

STATE OF VERMONT
LABOR RELATIONS BOARD

In the matter of:

AIDES ASSOCIATION OF THE BURLINGTON
SCHOOL DISTRICT

v.

BURLINGTON BOARD OF SCHOOL
COMMISSIONERS, LANSING K. REINHOLZ,
SUPERINTENDANT OF SCHOOLS, LUTHER
TABOR, DIRECTOR OF VOCATIONAL
EDUCATION, THOMAS GIBSON, CO-
ORDINATOR, CAREER DEVELOPMENT
PROGRAM

Docket No. 78-9R

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter is an unfair labor practice complaint brought before the Board on October 6, 1977, by the AIDES Association of the Burlington School District (the "Union"). The petitioner charges that the respondents have committed an unfair labor practice in violation of 21 V.S.A. § § 1726 (a) (1) and (3) because the school district refused to rehire Charles Campbell. The Union alleged that Mr. Campbell, a member of the Union and officer and the chairperson of the Union's negotiating team, was not rehired to fill vacancies for which he was qualified and made application because the school district was discriminating against Mr. Campbell because of his Union activities.

For the reasons stated below, the Board has decided to dismiss the complaint.

Findings of Fact.

1. The AIDES Association of the Burlington School District is the certified collective bargaining agent for the teachers aides of the school district ("District").

2. Mr. Charles Campbell is a member and officer of the Union and chairperson of the Union's negotiating team.

3. Mr. Campbell was employed by the district as a vocational landscaping aide from January 26, 1976, until January 14, 1977, when he was transferred to the position of Vocational Bus Driver. Mr. Campbell had applied for the bus driver position before his transfer.

4. At the time Mr. Campbell applied for and accepted the transfer to his bus driver position, he was aware that he was removing himself from the bargaining unit for which the petitioner is the certified representative and was also aware that the bus driver position was not permanent.

5. The position of Vocational Bus Driver was eliminated by the District's Board of School Commissioners on May 5, 1977. The decision to eliminate this position was made in the course of the Board's efforts to reduce its budget by \$366,900.00.

6. The District's Superintendent was directed by the Board to recommend budget cuts sufficient to reduce the District's budget by \$366,900.00. The Superintendent recommended the elimination of the position of Vocational Bus Driver as a part of his budget reduction efforts. He made this recommendation because a large part of the position's responsibility involved transportation of students to participate in an aviation mechanics program which would not be continued during the upcoming year.

7. At the beginning of the 1977-1978 school year there were over thirty vacancies existing in the District for aides. Mr. Campbell applied for several of these openings for which he met the published qualifications. He was given only one job interview for any of these positions and was not hired to fill any position.

8. Commencing in January, 1977, Campbell, as a chairperson of the AIDES negotiating team began gathering information regarding the School District aides from administrative personnel of the District. In the course of this effort, Mr. Campbell sought to gather information which was wide-ranging and comprehensive.

9. On March 29, 1977, Mr. Campbell was directed in writing by Superintendent Rainholz to make all future requests for information in writing. On April 14, 1977, Campbell was directed in writing by the Superintendent not to telephone the Superintendent's office pertaining to his Union activities.

10. On April 29, 1977, Mr. Campbell was suspended without pay from his employment by Thomas B. Gibson, Career Development Co-ordinator for the District for the reason that he placed a telephone call to the office of the Superintendent of the District to inquire about Union business during his normal working hours. Mr. Campbell appealed his suspension to the Superintendent who decided on May 4, 1977, to suspend Mr. Campbell for two days without pay. This determination was further appealed and on May 18, 1977, Mr. Campbell was advised that the two-day suspension was rescinded, that he was reinstated with pay and that his file was purged of any reference to the suspension.

11. In addition to these conflicts regarding Mr. Campbell's Union activities he was involved in disputes with his supervisors and co-workers relating to numerous matters not connected to Mr. Campbell's efforts in behalf of the Union. For example, Mr. Campbell made excessive demands about the condition of the buses assigned to him. Mr. Campbell was advised by Luther Tabor, his immediate

supervisor, on March 9, 1977, that his behavior was not conducive to the "team effort" needed for successful operation of the School's business and that his contentious behavior, if continued, would result in his supervisor's recommendation of appropriate disciplinary action.

12. There was no direct evidence that the District's refusal to rehire Mr. Campbell was based on his Union activities.

Conclusions of Law and Opinion.

13. The petitioner has the burden of proof by a preponderance of evidence of the unfair labor charge it has made. Simply stated, the Union has the burden of proving that failure of the District to rehire Mr. Campbell was a wrongful response to Mr. Campbell's Union activities.

14. The record is replete with evidence of harassment of Mr. Campbell⁴ the District. It is also replete with evidence of harassment by Mr. Campbell of his superiors and co-workers in the District.

15. The question which must be determined in this matter is whether the harassment of Mr. Campbell by the District was due to his Union activities or whether it was due to some other, lawful reason.

16. In resolving this question, the Board finds it suspicious, to say the least, that Mr. Campbell was interviewed for only one of over thirty positions as a aide for which he was qualified. This suspicion is heightened by the fact that the attitude of the District's administrators toward Mr. Campbell was shaped, at least in part, by his zealous efforts carried on in the name of the Union.

17. The Board recognizes that it is always difficult to establish motivation and thereby to determine that unfavorable treatment of an employee is directly related to the employee's Union affiliations. Absent the compelling showing of another explanation for employer's discrimination against an employee,

a Board would normally find in a situation such as that presented by this case that an unfair labor practice had been proven. In the particular circumstances of this case, however, the Board concludes from all of the evidence that an unfair labor practice has not been committed. The Board concludes there was sufficient evidence of personal friction between the petitioner and School officials to establish to the Board's satisfaction that the underlying cause of the decision not to rehire Mr. Campbell pertains to his personal qualities rather than to his Union affiliation.

18. The Board finds the question to be very close. It wishes to make certain that the District does not interpret this decision in any manner to be an endorsement by the Board of its restrictions on gathering of information necessary for Union negotiations. Indeed, but for the compelling evidence of annoying personal traits exhibits by Mr. Campbell, the Board's decision would have been different than it is.

19. Giving full consideration to all of the evidence, however, the Board concludes that Mr. Campbell annoyed his co-workers, his immediate supervisor, and ultimately the Superintendent of the District. Such annoyance was reflected in the correspondence between the Superintendent and Mr. Campbell on matters including responses to Mr. Campbell's request for information in connection with the Union negotiations. However, the Board concludes that the Union has failed to prove that it was the Union activities rather than the personal aggravations which were the motivating factors in the District's decision not to rehire Mr. Campbell.

ORDER.

For the reasons stated above it is ORDERED that the unfair labor practice complaint of the petitioner be dismissed.

DATED this 30th day of June, 1978.

VERMONT LABOR RELATIONS BOARD


John S. Burgess, Chairman


Robert Brown


William Keadley