VERMONT LABOR RELATIONS BOARD

ORLEANS CENTRAL EDUCATION ASSOCIATION	)	
v.	)	DOCKET NO. 18-28
ORLEANS CENTRAL SUPERVISORY UNION BOARD OF SCHOOL DIRECTORS	)	

MEMORANDUM AND ORDER

The Labor Relations Board needs to decide whether to issue an unfair labor practice complaint in this matter. The Orleans Central Education Association ("Association") filed an unfair labor practice charge on June 8; 2018, alleging that the Orleans Central Supervisory Union Board of School Directors ("Employer"): 1) failed to bargain in good faith in violation of 21 V.S.A. §1726(a)(5) and 16 V.S.A. §2001 by ending the provision of an Health Reimbursement Arrangement ("HRA") debit card for payment of prescriptions and medical providers, unilaterally implementing a more financially onerous arrangement, and not bargaining in good faith with the Association over this issue; and 2) committed an unfair labor practice by wrongfully conditioning bargaining with the Association upon the Association's agreement to withdraw a previously filed grievance against the Employer.

The Employer filed a response to the charge on June 28, 2018. Labor Relations Board Executive Director Timothy Noonan met with the parties on October 16 in furtherance of the Board's investigation of the charge.

The Labor Relations Board has discretion whether to issue an unfair labor complaint and hold a hearing on a charge. 21 V.S.A. §1727(a). In exercising its 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).

Upon review of the pertinent factual background, we conclude that the Association has not set forth sufficient factual allegations for the Board to conclude that the Employer may have committed an unfair labor practice with respect to the portion of the charge alleging that the Employer wrongfully conditioned bargaining with the Association upon the Association's agreement to withdraw a previously filed grievance against the Employer.

Future Planning Associates ("FPA") was selected as the administrator of the HRA effective January 1, 2018, provided for in the health benefit article of the parties' collective bargaining agreement. It was understood that FPA would offer a debit card to employees to cover the expenses of the integrated HRA including both prescription and medical expenses for which the Employer was responsible.

FPA had significant problems administering the HRA beginning with its implementation on January 1, 2018. The Association filed a grievance on February 1 alleging that the Employer violated the agreement by failing to provide a mechanism to cover the portion of medical expenses to be paid by the employer and by failing to provide debit cards to some employees. FPA withdrew from administering the HRA in May 2018. The employer selected Datapath to replace FPA as administrator. Datapath does not provide debit cards to employees.

Vermont-NEA Uniserv Director Matthew Polk contacted Heather Wright, Attorney for the Employer, on May 14 inquiring how the Employer would like to transition to Datapath and indicating that the Association would be willing to accept terms similar to a memorandum of agreement negotiated in a nearby school district. Wright responded in a May 15 email, stating: "The timing is pretty tight, but OCSU may be open to discussing this for the time period through

the end of the year if the agreement includes withdrawal/dismissal of the current grievance. Let me know if this is a possibility."

The Association contends that this response from the Employer's attorney constituted an unfair labor practice because it conditioned bargaining on the withdrawal of the grievance. This response by Attorney Wright is not sufficient to indicate that the Employer may have been improperly conditioning bargaining. We interpret her response as a suggestion for one component of closure on an issue rather than an improper preconditioning of bargaining. She was proposing an item to include in bargaining discussions to attempt to reach agreement. She was not threatening that bargaining would not occur absent withdrawal of the grievance.

We conclude differently with respect to the Association's other contention that the Employer failed to bargain in good faith in violation of 21 V.S.A. §1726(a)(5) and 16 V.S.A. §2001 by ending the provision of an HRA debit card for payment of prescriptions and medical providers, unilaterally implementing a more financially onerous arrangement, and not bargaining in good faith with the Association over this issue. The Association has set forth sufficient factual allegations for the Board to conclude that the Employer may have committed an unfair labor practice with respect to this portion of the unfair labor practice charge.

Based on the foregoing reasons, it is ordered:

1. The Vermont Labor Relations Board declines to issue an unfair labor practice complaint on the portion of the unfair labor practice charge by the Orleans Central Education Association alleging that the Orleans Central Supervisory Union Board of School Directors wrongfully conditioned bargaining with the Association upon the Association's agreement to withdraw a previously filed grievance against the Employer; and
2. The Labor Relations Board issues an unfair labor practice complaint on the portion of the charge by the Orleans Central Education Association alleging that the Orleans Central Supervisory Union Board of School Directors failed to bargain in good faith

in violation of 21 V.S.A. §1726(a)(5) and 16 V.S.A. §2001 by ending the provision of an HRA debit card for payment of prescriptions and medical providers, unilaterally implementing a more financially onerous arrangement, and not bargaining in good faith with the Association over this issue. The Vermont Labor Relations Board adopts for purposes of this complaint the allegations contained in this portion of the charge. This complaint is scheduled for a hearing on January 17, 2019, at 9 a.m., in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont.

Dated this 27th day of November, 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park

/s/ Alan Willard

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Alan Willard

/s/ David R. Boulanger

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David R. Boulanger