

VERMONT LABOR RELATIONS BOARD

VERMONT EDUCATION ASSOCIATION

v.

WASHINGTON WEST SUPERVISORY UNION and the  
School Districts of: WARREN, WAITSFIELD,  
WATERBURY, DUXBURY, FAYSTON, MORETOWN, and  
the HARWOOD UNION HIGH SCHOOL District  
No. 19

DOCKET NO. 79-72R

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On October 17, 1979, the Vermont Education Association (hereinafter, "VEA") filed an unfair labor practice charge with the Vermont Labor Relations Board (hereinafter the "Board") against the Washington West Supervisory Union (hereinafter, "Supervisory Union") et al. The charge, as amended November 15, 1979, alleges the respondent Supervisory Union, in refusing to sign a negotiated agreement with six, certified, "special skills" teachers employed by the Supervisory Union, committed an unfair labor practice in violation of 21 V.S.A. §1726(a)(1), (2) and (5).

The Supervisory Union did not file an answer to the charges. The Board investigated the matter, and taking the verified allegations contained in the charge as true, issued a complaint on December 5, 1979.

A hearing was held before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on February 14, 1980, at the Board hearing room in Montpelier, Vermont. At the hearing, VEA was represented by Richard D. Lang, Director of VEA/NEA UniServ District IV. Attorney Robert J. Kurrle represented the Supervisory Union, et al.

Prior to the February 14 hearing, by letters dated February 7 and 12, 1980, VEA filed a motion of summary judgment, as provided for in Section 11.9 of the Rules of Practice of the Vermont Labor Relations Board and pursuant to Rule 56 of the VRCP, incorporated in the Board's Rules of Practice in Section 11.1. At the hearing, the Supervisory Union admitted the facts contained in the charge and the parties essentially agreed as to the key issue before the Board: is the Supervisory Union required to bargain collectively with teachers employed directly by the Supervisory Union?

#### FINDINGS OF FACT

1. The Washington West Supervisory Union is comprised of seven individual school districts pursuant to 16 V.S.A. §261. Those school districts included in the Supervisory Union are the school districts of the towns of Warren, Waitsfield, Fayston, Moretown, Waterbury, and Duxbury, as well as the Harwood Union High School District No. 19.

2. The Supervisory Union Board of Directors, pursuant to 16 V.S.A. §262, is comprised of appointed representatives from each member school district, who in turn, were elected school directors for their respective districts.

3. The Supervisory Union, by joint agreement, did agree to co-operatively provide teaching services for certain "special skills" at member schools pursuant to 16 V.S.A. §267(a).

4. In order to provide those certain cooperative teaching services, the Supervisory Union directly employed qualified teachers by individual contracts.

5. The expense of providing these shared teaching services is allocated to member school districts within the Supervisory Union according

to a mutually agreed upon plan, based on the amount of time each individual works in a constituent district, all pursuant to 16 V.S.A. §267(c). The school district is billed by the Supervisory Union for these services and includes the necessary amounts in its own budget.

6. "Special skills" teachers with whom the Supervisory Union has contracted are paid by funds from the Supervisory Union central treasury. A major function of the Supervisory Union treasury, pursuant to 16 V.S.A. §321, is to fund such joint operations among the member districts.

7. The Supervisory Union Board of Directors meets at least two times a year for the purpose of acting on personnel matters (usually in April) and establishing a Supervisory Union budget (usually in December). Money necessary to pay for budgeted services (other than these "special skills" teachers) is assessed to each constituent school district on a formula based on the number of teachers in that district. The constituent district, in turn, submits its budget, including enough to meet its Supervisory Union assessment, to the electorate at a school district meeting for approval.

8. The Chairman of the Supervisory Union Board of Directors at all times material to this complaint is Roger Fraser. William Lincoln is the Superintendent for the Supervisory Union.

9. Superintendent Lincoln is the collective bargaining negotiating agent for all member school boards within the Supervisory Union.

10. The Supervisory Union hired the following certified teachers for the 1979-1980 school year for the purpose of providing "special skills" instruction to the member districts.

Valarie Visconti  
Charles Jarvis  
Larry Allen  
Sandra Cathey  
Elaine Cunningham  
Nancy Ruetzler  
Ellen Bruno

These teachers taught such subjects as athletics and speech therapy, for example.

11. On or about December 11, 1978, these teachers signed a petition authorizing the Valley Teachers' Association (hereinafter, "Association") to represent them for the purpose of collective bargaining. (Petitioner's Exhibit #1)

12. On or about December 12, 1978, this petition was presented to the Board of Directors of the Supervisory Union, who refused to recognize or negotiate with the Association as the collective bargaining agent. However, by letters dated December 22, 1978, and January 26, 1979, (Petitioner's Exhibits 2 and 3, respectively) Chairman Fraser indicated that he and Superintendent Lincoln, on behalf of the Supervisory Union Board of Directors, were willing to meet with "the group [of teachers] or their representative in informal discussions to develop an agreement" (Petitioner's Exhibit #3). The prior practice of the Supervisory Union was to negotiate individual contracts with each teacher.

13. On March 29, 1979, the Supervisory Union Board of Directors decided to maintain their position not to formally recognize a bargaining unit of "special skills" teachers employed by the Supervisory Union. The Supervisory Union did agree, however, to meet "informally" with those teachers.

14. Beginning on May 8, 1978, representatives of the Association met with Superintendent William Lincoln, and each of the member school districts party to this complaint except Waterbury and Harwood Union. Following a series of negotiating sessions between Superintendent Lincoln and representatives of the Association, an agreement was reached with respect to the terms and conditions of employment for the above-named teachers for the 1979-1980 school year.

15. The agreed terms and conditions of employment between the Supervisory Union and the Association were summarized in a memorandum and circulated by Superintendent Lincoln.

16. By letter dated July 25, 1979, from VEA UniServ Director Richard Lang (Petitioner's Exhibit #13), Superintendent Lincoln was requested to sign a collective bargaining agreement with the Association containing the agreed upon terms and conditions of employment set forth in Superintendent Lincoln's memorandum.

17. By letter dated August 29, 1979, (Petitioner's Exhibit #15), Superintendent Lincoln refused, indicating that the Supervisory Union Board of Directors felt such an agreement (Finding #16) was an inappropriate format "to deal with the results of discussions between the boards and the six teachers involved." Nonetheless, he unilaterally proclaimed the teachers involved would receive the salaries and benefits as negotiated and summarized in the Association's proposed "master" agreement.

18. In spite of the fact that the Supervisory Union Board refused to voluntarily recognize the Association in December, 1978, they did not call for, nor did the Association initiate, a secret ballot referendum, pursuant to 16 V.S.A. §1992, for the purpose of choosing an exclusive representative. It was the position of the Supervisory Union Board at that time that they (the Board) had no legal authority to grant recognition to those teachers.

19. We infer from the Supervisory Union's admittance to the facts of this case, the testimony of its witnesses and its position by memorandum, that there is no issue as to the appropriateness of the teachers' bargaining unit or the Association's authority to represent that unit. It is admitted, at this time, that:

"... the teacher's (sic) collective bargaining agent—  
the Valley Teachers' Association—was an appropriately

designated agent to represent the affected teachers for collective bargaining purposes." (Supervisory Union Memorandum, at 2)

#### OPINION AND CONCLUSIONS OF LAW

The question posed by this complaint is whether or not the Supervisory Union School Board is required to negotiate with certain employees under the collective bargaining laws of Title 16 (16 V.S.A. §1981 et seq.) or Title 21 (21 V.S.A. §1721 et seq.). The question of law is whether a Supervisory Union Board is a Board of a "School District" and thus required to bargain pursuant to 16 V.S.A. §2001. Jurisdiction rests on 21 V.S.A. §1735.

The facts are simple. In summary, several "special skills" teachers were hired for the 1979-1980 school year by the Supervisory Union. All are certified teachers. In the interests of efficiency, contrary to prior practice of individual contract negotiations, the Supervisory Union negotiated a master employment agreement with the teachers as a group. The negotiated agreement set forth salaries, benefits and other terms and conditions of employment between the "special skills" teachers and the Supervisory Union. Although the Supervisory Union Board refused to sign the agreement as finally negotiated, it did ultimately issue individual contracts to the members of the teachers Association on those agreed upon terms.

On these facts, it is the Supervisory Union Board's position that it may act as a delegated agent of its member school districts for the purposes of collective bargaining but that it is not required to do so under either the Teachers Labor Relations Act or the Municipal Employee Relations Act. The Supervisory Union suggests that because 16 V.S.A. §1981 et seq. pertaining to labor relations for certified teachers makes no mention of collective bargaining between teachers and supervisory unions, the rights and

duties of bargaining are not conferred on these parties. It also argues generally the non-applicability of 21 V.S.A. §1721 et seq.

This case deals only with certified teachers. Accordingly, the Municipal Employee Relations Act contained in 21 V.S.A. §1721 et seq. has no application. Such individuals are specifically excluded as municipal employees by 21 V.S.A. §1722(12)(E), because they are "certified employees of school districts." A highly technical argument could reach a different result: since a supervisory union is not a "school district" for purposes of 16 V.S.A. §1981, the certified teachers are employed by an entity classified as a political subdivision of the state and hence it is a municipal employer under 21 V.S.A. §1722(13). But we believe the legislature intended one bargaining law to apply to all "certified teachers." That statutory scheme is 16 V.S.A. §1981 et seq. In short, the legislature enacted one set of rules for bargaining affecting those who teach, and another for those who do not. Therefore, we reject the Municipal Employee Relations Act as having any application to this controversy.

Thus we must consider the application of the Teachers Labor Relations Act. A supervisory union is defined as a "school district" for purposes of Title 16 and general school administration, unless "the context otherwise clearly requires." 16 V.S.A. §11(a). "School District" as defined in 16 V.S.A. §1981 means "any public school district." This would appear to refer back to 16 V.S.A. §11(a). In any event, its context does not clearly require us to hold otherwise. Therefore, we conclude that a supervisory union is a 16 V.S.A. §1981(4) "school district," and that its managing authority is a 16 V.S.A. §1981(3) "school board." The individuals involved here are "teachers" and thus there is a duty of the parties to bargain collectively pursuant to 16 V.S.A. §1981 et seq.

Perhaps as equally determinative of the employer status of Washington West Supervisory Union as the foregoing exercise of statutory construction, is an analysis of the employment relationship between it and the "special skills" teachers.

"School district" (and thus public employer) status under our collective bargaining statutes does not require direct taxing authority. 16 V.S.A. §1981(4) provides that "school district" shall mean:

any public school district or any quasi-public or private elementary or secondary school within the state which directly or indirectly receives support from public funds.

(emphasis added)

The Supervisory Union does have its own treasury from which the Board of Directors is authorized to make disbursements for the purpose of funding joint operations among member districts of the Supervisory Union. The treasury is established by a pro rata formula which assesses and receives public funds from all member districts. The "special skills" teachers subject to this complaint were hired directly by the Supervisory Union to provide cooperative teaching services and were paid from the Supervisory Union central treasury.

All of the foregoing facts have been considered as key elements in a test of determining employer status under public sector collective bargaining laws. One such test asks:

Does the entity in question have sufficient independent control over the employment relationship which would require that entity be represented in negotiations of wages and other terms and conditions of employment?  
[See Wayne County Federated Library System, I NPER 23-10059 (Michigan Employee Relations Commission decision, 6/25/79)]

The answer to that question in this case is yes. The Supervisory Union Board clearly exercised its hiring authority and proceeded to participate in



negotiations for a master agreement with these employees. The fact that the Supervisory Union had in prior years negotiated individual contracts for these same services is further indication of sufficient independent control over the employment relationship with these employees.

A similar case regarding the public employer status of a medical rescue team serving four municipalities applied a similar test by posing the following four key questions: 1) Is the "employer" an independent entity, even though it receives appropriations from the communities it serves; 2) does it have its own budget; 3) does it maintain its own accounts and make disbursements from that budget; and 4) does the entity have authority to hire and fire employees and have control over those employer-employee functions traditionally associated with an employment relationship. See Medical/Rescue Team South, I NPER 40-10117 (Pennsylvania Employee Relations Board decision, 4/20/79).

Again, applying the facts of this case to those questions, we conclude an employer-employee relationship exists here so as to require collective bargaining pursuant to 16 V.S.A. §2001. We find the failure of the Supervisory Union to sign a written memorandum of the agreement negotiated with the Association, is in violation of 16 V.S.A. §2005, the statutory provision which requires it. Moreover, where such actions have been uniformly regarded as a per se refusal to bargain, H. J. Heinz Co. v. NLRB, 311 U.S. 514 (1941), and certified employees of school districts are protected "for the purposes of representation in, and prevention of, unfair labor practices" under 21 V.S.A. §1726-1729, pursuant to 21 V.S.A. §1735, it is violation of 21 V.S.A. §1726(a)(5) as well.

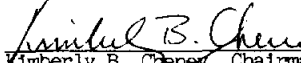
ORDER

Now, therefore, for all the foregoing reasons and consistent with the findings of fact and conclusions of law stated here and pursuant to the powers vested in the Vermont Labor Relations Board by 21 V.S.A. §1727(d) to prevent unfair labor practices, it is hereby ORDERED:


1. That the Washington West Supervisory Union Board of School Directors CEASE and DESIST from refusing to bargain with the teachers in ~~its employ~~ organized as the Valley Teachers' Association, by failing to enter into a written agreement with the Association which incorporates therein matters agreed to in negotiations pursuant to 16 V.S.A. §2005; and
2. That the Washington West Supervisory Union recognize the Association as the exclusive and appropriate bargaining agent for the group of teachers named in this complaint; and
3. That the Washington West Supervisory Union sign a written agreement with the Association incorporating therein matters previously agreed to in negotiations and since implemented by the Supervisory Union.

Dated this 25<sup>th</sup> day of April, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William E. Kemsley, Jr.

  
Robert H. Brown