23 VLRB 205, 208 (2000). However, earlier events may be utilized to shed light on the true character of matters occurring within the six-month period, where occurrences within the six-month limitations period may constitute in and of themselves unfair labor practices. Id. at 209.

We do not consider alleged School Board conduct during the election campaign as evidence supporting issuance of an unfair labor practice complaint. The alleged conduct occurred in the summer and early fall of 2000, prior to an October 4, 2000, election conducted by the Labor Relations Board in which employees voted 53 – 23 to be represented by the Association. The unfair labor practice charge before us was not filed until June 28, 2001, nearly nine months after the election. This was well outside the six-

month timeframe for the Association to contend that School Board conduct during the election campaign constituted an unfair labor practice.

Also, we do not believe that events during the election campaign will assist in determining whether further School Board actions within the six-month limitations period violated unfair labor practice provisions as alleged by the Association. The election campaign events are sufficiently distinct in nature, as well as too remote in time, to shed light on the true character of matters occurring within the six-month period.

The Association next alleges that the School Board discriminated against female employees based on gender by paying male support staff employees more than female employees who were doing the same work or working with the same student. The Association alleges that none of these pay differences can be explained by differences in seniority, education or experience.

Once again, there is a serious timeliness issue with respect to this allegation. The materials on file concerning the salary progression of the involved employees over the years indicate that the disparity in wages originated years earlier and there have been no changes in employees' wages since mid-2000. Since the unfair labor practice charge was filed in June 2001, any improper conduct by the Employer concerning wage disparities would have occurred much sooner than six months prior to filing the charge. Nonetheless, the Association contends that its allegations should be considered timely because the Association did not know about the wage disparities until they began negotiations for a first contract this year after being certified as bargaining representative.

We conclude that, under all the circumstances and upon consideration of unfair labor practice provisions as a whole, the Association has no remedy for any wage disparities through our unfair labor practice jurisdiction. The Association must

demonstrate some improper conduct of the School Board within the six-month limitations period that supports a conclusion that an unfair labor practice may have occurred. The Association has made no such showing.

Since the Association was the bargaining representative of employees throughout the six-month limitations period, there was no unilateral action the Employer could safely initiate during this period to correct any wage disparities that existed. This is because the Employer was required to maintain the status quo with respect to wages, hours and other conditions of employment. The unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith with an employee organization is the very antithesis of bargaining and is a per se violation of the duty to bargain. Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 434, 435-36 (1983). Under the Municipal Act, it is an unfair labor practice for an employer to unilaterally change conditions of employment during the course of negotiations prior to the exhaustion of mandated statutory impasse resolution procedures. Local 98, IUOE v. Town of Rockingham, 7 VLRB 363, 371-72 (1984).

Thus, the School Board could have been subject to an unfair labor practice charge if it made any unilateral changes in employees' wages to correct disparities, if any, that existed. In exercising our discretion whether to issue an unfair labor practice complaint on this issue, we hold that it would be inappropriate to conclude that the School Board may have committed an unfair labor practice through inaction on employee wages during the six-month limitations period.

The Association next alleges that the School Board discouraged membership in the Association, interfered with exercise of rights guaranteed by law, and failed to bargain in good faith by laying off 17 paraeducators, reducing the hours of many of the

remaining paraprofessionals, and subcontracting bargaining unit work. Upon review of the materials on file and upon investigation of these allegations, we conclude that the Association has set forth sufficient factual allegations for the Board to conclude that the School Board may have committed an unfair labor practice.

Now therefore, based on the foregoing reasons:

1) The Essex Town Board of School Directors may have committed an unfair labor practice in violation of 21 V.S.A. Section 1726(a)(1), (3) and (5) with respect to allegations concerning laying off paraeducators, reducing the hours of paraprofessionals, and subcontracting bargaining unit work, and an unfair labor practice complaint is issued on these matters. A hearing on these matters shall be held on January 3, 2002, 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 Essex Educators Association (ESP Unit), and it is ordered that the unfair labor practice charge filed by the Association is dismissed on those issues.

Dated this 6th day of December, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Richard W. Park

John J. Zampieri

Edward R. Zuccaro