

VERMONT LABOR RELATIONS BOARD

WOODSTOCK UNION HIGH SCHOOL)
TEACHERS' ASSOCIATION)

v.)

DOCKET NO. 78-94R)

WOODSTOCK UNION HIGH SCHOOL)
BOARD OF DIRECTORS)

MEMORANDUM OPINION AND ORDER ON EMPLOYER'S
MOTION TO DISMISS

Memorandum Opinion

The unfair labor practice charge brought by the Woodstock Union High School Teachers' Organization (hereinafter the "Teachers' Organization") against the Woodstock Union High School Board of Directors (hereinafter the "School Board") was filed concurrently with the unfair labor practice charge brought in Chester Education Association case, Docket No. 78-95R. In both cases the union charged the employer with violating 21 V.S.A. §1726(a)(1) and (a)(5) by unilaterally adopting interim policies which changed the conditions of employment after the expiration of a contract and while negotiating a successor agreement with the union.

The evidence heard in this case on October 26, 1978 established a factual pattern which is similar to that in the Chester case: Impasse had not been declared when the policies were adopted; fact-finding under 16 V.S.A. §2007 had not been invoked; the policies were adopted at school board meetings pursuant to 16 V.S.A. §563; the effect of the policies was to change certain personnel policies, the grievance procedure and to freeze wages

all of which are mandatory bargaining subjects.

In light of the similarity of the factual patterns in both cases and in view of our decision in the Chester case, we are to believe that an unfair labor practice occurred in the instant case.

The parties in this case have, however, reached agreement on a successor contract. There has, as a result, been some suggestion of mootness. In our view the case is not moot based on the Supreme Court's opinion in N.L.R.B. v. Katz 369 U.S. 736 82 S.Ct. 1107, 8 L.Ed 2d 230, (1962) (See footnote 16, 82 S.Ct. at 1114). The Vermont Supreme Court, however, ruled in N.C. Education Association v. Brighton School 135 Vt 451 (1978), that an appeal of an unfair labor practice charge brought by the school board was moot because the parties had reached agreement on a new contract in the interim.

In the Chester case we ordered that the School Board pay the teachers the monetary difference between the amounts they would have received had their increments not been unilaterally withheld, and the amounts they were in fact paid since the commencement of the 1978-79 school year. While we know that the parties in the instant case have reached agreement we have no information as to the provisions in the new contract as they relate to the teachers' salaries between September and the signing of the new agreement. If the new agreement did not provide for the incremental back pay, then the possibility may exist that the teachers have been deprived of a benefit to which they may have been entitled if we had found that an unfair labor practice had been

committed.

The employer's motion to dismiss, however raises a technical issue which may affect the validity of any order we may issue in this case. Unlike the Chester case and the Mt. Anthony case (Docket No. 78-96R), there was no stipulation in this case to treat the charge brought by the Association as a complaint brought by this Board for the purposes of the hearing. It is therefore necessary because of this technical defect, for us to grant the employer's motion to dismiss.

In light of the views expressed in this memorandum opinion, however, if the union be so advised as to present this Board with another unfair labor practice charge in this case, this Board is of the opinion that probable cause exists to issue a complaint in the name of the Board and to hold a hearing promptly thereon.

ORDER

For the foregoing reasons the Woodstock Union High School Board of Directors' Motion to Dismiss is granted and the unfair labor practice charge brought by the Teachers' Organization is hereby ORDERED dismissed and it is DISMISSED.

Dated this 5th day of December, 1978 at Montpelier, Vermont.

Vermont Labor Relations Board

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.

NOTE: Mr. Brown did not sit on or participate in this case.