VERMONT LABOR RELATIONS BOARD

WASHINGTON NORTHEAST SUPERVISORY UNION	)	
v.	)	
CABOT TEACERS' ASSOCIATION AND TWINFIELD TEACHERS' ASSOCATION	)	DOCKET NO. 16-60
CABOT TEACERS' ASSOCIATION AND TWINFIELD TEACHERS' ASSOCATION	)	
v.	)	
WASHINGTON NORTHEAST SUPERVISORY UNION	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 16, 2016, the Washington Northeast Supervisory Union Board of School Directors ("Employer") filed an unfair labor practice charge against the Cabot Teachers Association and the Twinfield Education Association (collectively the "Associations"). Therein, the Employer contends that the Associations committed an unfair labor practice in violation of 21 V.S.A. §1726(b)(4) by refusing to bargain collectively in good faith with the Negotiations Council of the Employer after unilaterally imposing a condition upon the negotiations in violation of law that the Employer Negotiations Council agree to conduct negotiations in executive session.

The Associations filed a response to the unfair labor practice charge on January 13, 2017, and also filed a cross unfair labor practice charge on this date. In the cross charge, the Associations contend that the Employer Negotiations Council committed an unfair labor practice

in violation of 21 V.S.A. §1726(a)(5) by failing to bargain in good faith by conditioning all future negotiations to occur in public, a condition which the Associations assert is not required by the Vermont Open Meeting Law or the Public Records Act and which is a violation of the ground rules agreed upon by the parties.

On February 15, 2017, the Vermont Labor Relations Board issued unfair labor practice complaints. The Board stated in the complaint that, "taking the allegations in the charge and cross charge in the light most favorable to the charging parties, it appears to the Vermont Labor Relations Board that unfair labor practice complaints should be issued and a hearing held to determine whether the Associations committed an unfair labor practice in violation of 21 V.S.A. §1726(b)(4), and whether the Employer committed an unfair labor practice in violation of 21 V.S.A. §1726(a)(5)".

On February 27, 2017, the Vermont School Boards Association filed an Application to Intervene pursuant to Section 32.6 of the Labor Relations Board *Rules of Practice* to file a memorandum of law in this matter.

A hearing was held on March 6, 2017, in the Labor Relations Board hearing room in Montpelier before Board Members Gary Karnedy, Chairperson; Richard Park and Edward Clark, Jr. Attorney J. Scott Cameron represented the Employer. Vermont-NEA Legal Counsel Rebecca McBroom represented the Associations. Attorney Eric Jones appeared on behalf of the Vermont School Boards Association. At the outset of the hearing, the Labor Relations Board granted the Application to Intervene filed by the Vermont School Boards Association to file a memorandum of law.

The Vermont School Boards Association filed a Memorandum of Law on March 31, 2017. The Employer and the Associations filed Proposed Findings of Fact and Memoranda of Law on April 3, 2017.

FINDINGS OF FACT

1. The Washington Northeast Supervisory Union ("WNESU") is a Supervisory Union in central Vermont comprised of the Cabot and Twinfield School Districts. WNESU is governed by a school board with representatives from both member school districts. Nancy Thomas serves as the Superintendent for the WNESU.

2. The Cabot School District is a Pre-K-12 school district within the WNESU, serving the community of Cabot. The Cabot School District is governed by a school board comprised of five members elected by the residents of the district.

3. The Twinfield School District is a Pre-K - 12 school district within the WNESU, serving the communities of Plainfield and Marshfield. The Twinfield School District is governed by a school board comprised of five members elected by the residents of the member districts.

4. Cabot Teachers' Association is a labor organization representing teachers employed by the Cabot school system. Twinfield Education Association is a labor organization representing teachers employed by the Twinfield school system, and it also represents teachers employed directly by the WNESU.

5. The school boards for WNESU, Cabot School District and Twinfield School District engage in collective bargaining negotiations through a Negotiations Council ("Employer Negotiations Council") which consists of representatives from the respective school boards. The Associations engage in collective bargaining negotiations through the Washington Northeast

Association Negotiations Council ("Association Negotiations Council") which consists of representatives of the Twinfield Education Association and the Cabot Teachers' Association.

6. The Employer Negotiations Council and the Association Negotiations Council agreed to ground rules in December 2015 to cover negotiations for the successor collective bargaining agreement to the agreement expiring June 30, 2016. The ground rules provided in pertinent part:

> 1. Each Council will have a designated spokesperson. Each party may use consultants, including having consultants present and participating. Advance notice to the other party will be given as soon as possible when someone who is not a member of the Board Council or the Association Council will be present at the negotiation session.
>
> . . .
>
> 7. Each team will be responsible for the taking of its own notes and will be shared as need be.
> 8. Each Council may update their respective membership on the status of negotiations. All updates will remain confidential.
> 9. The Councils agree not to release specific information regarding these negotiations to the public prior to agreement unless such release is mutually agreed upon in writing. In case of impasse, any news release will be jointly by the Board and the Association.
>
> . . .
>
> (Employer Exhibit 3, Associations Exhibit 3)

7. The parties conducted negotiations and subsequently entered into a collective bargaining agreement covering the period July 1, 2016 to June 30, 2017. The parties executed the agreement in January 2016. These negotiations were not treated by the Employer as covered by the Open Meeting Law (Employer Exhibit 1, Associations Exhibit 1).

8. None of the collective bargaining agreement negotiations over at least the last 25 years between the Employer and the Associations, including negotiations leading to the 2016-2017 collective bargaining agreement, have been treated by the Employer as covered by the Open Meeting Law. The negotiations have been conducted in private. During this period, the Employer never publicly noticed or warned a negotiation session, produced or posted minutes from a negotiation session, or entered into executive session during a negotiation session.

9. On June 1, 2016, WNESU Superintendent Nancy Thomas sent a memorandum to the presidents of the Associations notifying them of the intent of the Cabot School Board and the Twinfield Union School Board to negotiate a successor agreement to the 2016 – 2017 agreement. Thomas requested that the Associations notify her of the earliest dates available for the initial meeting to set ground rules and establish a timeline for meetings. Thomas has been primary spokesperson for the Employer in negotiations since 2010 (Employer Exhibit 2, Associations Exhibit 2).

10. Thomas and Terri Vest, Chief Negotiator for the Association Negotiations Council, met on October 31, 2016. At the meeting, they discussed the ground rules for the upcoming negotiations. They reviewed the ground rules used in the prior negotiations and made some tentative revisions to them. Thomas mentioned to Vest that, due to recent training conducted by the Vermont School Boards Association which she, Chris Tormey, Chairperson of the WNESU and Cabot School Board; and Patrick Healy, Twinfield School Board Chairperson, attended, the WNESU understood that negotiations were to be conducted in open session unless the Employer Negotiations Council decided to go into executive session. Vest indicated that the Associations disagreed with having negotiations in open session.

11. The Vermont School Boards Association began providing training to Vermont school boards in May of 2015 on the applicability of the Vermont Open Meeting Law to collective bargaining negotiations in the schools. The initiation of the training followed a change to the Open Meeting Law in 2014. Previously, the law provided that a public body may hold an executive session "where premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage". The words "after making a specific finding that" replaced "where" in a 2014 amendment to the law. The Open Meeting Law also

was amended to provide that a "person who is a member of a public body and who knowingly and intentionally violates the provisions" of the Open Meeting Law "shall be guilty of a misdemeanor and shall be fined not more than $500.00." The training also was prompted by a suit filed by a citizen against the Addison Northeast Supervisory Union concerning not being allowed to be present during teacher-school board collective bargaining negotiation sessions.

12. After the October 31, 2016 meeting, Thomas prepared a draft of the changes to the ground rules that had been discussed with Vest and forwarded them to Vest by email. The draft ground rules provided in pertinent part:

> 1. Each Council will have one or two designated spokespersons. Each party may use consultants, including having consultants present and participating. Advance notice to the other party will be given as soon as possible when someone who is not a member of the Board Council or the Association Council will be present at the negotiation session.
>
> . . .
>
> 7. Each team will be responsible for the taking of its own notes and will be shared as need be.
> 8. Each Council may update their respective membership on the status of negotiations.
> 9. Prior to impasse, any news release relating to the status of negotiations will be issued jointly by the Board and the Association. This will not be interpreted to prevent representatives of either party from providing factual information in response to questions or to requests for public documents related to negotiations.
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> . . .
>
> 11. Negotiations will proceed through 4 sessions. After 4 sessions if there is no Agreement, either party may elect to move to the next step in the negotiation process. Negotiation sessions will be held on the following dates:
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> a. November 14, 2016
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> b. November 17, 2016
>
> c. December 6, 2016
>
> d. December 20, 2016
>
> e. Additional sessions may be arranged by mutual agreement.
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> 13. Councils will present initial proposals, including salary and health insurance benefits, in writing to the other party at least 24 hours in advance of the first bargaining session. Proposals will be in final contact language. Thereafter, neither party shall

submit new proposals without the agreement of the other party. . .

. . .

(Employer Exhibits 4, 6; Associations Exhibit 4)

13. Paragraph Nos. 8 and 9 of the draft ground rules prepared by Thomas constituted revisions of these numbered paragraphs from the ground rules in the most previous round of negotiations.

14. The members of the Employer Negotiations Council for the current round of negotiations are Chris Tormey, Chairperson of the WNESU and Cabot School Board; Jackie Folsom, Cabot School Board Member; and Patrick Healy, Twinfield School Board Chairperson. Tormey, Folsom and Healy each were appointed to the Negotiations Council by their respective boards. Thomas also participates in negotiations for the Employer.

15. The Association Negotiations Council consists of Terri Vest and Rebecca Emerson, and others, as representatives of the Twinfield Education Association; and Bill Tobin as a representative of the Cabot Teachers' Association. Vest serves as Chief Negotiator and Spokesperson for the Association Negotiations Council, a role she has held for many years. Emerson also is President of the Twinfield Education Association. Tobin also is President of the Cabot Teachers' Association.

16. Thomas and Vest exchanged proposals on November 10, 2016, prior to the first negotiation meeting, as they had discussed and had been provided for in the draft ground rules. Vest did not understand these proposals would be considered public documents when she sent them to Thomas (Associations Exhibit 9).

17. On November 10, 2016, the Executive Assistant for the WNESU Human Resources Coordinator provided the Agenda for the November 14, 2016, negotiation session by

email to members of the Employer and Association Negotiations Councils, Thomas, and the media (Employer Exhibits 5a, 5b).

18. The Employer Negotiations Council and the Association Negotiations Council met on November 14, 2016, for the first scheduled negotiation session. There were no media members or members of the public present at this meeting. The parties discussed the draft ground rules. Tormey asked if there were any proposed changes to the proposed ground rules; the Association Negotiations Council did not offer any proposed revisions. The parties agreed to the ground rules as drafted by Thomas. Employer Negotiations Council members presented the Employer's goals and proposals. They then responded to questions from the Association Negotiations Council. The Association Negotiations Council indicated there was not enough time to present its proposals. The meeting adjourned with the understanding that the Association Negotiations Council would present its proposals at the next meeting (Employer Exhibit 7).

19. Superintendent Thomas sent an email on November 15, 2016, to members of the Employer and Association Negotiations Councils and the media containing the "Board Negotiations Sub-Committee meeting agenda for November 17" and the minutes of the November 14 meeting which she had prepared. Vest and Emerson did not know until they received this email that the Employer would be publicly posting the minutes of the November 14 meeting. Vest and Emerson understood when they received the email that the Employer considered the November 14 negotiations meeting a public meeting (Employer Exhibits 8a, 8b, 8c).

20. On November 17, 2016, the Employer and Association Negotiations Councils attended the second scheduled negotiating session. William Walters, reporter for the *Hardwick Gazette* newspaper, was present at this session. At the start of the meeting, the Association

Negotiations Council requested that the School Board Negotiations Council enter into executive session. The School Board Negotiations Council decided by a majority vote to enter into executive session. School Board and Association Negotiations Council members, Thomas and Employer Business Manager Christina Kimball attended the executive session. The executive session lasted over an hour. The Association Negotiations Council took the positon that negotiations should occur in executive session. The School Board Negotiations Council took the position that it was required to negotiate in open session absent a specific finding that failure to enter into executive session would clearly place the School Board Negotiations Council or a person at a substantial disadvantage. After the executive session concluded, the meeting adjourned without further negotiations and without the parties agreeing whether negotiations would be conducted in open session or in executive session (Employer Exhibit 9).

21. On Monday morning, November 21, 2016, *Hardwick Gazette* reporter Walters sent a "Public Records Request Letter" to Superintendent Thomas. He requested the following records: "The negotiation proposal presented to the professional staff representatives by the WNESU bargaining team; (t)he negotiation proposal presented by the professional staff representatives to the WNESU bargaining team" (Associations Exhibit 7).

22. On Monday afternoon, November 21, 2016, Thomas sent an email to Vest, Emerson and Tobin; providing in pertinent part:

> Will Walters has made a formal Freedom of Information Act (attached) regarding Board and Teacher proposals. The Board was already going to post their proposal along with agendas and minutes as they are obligated to do. They were going to hold off on posting the teacher proposal until talking with you at the next meeting, however, we have received legal guidance that the office is obligated to share the information should there by a FOI request.
>
> I wanted to give you a heads up that I will email these other 2 attachments to Will tomorrow.
> . . .

(Associations Exhibit 7)

23. On Tuesday morning, November 22, 2016, Vest sent an email to Thomas in response to her email, stating: "attached is a clean copy of our proposal." Vest attached a copy of the Association Negotiations Council bargaining proposals. Vest did not express an objection to the release of the proposals (Associations Exhibits 7, 9).

24. Thomas sent Walters the Employer and Associations Negotiations Councils bargaining proposals on November 22, 2016 (Associations Exhibit 9).

25. Superintendent Thomas sent an email on November 29, 2016, to members of the Employer and Association Negotiations Councils and the media containing the minutes of the November 17 meeting which she had prepared and the agenda for the scheduled December 6 meeting of the Negotiations Councils (Employer Exhibits 10a, 10b).

26. On December 5, 2016, Vest delivered a letter to Thomas informing her that the Association Negotiations Council "must insist on conducting negotiations in executive sessions or must suspend negotiations at this time". Vest indicated that the Association Negotiations Council "feel it is necessary to seek clarity about this bargaining situation from the Vermont Labor Relations Board at this point." Vest stated: "If at any time during this process the Board Council would like to resume negotiations in executive session, we would immediately respond and return to the negotiating table" (Employer Exhibit 11, Associations Exhibit 5).

27. Thomas sent an email on December 6 at 11:58 a.m. to Vest, Tobin and Emerson, stating:

> The Board Negotiating Council would like you to know that they have received your letter regarding negotiations, and that the meeting scheduled for 5:30 tonight has not been canceled, but will be meeting at Cabot as scheduled. They will determine at the meeting how they will proceed. (Associations Exhibit 8)

28. Vest responded to this email at 3:16 p.m. on December 6, stating in pertinent part:

> I am in classes from 11:15 until 2:50 and don't usually check my email during class. I just got this. My team did not plan on meeting tonight since we did not receive word that the Board was going to hold negotiations in executive session. Therefore, our team will not be present and the negotiations session has, in fact, been canceled by our side as indicated in the letter you received yesterday.
> . . .
> (Associations Exhibit 8)

29. On December 6, 2016, the members of the Employer Negotiations Council and Thomas convened for a negotiation meeting at 5:30 p.m. The Association Negotiations Council did not attend the December 6 meeting. The Employer Negotiations Council discussed the December 5 letter from Vest to Thomas. The Negotiations Council decided at the meeting to recommend to the WNESU School Board that the Employer file an unfair labor charge with the Labor Relations Board against the Association Negotiations Council for refusal to bargain in good faith. The meeting adjourned at 6 p.m. (Employer Exhibit 12).

30. Thomas sent Vest an email at 7:26 p.m. on December 6 in response to the email which Vest had sent her at 3:16 p.m. that day, stating:

> No problem. I didn't expect you to come, given your letter and wasn't expecting a call back. I had to leave the office at 2:40 for a meeting.
>
> The Board just wanted to be clear that they would be there in case the Teacher Council decided to come. They have not changed their position on negotiating in open session. They are considering their response (Associations Exhibit 8).

31. No other negotiations meetings have been held or scheduled.

32. There are instances in Vermont of collective bargaining negotiations between school employers and teacher associations occurring in public. There are four sets of negotiations in the state where negotiations have been suspended due to a disagreement between a school employer and a teachers' association whether to conduct negotiations in public or private.

OPINION

We need to determine whether the Associations committed an unfair labor practice in violation of 21 V.S.A. §1726(b)(4), and whether the Employer committed an unfair labor practice in violation of 21 V.S.A. §1726 (a)(5). The Employer contends that the Associations committed an unfair labor practice in violation of §1726(b)(4) by refusing to bargain collectively in good faith with the Employer Negotiations Council by unilaterally imposing a condition upon the negotiations in violation of law that the Employer Negotiations Council agree to conduct negotiations in executive session. The Associations contend to the contrary that the Employer Negotiations Council committed an unfair labor practice charge in violation of §1726(a)(5) by failing to bargain in good faith through conditioning all future negotiations to occur in public, a condition which the Associations assert is not required by the Vermont Open Meeting Law or the Public Records Act and which is a violation of the ground rules agreed upon by the parties.

Our decision in this case has statewide significance as it will create a precedent guiding future school board and teachers' association negotiations in Vermont. This case involves the interplay of four statutes: 1) the Vermont Open Meeting Law, 1 V.S.A. §310-314; 2) the Public Records Act, 1 V.S.A. §315-320; 3) the Labor Relations for Teachers and Administrators Act, 16 V.S.A. §1981-2028; and 4) the Municipal Employee Relations Act, 21 V.S.A. §1721-1736. Following are the pertinent provisions of each of these statutes.

Open Meeting Law

1 V.S.A. § 310 – As used in this subchapter: . . . (2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action . . . (3) "Public body" means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions . . .

. . .

1 V.S.A. § 312 – (a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment or formal action shall be considered binding except as taken or made at such open meeting . . .

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) all members of the public body present;

(B) all other active participants in the meeting;

(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) the results of any votes, with a record of the individual vote of each member if a roll call vote is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting. Meeting minutes shall be posted no later than five days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body . . .

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. . .

. . .

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; . . .

. . .

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. . .

1 V.S.A. § 313 – (a) No public body may hold an executive session from which the public is excluded, except by . . . a majority of its members present in the case of any public body of a municipality or other political subdivision. . . A public body may not hold an executive session except to consider one or more of the following:

(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage[1]:

(A) contracts;

(B) labor relations agreements with employees;

(C) arbitration or mediation

(D) grievances . . .

. . .

[1] The words "after making a specific finding that" replaced "where" in a 2014 amendment to § 313(a)(1).

(6) records exempt from the access to public records provisions of section 316 of this title; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains; . . .

. . .

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

. . .

1 V.S.A. § 314(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter . . . shall be guilty of a misdemeanor and shall be fined not more than $500.00.

. . .

Public Records Act

1 V.S.A. § 315 – (a) It is the policy of this subchapter to provide for free and open examination of records . . . the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

. . .

1 V.S.A. § 317 – (a) As used in this subchapter: . . . (2) "Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.

(b) As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. . .

(c) The following public records are exempt from public inspection and copying:

. . .

(15) Records relating specifically to negotiation of contracts including collective bargaining agreements with public employees.

. . .

Labor Relations for Teachers Act

16 V.S.A. § 1981 – As used in this chapter unless the context requires otherwise: . . . (2) "Professional negotiations" means the meeting, conferring, consulting, discussing, and negotiating in good faith between a school board negotiations council and a teachers organization negotiations council or an administrators negotiations council to reach agreement.

. . .

(8) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated

by each school board within the supervisory union and by the supervisory union board to engage in professional negotiations with a teachers' or administrators' organization.

. . .

16 V.S.A. § 2001 – The negotiations councils of the school board and of the recognized teachers' or administrators' organization shall meet together at reasonable times, upon request of either party, and shall negotiate in good faith on all matters properly before them under the provisions of this chapter.

. . .

16 V.S.A. § 2007 - (a) If mediation fails to resolve outstanding differences or is not requested and a continuing disagreement persists, either party may, after negotiation on all matters properly before them, request that any or all unresolved issues be submitted to a fact-finding committee . . .

. . .

(d) The report of the fact-finding committee shall be advisory only and shall not be binding on either party. The report shall be made public by the fact-finding committee if the issues in dispute have not been resolved within 10 days of the delivery of the report.

. . .

16 V.S.A. § 2009 – The negotiations councils for school boards and for teachers' and administrators' organizations are empowered to delegate in whole or in part the responsibility for negotiation of the collective agreement to any persons they may choose. However, final ratification of any agreement on behalf of a school board shall remain the sole responsibility of the school board, unless the school board has agreed to binding interest arbitration . . .[2]

Municipal Employee Relations Act

21 V.S.A. §1726 - (a) It shall be an unfair labor practice for an employer: . . . (5) to refuse to bargain collectively in good faith with the exclusive bargaining agent. . . (b) It shall be an unfair labor practice for an employee organization or its agents: (4) to refuse to bargain collectively in good faith with a municipal employer.

In interpreting these statutes and deciding whether either the Employer or the Associations committed an unfair labor practice, the Board follows the rules of statutory construction set forth by the Vermont Supreme Court. The primary objective in interpreting statutes is to give effect to the intent of the Legislature, which the Board attempts to discern first by looking to the language of the statute. Grievance of West and Cray, 165 Vt. 445, 449 (1996). Petition of Vermont State Employees' Association (re: State Police Lieutenants), 31 VLRB 331,

[2] The "negotiations councils" referenced in Sections 1981, 2001 and 2009 of the Labor Relations for Teachers Act were added to the Act in 2007

339 (2011). Where the meaning of a statute is plain and unambiguous, there is no need for construction and it must be enforced according to its terms. Petition of the VSEA, Inc. (Community Correctional Center Employees), 143 Vt. 636, 640-41 (1988).

In determining legislative intent, the Board looks beyond the language of a particular section, standing alone, to the whole statute. Id. Provisions that are part of the same statutory scheme must be read in context and the entire statutory scheme read together so the legislative intention can be ascertained from the whole of the enactments. In re Grievance of Danforth, 174 Vt. 231, 238 (2002). Petition of Vermont State Employees' Association (re: State Police Lieutenants), 31 VLRB at 339. Legislative intent is truly derived from a consideration of not only the particular statutory language, but from the entire enactment, its reason, purpose and consequences. Rutland Herald v. City of Rutland, 191 Vt. 387, 398 (2012). The Legislature is presumed to make changes in light of existing law. In re Danforth, 174 Vt. 231, 238 (2002).

The first question before us is whether the Employer Negotiations Council is a "public body" within the meaning of § 310(3) of the Open Meeting Law. In interpreting the provisions of the Open Meeting Law, we follow the guidance of the Vermont Supreme Court that it is entitled to a liberal construction in support of the goal of open access to public meetings for members of the public. Trombley v. Bellows Falls Union High School District No. 27, et al, 160 Vt. 101, 104 (1993). Exemptions to it must be strictly construed. Id. Further, it must be presumed that language is inserted in a statute advisedly, and a statute is not construed in a way that renders a significant part of it pure surplusage. Id.

§ 310(3) provides in pertinent that "'public body' means . . . any board, council . . . of any . . . instrumentality of the State or one or more of its political subdivisions, or any committee

of any of the foregoing boards, council . . .” School boards in Vermont are public bodies meeting this definition, and we conclude that negotiation councils of school boards also are public bodies. The Labor Relations for Teachers and Administrators Act provides: “ ‘School board negotiations councils’ means . . . for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union and by the supervisory union board to engage in professional negotiations with a teachers’ or administrators’ organization.” 16 V.S.A. § 1981(8). The Employer Negotiations Council is a body explicitly authorized by this statutory provision and constitutes a “public body” pursuant to § 310(3) as a council of a political subdivision of the State.

The next question we must address is: When the Employer Negotiations Council gathers to engage in collective bargaining contract negotiations with the Association Negotiations Council, is this a “meeting” within the meaning of § 310(2) of the Open Meeting Law? The Employer contends that it is such a meeting; the Associations disagree.

§ 310(2) defines “Meeting” as “a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action”. It is evident that there is a meeting pursuant to this provision when the Employer Negotiations Council gathers for purposes such as preparing for negotiations, soliciting public comment on negotiations, developing bargaining proposals, and discussing negotiations strategy. The Negotiations Council may decide to hold an executive session to discuss some of these matters pursuant to § 313 (a) (1) of the Open Meeting Law, but it is doing so in a meeting of a public body.

It is less clear whether a meeting pursuant to § 310(2) is occurring when the Employer Negotiations Council gathers for a session with the Association Negotiations Council, an

independent and equal bargaining partner, to negotiate over terms of a collective bargaining agreement. In Blum v. Friedman, 172 Vt. 622, 782 A.2d 1204 (2001), the Vermont Supreme Court addressed an appeal filed by a town resident from a superior court decision dismissing his claim that a town violated the Open Meeting Law by not allowing him to be present during contract negotiation meetings between the town and a corporation which provided municipal services to homeowners under a contract negotiated with the town. In its decision, the Supreme Court stated as follows in a footnote: "The superior court assumed that the negotiating sessions are meetings for purposes of the act, see 1 V.S.A. § 310(2), and neither party has questioned that assumption. Similarly, the parties agree that § 313(a)(1) applies, although the "meetings" are negotiating sessions in which the other party to the contract is present. We rely on both assumptions without examining their accuracy." Id. 172 Vt. at 628 n. 2, 782 A.2d at 1208.

This statement in Blum v. Friedman invites an examination of whether a negotiation session between the public body and the other party to the contract is a meeting for the purpose of the Open Meeting Law. Here, our examination is focused particularly on whether a negotiation session between a school board negotiations council and a teacher organization negotiations council over the terms of a collective bargaining agreement is a meeting under the Open Meeting Law.

In determining legislative intent, we look beyond the language of the particular section defining "Meeting", and examine other provisions of the Open Meeting Law. The reading of the entire statutory scheme together will place in context particular provisions of the Open Meeting Law. § 313 of the Open Meeting Law sheds light on legislative intent. § 313(a)(1) provides that a public body may hold an executive session at a meeting covered by the Open Meeting Law "to consider . . . (A) contracts; (B) labor relations agreements with employees" after "making a

specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage". § 313(b) goes on to state: "Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed."

The fact that § 313(b) gives the discretion to the public body whether to allow anyone into the executive session beyond the members of the public body itself raises a serious question whether the Legislature intended collective bargaining negotiations sessions between school board negotiation councils and teachers' organization negotiations councils to be meetings within the coverage of the Open Meeting Law. A teachers' organization negotiations council obviously is an indispensable party to negotiation of a collective bargaining agreement.

The public policy so providing is set forth in § 2001 of the Labor Relations for Teachers and Administrators Act, which provides that "the negotiations councils of the school board and of the recognized teachers' or administrators' organization shall meet together at reasonable times, upon request of either party, and shall negotiate in good faith on all matters properly before them under the provisions of this chapter". It cannot be within the discretion of a school boards negotiations council to decide whether to exclude a teachers' organization from negotiating sessions when it is obligated to negotiate collective bargaining agreements with such organization.

We must determine legislative intent in light of several pertinent statutes other than the Open Meeting Law. § 317(c)(15) of the Public Records Act provides: "The following public records are exempt from public inspection and copying: . . . Records relating specifically to negotiation of contracts including collective bargaining agreements with employees." "Public

record" means any written or recorded information . . . which is produced or acquired in the course of public agency business".

The Public Records Act implements the policy that the public interest clearly favors the right of access to public documents and public records, and under this policy the exceptions listed in § 317(c) should be strictly construed. Trombley v. Bellows Falls Union High School District No. 27, 160 Vt. at 106-107. Applying such a strict construction, it is clear that records relating specifically to negotiation of collective bargaining agreements exempt from public inspection and copying pursuant to § 317(c)(15) include negotiation proposals and counter-proposals, as well as other information, exchanged by the parties during negotiations.

It is inconsistent for negotiating sessions to be considered meetings pursuant to the Open Meeting Law when the bargaining proposals which necessarily will provide the basis for much discussion during these sessions are exempted from public inspection and copying. We cannot envision a way in which the tension between public meetings and records exempt from public inspection and copying can be reconciled.

The provisions of the Labor Relations for Teachers and Administrators Act provide further evidence that the Legislature did not intend negotiating sessions to be considered meetings pursuant to the Open Meeting Law. § 2009 of the Labor Relations for Teachers Act provides: "The negotiations councils for school boards and for teachers' and administrators' organizations are empowered to delegate in whole or in part the responsibility for negotiation of the collective agreement to any persons they may choose."

If we were to decide that the Legislature intended the "meeting" provision of the Open Meeting Law to extend to negotiating sessions, this provision of the Teachers Act would allow school board negotiations councils unilaterally to decide whether negotiations would be covered

by open meeting provisions depending on whether the person or persons it chooses to negotiate constitutes a "public body" under the Open Meeting Law. We are not inclined to conclude that the legislature intended such a result absent specific statutory language or clear legislative history. The specific statutory language is absent. The parties did not accept our invitation to cite specific legislative history on this issue or any other except for the effective dates that changes were made in statutory language.

Also, an examination of the dispute resolution procedures set forth in the Labor Relations for Teachers Act supports a conclusion that the Legislature did not intend negotiating sessions to be considered meetings pursuant to the Open Meeting Law. In situations where parties do not reach agreement at an earlier stage of the negotiations process and resort to fact-finding, § 2007 of the Labor Relations for Teachers Act provides that the fact-finding "report shall be made public by the fact-finding committee if the issues in dispute have not been resolved within 10 days of the delivery of the report." This necessarily implies that the report would be private until that time. Given legislative direction that proceedings are private at this late stage of the negotiations process, we presume absent specific language to the contrary that the Legislature is not requiring that negotiations be conducted in public at earlier stages of negotiations.

The executive session provisions of the Open Meetings Law are more internally consistent with a conclusion that negotiating sessions are not meetings pursuant to the Open Meeting Law. § 313(b) gives the discretion to the public body whether to allow anyone into the executive session beyond the members of the public body itself. This follows logically from § 313(a)(1) providing that a public body may hold an executive session at a meeting covered by the Open Meeting Law to consider labor relations agreements with employees after making a

specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage.

It is consistent that this discretion is granted to further the purpose of the executive session to not place the public body or a person involved at a substantial disadvantage due to premature general public knowledge. For example, this could be invoked if a school board negotiations council makes a specific finding that public disclosure of discussion of their negotiations strategy would clearly place the employer at a substantial disadvantage. As discussed above, the internal consistency of § 313(a)(1) and § 313(b) does not exist if collective bargaining negotiations sessions between school board negotiation councils and teacher organization negotiations councils are considered meetings within the coverage of the Open Meeting Law.

In sum, a review of the Open Meeting Law, the Public Records Act and the Labor Relations for Teachers Act indicates that the Legislature intended negotiating sessions between school board negotiation councils and teacher organization negotiations councils to not be considered meetings pursuant to the Open Meeting Law. This results in an internally consistent application of the Open Meeting Law, is consistent with the Public Records Act provision exempting records relating specifically to negotiation of collective bargaining agreements from public inspection and copying, and more reasonably reflects the provisions of the Labor Relations for Teachers Act.

Our determination is bolstered by labor relations principles of bilateral negotiations and balance of power derived from our case law precedents on whether parties have engaged in good faith bargaining. One principle is the bilateral nature of the negotiations process. In Vermont State Employees' Association v. Judiciary Department of the State of Vermont, 33 VLRB 253

(2015), the Board relied on the bilateral obligation of the parties in the collective bargaining process to meet at reasonable times and negotiate in good faith to conclude that this necessarily implies a joint discussion on establishing negotiation meetings, and held that one party does not have the unilateral right to decide the commencement date of negotiations. Id. at 266-67.

The bilateral nature of the negotiations process also was addressed by the Board in UE Local 267 v. University of Vermont, University of Vermont v. UE, 21 VLRB 106 (1998). The Board indicated that the following concerns are present when one party issues press releases, or otherwise publicly disseminates information about negotiations, prior to impasse without consent of the other party: "(S)uch conduct tends to hinder the compromise inherent in successful collective bargaining as free and open discussion is hampered, parties may act unduly cautious, negotiators are less likely to move from fixed positions, and posturing tends to increase. The second-hand discovering by the public of what occurs in negotiations significantly hampers the free exchange of views and compromise inherent in collective bargaining." Id. at 113.

The bilateral nature of the negotiations process reflected in these precedents would be compromised if collective bargaining negotiations sessions between school board negotiation councils and teacher organization negotiations councils are held to be meetings within the coverage of the Open Meeting Law. School board negotiations councils would be able to unilaterally decide whether to meet in executive session. Such a significant determination whether negotiations will proceed in public session or in private is one that would be jointly decided by the employer and the union representing employees where genuine bilateral negotiations is occurring.

Similarly, school board negotiations councils would be able to unilaterally prepare minutes of negotiations sessions and publicly post and otherwise disseminate them without the

consent of the teachers' organization negotiations council. As discussed above in the UE and University of Vermont case, this may hamper the free exchange of views and compromise inherent in collective bargaining.

Another labor relations principle derived from our case law precedents is concern over the balance of power in negotiations. In Caledonia North Education Association v. Burke Board of School Directors, 18 VLRB 45, 63-64 (1995), the Board indicated that, in our unfair labor practice jurisprudence, we would guard against the balance of power shifting substantially to the unfair advantage of either party. Here, the balance of power would shift substantially to the unfair advantage of management if collective bargaining negotiations sessions between school boards and teacher organizations are held to be meetings within the coverage of the Open Meeting Law.

The ability of school board negotiations councils to unilaterally regulate public comment pursuant to § 312(h) of the Open Meeting Law, if negotiations were conducted in open session, could result in expression of opinion unfairly unbalanced against teacher organizations. Also, the ability of school board negotiations councils to unilaterally decide whether to meet in executive session would provide an unfair advantage to management. The employer could exercise such discretion in a way and at a time that would be advantageous to management and harm the teachers' association. This could unfairly shift the balance of power in negotiations.

Further, the ability of school board negotiations councils to unilaterally prepare minutes of negotiations sessions, and publicly post and otherwise disseminate them, without the consent of the teachers' organization negotiations council would provide an unfair advantage to management. Minutes prepared unilaterally by a representative of the employer without the required approval of the teachers' association creates the potential for public dissemination of

information which excludes particular issues and is unfairly tilted toward the employer. This could place public pressure on the teachers' association which unfairly shifts the balance of power in negotiations.

Thus, we determine that negotiating sessions between school board negotiation councils and teacher organization negotiations councils are not meetings pursuant to the Open Meeting Law. If we were to rule otherwise, we would be acting contrary to the intent of the Legislature by applying the Open Meeting Law in an internally inconsistent manner, acting inconsistent with the Public Records Act provision exempting records relating specifically to negotiation of collective bargaining agreements from public inspection and copying, and creating a result which does not reasonably reflect the provisions of the Labor Relations for Teachers Act. We also would be acting contrary to the important labor relations principle promoting the bilateral nature of the negotiations process, and would be allowing the balance of power to shift to the unfair advantage of management.

This determination having been made, we turn to determining whether either party committed an unfair labor practice in this matter. The Employer contends that the Associations committed an unfair labor practice in violation of §1726(b)(4) of the Municipal Employee Relations Act by refusing to bargain collectively in good faith with the Negotiations Council of the Employer by unilaterally imposing a condition upon the negotiations in violation of law that the Employer Negotiations Council agree to conduct negotiations in executive session.

The Employer has not established that the Associations acted in violation of law by refusing to negotiate in public. As detailed above, negotiating sessions between school board negotiation councils and teachers' organization negotiations councils are not meetings pursuant to the Open Meeting Law. Thus, the Association Negotiations Council acted within its rights by

declining to negotiate in public. The Association Negotiations Council could have agreed to negotiate in public but was not required by law to do so.

The Associations contend that the Employer Negotiations Council committed an unfair labor practice charge in violation of §1726(a)(5) by failing to bargain in good faith through conditioning all future negotiations to occur in public, a condition which the Associations assert is not required by the Vermont Open Meeting Law or the Public Records Act and which is a violation of the ground rules agreed upon by the parties.

We first address the contention of the Associations that the Employer violated the ground rules agreed upon by the parties. The Associations would have to establish by a preponderance of the evidence that the parties agreed through the ground rules to negotiate in private. The Associations rely on paragraphs 1, 8 and 9 of the ground rules. Paragraph 1 provides that "(a)dvance notice to the other party will be given as soon as possible when someone who is not a member of the Board Council or the Association Council will be present at the negotiation session." This provision does not necessarily infer that negotiations would be conducted in private. This can reasonably be interpreted as requiring notification when one of the parties specifically plans to have someone present to provide information pertinent to negotiations, and could apply whether negotiations are public or private.

Paragraph 8 states that "(e)ach Council may update their respective membership on the status of negotiations." This also is a provision that can apply whether negotiations re public or private. It simply articulates the ability of either party to update their respective membership on the status of negotiations, presumably because the entire membership does not attend negotiating sessions.

Paragraph 9 states: “Prior to impasse, any news release relating to the status of negotiations will be issued jointly by the Board and the Association. This will not be interpreted to prevent representatives of either party from providing factual information in response to questions or to requests for public documents related to negotiations.” This provision also does not necessarily infer negotiations will be conducted in private. The requirement for joint news releases can be applicable whether negotiations are public or private.

The fairest reading of the ground rules entered into by the parties is that they do not specifically address whether negotiations will occur in public or private. In sum, the Associations have not established by a preponderance of the evidence that the parties agreed through the ground rules to negotiate in private.

We also note that the release of bargaining proposals to the media by the Employer does not contribute to any determination that the Employer failed to negotiate in good faith. First, the Associations did not cite this release as a factual allegation in the unfair labor practice charge which they filed with the Board. Second, the Associations waived the right to contest the release of such documents when they did not object when the Employer notified them they were releasing the documents the following day.

We further conclude that the Associations have not otherwise established that the Employer Negotiations Council violated its duty to bargain in good faith. It is true that the Employer Negotiations Council has taken the position that, as a public body, it is obligated to negotiate in open session unless it can make a specific finding that doing so would clearly place it or a person at a substantial disadvantage. However, the Employer had a good faith disagreement with the Associations on a significant case of first impression in Vermont. We do

not believe the circumstances of this case warrant a holding that the Employer proceeded in violation of its duty to bargain in good faith. Subjective bad faith is not present in this case.

This conclusion does not end the inquiry. In addition to unfair labor practice cases where the subjective good or bad faith of parties is examined, there are other cases where per se refusals to bargain constituting unfair labor practices exist. NLRB v. Katz, 369 U.S. 157, 743 (1962). Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 434, 435-436 (1983). *The Developing Labor Law (6th Edition*, Bloomberg BNA, 2012), Volume 1, p. 892 - 913. The NLRB and federal courts have applied the per se analysis to many cases involving unilateral changes in conditions of employment under the National Labor Relations Act, and have extended it to many other areas where refusal to bargain in good faith is alleged: i.e., bargaining directly with employees, refusal to execute a written contract, refusal to meet at reasonable times, refusal to confer, and insisting on nonmandatory subjects of bargaining. *The Developing Labor Law*, Volume 1, p.892-913.

The extension of the per se analysis is equally applicable to the case now before us involving whether bargaining occurs in public and private. As a matter of fact, the Associations have not established that the Employer engaged in a per se violation of the duty to bargain. It was the Association Negotiations Council which suspended negotiations between the parties by its letter of December 5, and did not appear at a scheduled December 6 negotiations session. The Employer Negotiations Council on the contrary did attend the December 6 negotiations session. Once it was clear that the Association Negotiations Council suspended negotiations, the Employer acted within its rights by filing an unfair labor practice charge.

Although the Association Negotiations Council acted within its rights by declining to negotiate in public, its unilateral suspension of negotiations precludes our conclusion that the

Employer engaged in a per se violation of its duty to bargain under the circumstances. There was not a failure to negotiate, or a refusal to negotiate in fact, by the Employer at this time as the Employer Negotiations Council was prepared to negotiate with the Association Negotiations Council.

In conclusion, the Employer and other school board negotiations councils in the state may not rely on the Open Meeting Law to insist on conducting negotiation sessions in public given our opinion here, but we decline to conclude the Employer committed an unfair labor practice under the unique circumstances of this case.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the unfair labor practice charge filed by the Washington Northeast Supervisory Union Board of School Directors against the Cabot Teachers Association and the Twinfield Education Association is dismissed, and the unfair labor practice charge filed by the Cabot Teachers Association and the Twinfield Education Association against the Washington Northeast Supervisory Union Board of School Directors is dismissed.

Dated this 2nd day of May 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy
Gary F. Karnedy, Chairperson

/s/ Richard W. Park
Richard W. Park

/s/ Edward W. Clark, Jr.
Edward W. Clark, Jr.