

## **Applicability of Statutory “Freedom of Speech” Provisions to ULP Cases**

The statutes administered by the Board provide: “The expression of any views, argument or opinion, or the dissemination thereof, whether in printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit”.<sup>1</sup>

This “freedom of speech” provision most often is invoked in the context of organizing campaigns by unions to represent employees. In a municipal case, the Board determined that statements by town officials constituted protected speech under the “freedom of speech” provisions where they consisted of opinions that town employees and the town would have better relations in the absence of a union, the presence of an “outside” union in the workplace would result in more adversarial relations, and procedures already in place should be attempted before the employees opted to be represented by a union.<sup>2</sup>

In a case arising from a school district,<sup>3</sup> the Board concluded that a request by a personnel director to meet with teachers during a union organizing campaign and attempt to dissuade them from voting for the union constituted protected speech under the “freedom of speech” provision. Also, the Board concluded in another union organizing case that employer communications with employees consisted “mainly of qualified predictions and some pedantic puffery within the prescribed limits on employer speech”.<sup>4</sup>

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<sup>1</sup> 3 V.S.A. §966, 21 V.S.A. §1621(d), 21 V.S.A. §1728.

<sup>2</sup> United Paperworkers International Union v. Town of Wilmington, 20 VLRB 1 (1997).

<sup>3</sup> Chittenden South Supervisory Teachers’ Association v. Chittenden South Supervisory School District, 5 VLRB 332 (1982).

<sup>4</sup> International Union of Operating Engineers #98 and Town of Springfield, 3 VLRB 221, 225 (1980).

The Board also has determined that the “freedom of speech” provision was applicable outside the union organizing campaign context. The Board concluded that a school superintendent’s statement at a workshop he was conducting for teachers that a Vermont-NEA uniserv director was a “fascist” constituted exercise of his free speech right to express “views” or “opinions”.<sup>5</sup> The Board determined to the contrary that the superintendent’s statements to two teachers who were union leaders that they may be subject to “legal dangers” and “personal liability” if untrue information was disseminated about him, and informing them that they were in a “very vulnerable position”, did not constitute protected speech because they involved an impermissible “threat of reprisal”.<sup>6</sup>

The Board found protected free speech in another school case where the teachers’ association made negative comments in public forums about the employer’s chief negotiator during a contract negotiations dispute. The Board declined to issue an unfair labor practice complaint in the case because it concluded that no statements made contained a threat of reprisal or promise of benefit.<sup>7</sup> In a further school case, the Board determined that the “freedom of speech” provision protected a teachers’ association which undertook a political campaign to oppose the reelection of two school board members.<sup>8</sup>

The Board decided elsewhere that a non-coercive letter sent by an employer to teachers presenting various pieces of information on negotiations, including a statement of economic bargaining proposals offered to the union, constituted

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<sup>5</sup> Valley Education Association, Vermont-NEA/NEA, et al v. Moretown Board of School Directors, et al, 18 VLRB 561, 578 (1995).

<sup>6</sup> Id. at 576.

<sup>7</sup> Essex Junction School District v. Essex Junction Education Association and Vermont-NEA, 14 VLRB 89 (1991).

<sup>8</sup> Hyde Park Elementary School Board v. Lamoille North Education Association, 22 VLRB 78 (1999).

protected speech.<sup>9</sup> Similarly, the Board concluded in another case that protected speech existed when a school principal sent an e-mail message to school staff expressing differences with a flyer that staff had sent to members of the community concerning contract negotiations.<sup>10</sup>

The Board concluded that the “freedom of speech” provision had no applicability in a case, contrary to a claim by the Vermont State Employees’ Association, where VSEA had disseminated a flyer to VSEA members and retirees that disclosed confidential information about negotiations in violation of negotiation ground rules.<sup>11</sup> The Board stated:

This is not a case of VSEA being restricted in the “expression of any views, argument or opinion”. Instead, at issue is the enforceability of ground rules agreed upon by VSEA which restrict the disclosure of specific bargaining proposals. The freedom of expression provisions of Section 966 are not implicated.<sup>12</sup>

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<sup>9</sup> Burlington Education Association v. Burlington Board of School Commissioners, et al., 7 VLRB 248 (1984).

<sup>10</sup> Lamoille North Education Association v. Hyde Park Elementary School Board, 22 VLRB 115, 140-141 (1999).

<sup>11</sup> State of Vermont v. Vermont State Employees’ Association, 28 VLRB 1 (2005).

<sup>12</sup> Id. at 12.