

VERMONT LABOR RELATIONS BOARD

IN RE: Unfair Labor Practice)
Charge of Vermont State Colleges)
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Vermont State Colleges Faculty)
Federation, AFT Local 3180,)
AFL-CIO)

DOCKET NO. 79-58S

Memorandum and Order Concerning Effect of Appeal of Board's Order

On August 15, 1979, the Employer charged the Faculty Federation with an unfair labor practice, refusal to bargain in accordance with our opinion and order in Vt. State Colleges Faculty Fed. v. Vt. State Colleges 2 VLRB 121 (1979).

The Federation has appealed that decision to the Vermont Supreme Court, and it is pending. No enforcement action has been requested and none initiated by this Board. 3 V.S.A. §1002. The Board's order in VSCFF v. VSC, supra is not subject to the Administrative Procedure Act. See 3 V.S.A. §1005. Accordingly, 3 V.S.A. §815 providing an appeal does not stay an agency order, does not apply. Under these circumstances the Board's order appears to be in limbo. There is no statute making the Board's order effective according to its terms pending an appeal and in the absence of an enforcement order. See Vt. State Employees Assn. v. State 134 Vt. 195, 197 (1976) and Vt. State Employees Assn. v. State 135 Vt. 627 (1977).

Counsel for the Colleges has taken a different position in a quite different context. In a letter to a state legislator, dated April 2, 1979, opposing legislation clarifying rights of the parties before the Board during pendency of an appeal, Counsel wrote:

"...the amendment which proposes that orders of the Board to cease and desist from unfair labor practices shall not be ordinarily stayed by an appeal is particularly troublesome. For example, in situations where the Board may find a particular subject to be a mandatory area of bargaining over the employer's objections, the employer would be obligated to enter into fruitless and protracted negotiations over a subject that may very well be overturned and declared non-mandatory on appeal. The time and expense that could go into such negotiations would certainly be wasted."

While we do not agree with this position, believing the Board or the Court ought to have discretion to require bargaining in some instances, we think under existing legislation the Federation is not guilty of an unfair labor practice. For the foregoing reasons, we decline to issue a complaint.

ORDER

For the foregoing reasons the charge of unfair labor practice is hereby DISMISSED.

Dated this 20th day of December, 1979, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Jr.
William G. Kemsley, Jr.

Robert H. Brown
Robert H. Brown