

VERMONT LABOR RELATIONS BOARD

HUBERT LARY)	
)	
v.)	
)	
UPPER VALLEY TEACHERS' ASSOC-)	DOCKET NO. 80-71
IATION, VEA/NEA, AND ROCHESTER)	
BOARD OF SCHOOL DIRECTORS)	

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR LABOR
PRACTICE COMPLAINT

By letter dated September 2, 1980, Mr. Hubert Lary, a school teacher employed for more than 20 years by the Rochester Board of School Directors (the "Employer"), Rochester, Vermont, alleged that both the Upper Valley Teachers' Association (the "UVTa") and the Employer had consistently discriminated against him and that the UVTa had failed to represent him by: 1) the parties' negotiation and maintenance by master contract of a step system salary schedule during the school years 1975-76 through 1978-79; and 2) the subsequent agreement by the parties to abolish the step salary schedule system and replace it with an across-the-board percentage increase for the school years 1979-80 and 1980-81.

Mr. Lary first charges that the step salary schedule in force in 1975-79 inherently discriminated against older teachers since base salary increases received by him during these years amounted to a lesser percentage than salary increases received by other, younger, less experienced (and union member) teachers in the bargaining unit. He then argues that subsequent abolition of that system and its replacement with across-the-board percentage increases in 1979 and 1980, increases the past

discriminatory effects of the step system salary schedule since his percentage increases in 1979 and 1980 were applied to a lower base salary than would have been the case had his salary increased at an equitable rate during prior years.

An independent investigation was carried out by the Board Assistant, and both parties were given ample opportunity to submit facts for our consideration. We take Mr. Lary's letter as charges of unfair labor practices in violation of 21 V.S.A. §1726(a)(3) and 21 V.S.A. §1726(b)(3), and find the following facts.

1. Mr. Lary is a non-union member of the UVTA bargaining unit, employed as a teacher by the Rochester Board of School Directors in that school system for more than 20 years.

2. As such, he is, and has been for several years, among the most experienced teachers employed within that school system, and has received a salary at or above (through individual grievance adjustments) the top of the negotiated salary schedule during the school years 1975-76 through 1978-79, inclusive. Thereafter, when the step salary schedule was abolished by negotiations for the school years 1979-80 and 1980-81, Mr. Lary received the same percentage increase as all other unit members (8.5 percent and 8 percent across-the-board), based on his 1978-79 salary.

3. In 1974-75 and for several years prior to that time, Mr. Lary, in addition to his teaching responsibilities, assumed various administrative job responsibilities (such as assistant principal). During those years, he negotiated compensation above that received of similarly experienced and qualified employees who assumed no such responsibilities in addition to their teaching. With the advent of collective bargaining in 1975-76, and the first contractual salary schedule, Mr. Lary was not

offered extra compensation for extra administrative duties and he did not assume any.

4. The step salary schedule negotiated by UVTA and the Employer into the master contracts for the years 1975-76, 1976-77, 1977-78 and 1978-79 are typical incremental salary systems used throughout Vermont and the education field generally. The schedules material here (attached to this memorandum and order) set forth salary levels based on both experience and educational levels. From year to year, individual teachers advance through the schedule "vertically" by virtue of their longevity alone. "Horizontal" progression through the system is dependent upon completion of substantial credits of continuing education.

5. In order to avoid "freezing" the salaries of the most experienced teachers in the unit, additional experience level steps were negotiated by the UVTA with the renegotiation of every master contract incorporating a salary schedule since the inception of collective bargaining at the Rochester school system. For example, the 1976-77 salary schedule included 11 "vertical" or teaching experience steps, and provided bargaining unit members with a 7 percent average increase from one step to another (over their 1975-76 salary level). The last negotiated salary schedule, the one for 1978-79, included a total of 14 steps and provided an average 6.7 percent increase to bargaining unit members progressing from Step 2 to 3 and 13 to 14, for example.

6. In September, 1975, Mr. Lary filed a grievance with the Employer which UVTA processed regarding his base salary for that year. As a result of that grievance, through a settlement agreed to by UVTA, the Employer and Mr. Lary, he received an additional \$1,000 in salary. He also, independent of the UVTA, agreed to perform certain non-teaching duties for the Employer for which he received additional compensation.

7. In December, 1975, as a part of the settlement of Mr. Lary's 1975 grievance and in response to an award which gave Mr. Lary a salary in excess of the prescribed schedule amount, the Employer and UUTA agreed to the addition of the following language to the master contract between the parties, a clause which was subsequently included in the 1976-77 master contract.

Article XIV 14.3

A teacher whose salary is above the step defined by his education and experience will either enter the schedule at a step corresponding to his 1974/75 level, or at a salary which is mutually agreed upon by the teacher, the Board, and the Association. These salaries will remain constant until equaled or surpassed by the schedule in effect at the time. At that time these people will be put on schedule at their proper step.

8. In 1976, Mr. Lary again grieved the contractual salary level assigned to him, this time, independent of UUTA, and again received additional compensation, bringing his salary to his 1974-75 level, an amount in excess of the maximum salary level of the 1976-77 master salary schedule.

9. Under the contract language set forth in finding #5 infra, Mr. Lary did not receive any salary increase for the year 1977-78, and only a small percentage increase (approximately 2 percent) for 1978-79.

MEMORANDUM

We decline to issue any complaint in this matter. Neither our investigation nor the legal principles governing a Union's duty to fairly represent its members reveal any unfair labor practice.

Moreover, the fact that Mr. Lary sought and received through the grievance procedure additional compensation in 1975 and 1976 on this same claim before us now indicates sufficient knowledge on his part of

his rights pertaining to these matters under the contract and the law. Therefore, any claim on events prior to the negotiation of the 1980-81 master contract is barred from our jurisdiction under 21 V.S.A. §1727(a), which provides in pertinent part that:

No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board...

With respect to Mr. Lary's charges on the facts relating to the negotiation and administration of the 1980-81 master contract, the only period properly before us under our authority to prevent unfair labor practices, we find no evidence of discrimination, hostility, or arbitrary conduct in UUTA's representation based on Mr. Lary's non-membership in the UUTA. On the contrary, the negotiation and implementation of an across-the-board percentage increase for all bargaining unit members, as occurred in 1979 and 1980, combined with the abolishment of the step salary schedule, is proof that Mr. Lary benefitted at least equally (if not more favorably) by that action as other similarly situated unit members.

Had consideration of Mr. Lary's charges for the school years commencing 1975-78 (1978 being the last year of a step salary schedule) not been time-barred under the "six month rule" of 21 V.S.A. §1727(a), we still would find no basis upon which to issue a complaint under either 21 V.S.A. §1726(a)(3) or §1726(b)(3). The concept of the duty of fair representation has been described generally as

...a statutory obligation to serve the interest of all members without hostility or discrimination toward any,

to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

Vaca v. Sipes, 386 US 171, 177 (1967)*

However, in view of the give and take of the negotiations process, the complete satisfaction of all who are represented is hardly to be expected. Ford Motor Co. v. Huffman, 345 US 330 (1953). Differences inevitably arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees, the mere existence of which does not make them invalid, Ford Motor Co., supra.

On his particular facts, Mr. Lary would have the Board see him as a victim of the step salary schedule system, reaching (and exceeding) the maximum pay scale in 1975 and being required to wait out the average percentage increases enjoyed by everyone else in the three years that follow before the abolition of that system.

We are not so inclined. If one compares Mr. Lary's negotiated base salary, representing pay received solely for teaching responsibilities we find that he was treated fairly by his representative union. It was Mr. Lary's grievance awards in 1975 and 1976 which resulted in his low

* The statutory duty of fair representation was developed over 30 years ago in a series of cases involving alleged racial discrimination by unions certified as exclusive bargaining representatives under the Railway Labor Act (45 USC §151 et. seq.) and the National Labor Relations Act (29 USC §151 et seq.) For a historical development of the concept see: Steele v. Louisville & N.R. Co., 323 US 192 (1944), Ford Motor Co. v. Huffman, 345 US 330 (1953); Humphrey v. Moore, 375 US 335 (1964); and Miranda Fuel Co., 140 NLRB 181 (1962), enf. denied 326 F. 2d 172 (CA2 1963). See also: Clark, "The Duty of Fair Representation: A Theoretical Structure", 51 Texas L. Rev. 1119 (1973).

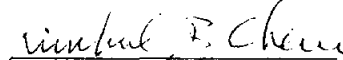
percentage increases in 1977 and 1978, and not UVTA's failure to represent the more experienced teachers in the unit generally, and him in particular. On the contrary, UVTA consistently negotiated additional steps into the system which prevented freezing the salaries of the most experienced teachers from year to year. Furthermore, in relation to Mr. Lary in particular, we note that the UVTA was responsible for processing the grievance initially responsible for Mr. Lary's award for additional compensation in 1975, and did not prevent him from successfully filing another in 1976 which resulted also in the award of a salary level in excess of the negotiated schedule. The real basis of Mr. Lary's dissatisfaction here appears to us to be his change of status and commensurate loss of compensation from a teacher/administrator to teacher, experienced coincidentally or not with the inception of collective bargaining between the UVTA and the Employer, a grievance of sorts we cannot redress.

ORDER

Now, therefore, based on the facts represented by the parties in the course of our investigation and for the foregoing reasons, it is hereby ORDERED that the Board shall DECLINE to issue an unfair labor practice complaint on the charges of Mr. Hubert Lary and that this matter be closed from any further consideration by the Board.

Dated this 2nd day of November, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sp.


Robert H. Brown

Rochester High School -

APPENDIX A

1975 - 1976

year of teaching	BA	years of teaching	BA + 15	years of teaching	BA + 30 or Masters
1	6800	1	7050	1	7300
2	7140	2	7403	2	7665
3	7480	3	7755	3	8030
4	7820	4	8108	4	8395
5	8160	5	8460	5	8760
6	8500	6	8813	6	9125
7	8840	7	9165	7	9490
8	9180	8	9518	8	9855
9	9520	9	9870	9	10,220
10	9860	10	10,223	10	10,585
11	10,200	11	10,575	11	10,950

1976 - 1977

1	7000	1	7250	1	7500
2	7350	2	7613	2	7875
3	7700	3	7975	3	8250
4	8050	4	8338	4	8625
5	8400	5	8700	5	9000
6	8750	6	9063	6	9375
7	9100	7	9425	7	9750
8	9450	8	9788	8	10,125
9	9800	9	10,150	9	10,500
10	10,150	10	10,513	10	10,875
11	10,500	11	10,875	11	11,250
12	10,850	12	11,238	12	11,625

ROCHESTER HIGH SCHOOL

ROCHESTER

APPENDIX A

<u>1977-1978</u>				<u>1978-1979</u>			
YEAR OF TEACHING	B.A.	B.A. & 15	B.A. & 30 MASTERS	YEAR OF TEACHING	B.A.	B.A. & 15	B.A. & 30 MASTERS
1	7300	7500	7800	1	7500	7700	8000
2	7665	7875	8190	2	7875	8085	8400
3	8030	8250	8580	3	8250	8470	8800
4	8395	8625	8970	4	8625	8855	9200
5	8760	9000	9360	5	9000	9240	9600
6	9125	9375	9750	6	9375	9625	10,000
7	9490	9750	10,140	7	9750	10,010	10,400
8	9855	10,125	10,530	8	10,125	10,395	10,800
9	10,220	10,500	10,920	9	10,500	10,780	11,200
10	10,585	10,875	11,310	10	10,875	11,165	11,600
11	10,950	11,250	11,700	11	11,250	11,550	12,000
12	11,315	11,625	12,090	12	11,625	11,935	12,400
13	11,680	12,000	12,480	13	12,000	12,320	12,800
14				14	12,375	12,705	13,200

ROCHESTER HIGH SCHOOL

23 CIVIL	1979-80 a			YEARS TEACHING	1980-81 *		
	BA	BA+15	BA+30 MATTERS		BA	BA+15	BA+30 MATTERS
	8,000	8,200	8,500	1	8,000	8,200	8,500
1	8,138	8,355	8,680	2	8,680	8,897	9,223
2	8,544	8,772	9,114	3	8,789	9,023	9,374
3	8,951	9,190	9,548	4	9,228	9,474	9,843
4	9,358	9,608	9,982	5	9,667	9,925	10,312
5	9,765	10,025	10,416	6	10,107	10,376	10,781
6	10,172	10,443	10,850	7	10,546	10,827	11,249
7	10,579	10,861	11,284	8	10,986	11,279	11,718
8	10,986	11,279	11,718	9	11,425	11,730	12,187
9	11,393	11,696	12,152	10	11,864	12,181	12,655
10	11,799	12,114	12,586	11	12,304	12,632	13,124
11	12,206	12,532	13,020	12	12,743	13,083	13,593
12	12,613	12,949	13,454	13	13,183	13,534	14,062
13	13,020	13,367	13,888	14	13,622	13,985	14,530
14	13,427	13,785	14,322	15	14,062	14,437	14,999
15				16+	14,501	14,888	15,468

* ROUNDED TO NEAREST DOLLAR