VERMONT LABOR RELATIONS BOARD

VERMONT SCHOOL BOARDS ASSOCIATION AND REPRESENTATIVES OF SCHOOL EMPLOYERS ON THE COMMISSION On PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS	)	
v.	)	DOCKET NO. 19-16
VERMONT-NEA, AFSCME AND REPRESENTATIVES OF SCHOOL EMPLOYEES ON THE COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS	)	

MEMORANDUM AND ORDER

The issue to be decided is whether the Labor Relations Board has jurisdiction in this matter. On April 8, 2019, the Vermont School Boards Association ("VSBA") and Representatives of School Employers on the Commission on Public School Employee Health Benefits ("Representatives of School Employers") filed an amended unfair labor practice charge against the Vermont-NEA, AFSCME and Representatives of School Employees on the Commission on Public School Employee Health Benefits ("Representatives of School Employees"). The VSBA and the Representatives of School Employers contend that the Representatives of School Employees have committed an unfair labor practice by failing to bargain in good faith through refusing to negotiate unless the Representatives of School Employers agree to the inclusion of five "alternate" employee participants in negotiations.

The VSBA and Representatives of School Employers contend that the Labor Relations Board has jurisdiction over the amended charge pursuant to the Vermont Labor Relations for Teachers Act, 16 V.S.A. § 1981 et seq.; the Vermont Municipal Employee Relations Act, 21 V.S.A. § 1721, et seq.; and Chapter 61 of Title 16. The Labor Relations Board Executive Director requested that the VSBA and the Representatives of School Employers file a response

explaining the reasons in support of the position that the Labor Relations Board has jurisdiction over this matter in light of various statutory provisions: The VSBA and Representatives of School Employers filed the response on April 16, 2019, explaining their reasons in support of the position that the Board has jurisdiction.

The Board Executive Director then requested that Vermont-NEA and AFSCME file a response indicating their respective positions on whether the Labor Relations Board has jurisdiction. Vermont-NEA and AFSCME filed a response on April 29, 2019, asserting that the Board does not have jurisdiction. The VSBA and Representatives of School Employers filed a reply to Vermont-NEA's response on May 6, 2019.

The question to be decided herein is whether the Labor Relations Board has jurisdiction over this matter concerning negotiations of the Commission on Public School Employee Health Benefits conducted pursuant to Chapter 61 of Title 16 of Vermont statutes. Act No. 11 of the 2018 Special Session of the Vermont General Assembly provides that the "Commission shall commence negotiations for an initial agreement under on or before April 1, 2019" pursuant to Chapter 61, and that the "initial agreement negotiated . . . shall be for incorporation by reference into collective bargaining agreements between a supervisory union or school district and school employees that take effect on or after July 1, 2020."

The Labor Relations Board, as a public administrative body, has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563 (1977). There have been many cases where the Board has concluded it has no jurisdiction in cases where authorization for Board jurisdiction is not specifically provided by statute.

For instance, temporary employees are not considered "employees" under the State Employees Labor Relations Act, and the Board has concluded it has no jurisdiction over the

grievances of temporary State employees. 3 V.S.A. Sections 311(a)11), 902(5)(A). Grievance of McCluskey, 7 VLRB 359 (1984). Emerson v. Vermont Department of Forests, Parks and Recreation, 20 VLRB 41 (1997). Also, the Board has held that employees exempt from the state classified service are not considered "employees" under the Act eligible to appeal grievances to the Board. 3 V.S.A. §902(5)(A). Grievance of Woolaver, 21 VLRB 219 (1998).

The Board has further determined that classified state employees in their original probationary period also are not eligible to file grievances with the Board pursuant to the provisions of the State Employees Act. Grievance of Peplowski, 6 VLRB 16 (1983). Grievance of Cole, 6 VLRB 204 (1983). Grievance of Barrows, 8 VLRB 82 (1985). The Board recently held that it had no jurisdiction over a petition filed by a municipal employer to decertify a union as representative where authorization for Board jurisdiction over such a petition is not specifically provided by statute. Decertification of Bellows Falls Village Corporation, 34 VLRB 403 (2018).

In the case before us, the applicable statute – Chapter 61 of Title 16 – does not specify that unfair labor practice charges be administered by the Board and does not incorporate unfair labor practice provisions of any other statute. This is not the case with respect to other labor relations statutes in Vermont that provide for specified unfair labor practices that are specifically administered by the Board. The State Employees Labor Relations Act, the Judiciary Employees Labor Relations Act, the Municipal Employee Relations Act, the State Labor Relations Act, the Independent Direct Support Providers Labor Relations Act, and the Early Care and Education Providers Labor Relations Act each contain a list of employer and union unfair labor practices. 3 V.S.A. §961, §962; 3 V.S.A. §1026, §1027; 21 V.S.A. §1726; 21 V.S.A. §1621; 21 V.S.A. §1637; 33 V.S.A §3612. Each of these statutes explicitly provide that employees, unions and

employers may file a charge with the Board alleging that a union or employer has committed an unfair labor practice as specified in provisions of each of these labor relations statutes administered by the Board. 3 V.S.A. §§961 - 965, 3 V.S.A. §§1026 – 1031, 21 V.S.A. §§1621 - 1622, 21 V.S.A. §§1726 – 1729; 21 V.S.A. §§1637 – 1638; 33 V.S.A §§3612(e).

The Labor Relations for Teachers Act, unlike the other Vermont labor relations statutes, did not contain provisions detailing employer and union unfair labor practices when it was enacted. However, the lack of unfair labor practice provisions concerning teachers was changed in 1975 when the Municipal Employee Relations Act was amended to add a section providing:

> For the purposes of representation in, and prevention of, unfair labor practices under sections 1726-1729 of this title, a teacher who is a certified employee of a school district shall be considered a municipal employee; and any school district, which includes any public school district or any quasi-public or private elementary or secondary school within the state which directly or indirectly receives support from public funds shall be considered a municipal employer. Act No. 113; 21 V.S.A. §1735.

This 1975 amendment demonstrates that the Legislature, when presented with a situation where a labor relations statute did not specify that unfair labor practices are adjudicated by the Board, addressed the issue by explicitly extending unfair labor practice provisions to be administered by the Board to covered employees and employers. In the case before us, Chapter 61 of Title 16 neither specifies unfair labor practices to be administered by the Board nor incorporates unfair labor practice provisions of any other statute.

Chapter 61 makes a reference to unfair bargaining practices in 16 V.S.A. § 2105(c), which provides:

> The arbitrator or arbitrators shall have the authority to address complaints that either party has engaged in or is engaging in unfair bargaining practices, including a refusal to bargain in good faith. If the arbitrator or arbitrators find upon a preponderance of the evidence that a party has engaged in or is engaging in any unfair bargaining practice, the arbitrator or arbitrators may include in the decision a remedy for the unfair bargaining practice that is consistent with the provisions of 21 V.S.A. § 1727(d).

Thus, when the Legislature addressed unfair bargaining practices, including a refusal to bargain in good faith, in Chapter 61, it provided for a specific decision-maker other than the Board to adjudicate them. The absence of unfair labor practice provisions specifically adjudicated by the Board are at odds with an assertion of Board jurisdiction over unfair labor practice charges concerning negotiations of the Commission on Public School Employee Health Benefits conducted pursuant to Chapter 61 of Title 16.

In addition to examination of specific unfair labor practice provisions, there are other statutory provisions that inform the question whether the Board has jurisdiction in this matter pursuant to the Municipal Employee Relations Act ("Municipal Act"), the Labor Relations for Teachers Act ("Teachers Act"), and Chapter 61 of Title 16, as asserted by the VSBA and Representatives of School Employers.

One area to examine is who represents the respective parties in collective bargaining negotiations. The Municipal Act and the Teachers Act provide that the employer shall be represented in collective bargaining negotiations by the school board negotiations council, and the employees shall be represented by the teachers' organization negotiations council or the school employees' negotiations council. 16 V.S.A. §§ 2004, 2005; 21 V.S.A. § 1725(b).

The Municipal Act and the Teachers Act define these entities specifically. "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 school employees' organization." 16 V.S.A. § 1981(8). 21 V.S.A. §§ 1722(18).

"Teachers' organization negotiations council" means "the body comprising representatives designated by each teachers' organization . . within a supervisory district or supervisory union to act as its representative for professional negotiations." 16 V.S.A. § 1981 (9). "School employees' negotiations council" means "the body comprising representatives designated by each exclusive bargaining agent within a supervisory district or supervisory union to engage in collective bargaining with its school board negotiations council." 21 V.S.A. § 1722 (19).

On the other hand, Chapter 61 of Title 16 has created a bargaining model for school health care bargaining that is separate from the traditional bargaining model under the Municipal and Teachers Acts, and it provides for different representation of the respective parties in collective bargaining negotiations. It creates a Commission on Public School Employee Health Benefits to "determine . . the amounts of the premiums and out-of-pocket expenses for school employee health benefits that shall be borne by school employers and by participating employees." 16 V.S.A. § 2102 (a); and "whether school employers shall establish a health reimbursement arrangement, a health savings account, both, or neither, for their participating employees.". 16 V.S.A. § 2103(b)(1). The composition of the Commission is defined in 16 V.S.A. § 2102 (b):

> (1) The Commission shall have 10 members, of whom five shall be representatives of school employees and five shall be representatives of school employers.
> (2) (A) The representatives of school employees shall be appointed as follows:
> (i) four members appointed by the labor organization representing the greatest number of teachers, administrators, and municipal school employees in this State; and
> (ii) one member appointed by the labor organization representing the second-greatest number of teachers, administrators, and municipal school employees in this State.
> (B) The five representatives of school employers shall be appointed by the organization representing the majority of the public school boards in this State.

The separate bargaining model and different representation of parties in Chapter 61 negotiations compared to collective bargaining negotiations under the Teachers Act and

Municipal Act supports a conclusion that Municipal Act and Teachers Act provisions have no bearing on Chapter 61 negotiations. Other statutory provisions that inform the question of whether the Board has jurisdiction in this matter are the provisions of the Municipal Act and the Teachers Act addressing the negotiation of health benefits. Section 1725((a)(2)A) of the Municipal Act, as amended effective January 1, 2020, and that applies to all collective bargaining agreements between a supervisory union or school district and school employees that take effect on or after that date, states:

> For the purpose of collective bargaining related to municipal school employees, "wages, hours and conditions of employment" shall not include health care benefits or coverage other than stand-alone vision and dental benefits. Health care benefits and coverage, excluding stand-alone vision and health benefits but including health reimbursement arrangements and health savings accounts, shall not be subject to collective bargaining by municipal school employees pursuant to this chapter, but shall be determined pursuant to 16 V.S.A. chapter 61.

Similarly, Section 2004(b) of the Labor Relations for Teachers Act, as amended effective January 1, 2020, and that applies to all collective bargaining agreements between a supervisory union or school district and school employees that take effect on or after that date, states:

> As used in this section, the terms "salary" and "related economic conditions of employment" shall not include health care benefits or coverage other than stand-alone vision and dental benefits. Health care benefits and coverage, excluding stand-alone vision and health benefits but including health reimbursement arrangements and health savings accounts, shall not be subject to collective bargaining by municipal school employees pursuant to this chapter, but shall be determined pursuant to 16 V.S.A. chapter 61.

Thus, the negotiation of health benefits for school employees at issue in the case before us are explicitly removed from collective bargaining negotiations under the Municipal Act and the Teachers Act. Given this legislative directive, the conclusion that Municipal Act and Teachers Act provisions have no bearing on Chapter 61 negotiations is reinforced.

In sum, there is no valid basis for the assertion of the VSBA and Representatives of School Employers that the Labor Relations Board has jurisdiction over the unfair labor practice charge filed in this matter pursuant to the Vermont Labor Relations for Teachers Act, the Vermont Municipal Employee Relations Act, and Chapter 61 of Title 16. The Legislature has not conferred jurisdiction on the Board to adjudicate unfair labor practice charges concerning negotiations conducted under Chapter 61 of Title 16. Thus, we are without jurisdiction to act on the unfair labor practice charge in this matter.

Based on the foregoing reasons, it is ordered that the unfair labor practice charge filed by the Vermont School Boards Association and Representatives of School Employers on the Commission on Public School Employee Health Benefits is dismissed.

Dated this 9th day of May, 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Robert Greemore

Robert Greemore

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek

/s/ Roger A. Donegan

Roger A. Donegan