VERMONT LABOR RELATIONS BOARD

SOUTHWESTERN VERMONT
EDUCATION ASSOCIATION

v. DOCKET NO. 78-96R

MT. ANTHONY UNION SCHOOL
BOARD

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On September 12, 1978 the Southwestern Vermont Education Association filed an unfair labor practice charge with the Vermont Labor Relations Board against the Mt. Anthony Union School Board. The charge alleged that the Mt. Anthony Union School Board had violated the provisions of Title 21, V.S.A. §1726 (a)(1) and (a)(5) and commited an unfair labor practice by unilaterally implementing interim operational board policies while in the process of collective bargaining.

The matter came for a hearing before the Vermont Labor Relations Board on Thursday, October 26, 1978 in Montpelier, Vermont. Chairman Kimberly Cheney and Members William G. Kemsley, Sr. and Robert H. Brown were present. The Association was represented by Charles Ochmanski, Executive Director of the Vermont Education Association. The School Board was represented by John H. Williams, II, Attorney.

At the commencement of the hearing the parties stipulated that the charge brought by the Association would be treated as a complaint brought in the name of the Board pursuant to the provisions of 21 V.S.A. § 1727(a). At the close of the hearing the Board ordered briefs and requests for findings to

be submitted no later than October 27, 1978.

FINDINGS OF FACT

1. Southwestern Vermont Education Association is the exclusive bargaining representative of the teachers of Mt. Anthony Union High School District No. 14.

2. On March 22, 1976 the Southwestern Vermont Education Association and the Mt. Anthony Union High School District Board of School Directors entered into a collective bargaining agreement for the years 1976 to 1978 (Joint Exhibit No. 1).

3. The master agreement referred to in Paragraph 2 above states in Article 15, entitled "Duration of Agreement", that: "This agreement shall begin September 1, 1976 and continue in full force and effect until September 1, 1978." (Joint Exhibit No. 1).

4. On December 19, 1977 the Association and the School Board began negotiation sessions for a new agreement. Since that time they have met to negotiate on several occasions throughout the 1978 school year, the last year of the old agreement.

5. As of the expiration date of the old agreement, September 1, 1978, no new agreement had been reached but negotiations were continuing.

6. On May 12, 1978 the Superintendent of Schools sent each teacher at the Mt. Anthony Union High School a letter confirming their employment for the 1978-79 school year. In that letter

he stated, "all the terms and conditions of employment will be governed by the new master agreement" (Joint Exhibit No. 2).

7. August 28, 1978 the School Board authorized continuation of salaries and certain other employee benefits commencing September 1 (Joint Exhibit No. 6).

8. The continuation of benefits authorized by the School Board on August 28, 1978 was set forth in an August 31, 1978 letter to all teachers. The letter stated that teachers who had been employed by the district last year, would receive a salary effective September 1 which would be that teacher's salary last year, increased when appropriate for an additional year of teaching experience and additional academic credits earned during the past year. The letter further provided that teachers would be entitled to:

> 1. Ten days of sick leave this coming year with pay if this is the teacher's first or second year with the district, and 15 days of such sick leave if the teacher had been with the district for more than two years. Accumulated sick leave would be honored.
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> 2. Membership in Blue Cross-Blue Shield Plan J with Major Medical Rider, each teacher who enrolls in the family plan to reimburse the district $100 for each year and each teacher who enrolls in the single person plan to reimburse the district $50 for the year (reimbursements to be by payroll deduction).
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> 3. Five thousand dollars group life insurance also including accidental death and dismemberment coverage, if the teacher is eligible under the rules of the group plan (Joint Exhibit No. 3).

9. The reference in the August 31, 1978 letter to increasing of a teacher's salary is what is usually referred to as "movement on step". This salary provision authorized by the School Board is in accordance with Appendix B of the old master contract.

10. The provision in the August 31, 1978 letter regarding sick leave is in all substantive respects the same as Article 12 Section 1B of the old master agreement.

11. The provision of the August 31, 1978 letter regarding medical insurance is in all substantive respects the same as Article 14, Section 5 of the old master agreement.

12. The provision in the August 31, 1978 letter regarding group life insurance is in all substantive respects the same as Article 14, Section 10 of the old master agreement.

13. There are many subjects covered by the old master agreement that are not dealt with one way or another by the August 31, 1978 letter except in the following language:

> "As soon as we reach a new master agreement with the Association and it is signed by both parties, all terms and conditions of employment for our teachers will be governed by the new master agreement. While we are without any agreement the Board will resolve individual employee relation matters in accordance with guidelines which the Board will establish as circumstances may require and in the best interest of the district." (Exhibit No. 3)

14. On October 9, 1978 the School Board in a public meeting adopted the following guidelines for the Board's negotiating committee:

a) A teacher or the Association on behalf of a teacher will have the right to file a grievance under the new master agreement regarding any

action that would be proper subject for grievance under that new master agreement, not withstanding that the action took place between September 1, 1978 and the date on which the new master agreement is signed, and

b) the new master agreement, once signed, will continue in effect until a subsequent master agreement is reached.

15. Mount Anthony High School has been on split session since last year. The old master agreement does not cover this feature of the Mt. Anthony school day one way or another.

16. The coordinator system referred to in the old master agreement for evaluation of teachers was replaced last year by a system which the old master agreement does not cover one way or another.

17. To date neither party has declared impasse and no new agreement has been finalized.

OPINION

This complaint was brought concurrently with the complaint brought by the Chester Education Association against the Chester-Andover School Board, Docket No. 78-95R. The issue as framed by the teachers' organization is the same in both cases:

1. Does a school district's unilateral adoption of interim operational policies which change existing terms and conditions of employment before full compliance with Chapter 57, Title 16 constitute an unfair labor practice; and

2. Does a school district's unilateral implementation of such policies, in a manner which circumvents the recognized collective bargaining agent, constitute an unfair labor practice?

In the Chester-Andover case we found that the school board had committed an unfair labor practice by adopting interim policies which changed the terms and conditions of employment after the expiration of the old agreement while still in the process of bargaining with the Association for a successor contract. In that case we ruled that 16 V.S.A. §563 does not give a school board statutory authority to unilaterally impose changes in the conditions of employment prior to complying with the statutory procedures contained in the Labor Relations Act for Teachers. Under 16 V.S.A. §2008 a school board may not impose final decisions relating to mandatory bargaining subjects prior to declaring impasse and completing the fact-finding process under 16 V.S.A. §2007.

In our opinion in the Chester case we said that in order to find an unfair labor practice, it was necessary to determine whether the actions of the school board changed terms of employment which were mandatory subjects of bargaining under 16 V.S.A. §2004. In that case, we found that the interim policies adopted by the school board had changed personel leave policy, the grievance procedure and had frozen wages and that the policies had therefore changed the terms of employment. Looking at the facts

in this case, we are unable to reach a similar finding.

While the situations in the Mt. Anthony case is similar to the situation in the Chester case in that the parties have been bargaining for a successor agreement for over a year and have not declared impasse or invoked fact-finding, there is no evidence in the Mt. Anthony case that the school board changed any of the terms of employment which were mandatory bargaining issues while they were in the process of negotiating with the Association. On the contrary, the letter to the teachers from the Superintendent dated August 31, 1978 preserved in substance the provisions of the old contract relating to wages, sick leave, medical insurance and life insurance. While the letter did not adopt all of the provisions of the old contract relating to conditions of employment, there is no showing by the Association that any of these conditions were in fact changed once the school year began in September.

The letter did state that the Board would resolve individual employee relation matters "in accordance with guidelines which the Board will establish as circumstances may require". Assuming that the school board was referring in this paragraph to the grievance procedure, there is still no showing that any guidelines were established or that these guidelines would have changed the old grievance procedure in any way.

Finally there was some discussion at the hearing and in the employer's brief relating to changes instituted by the Board concerning teacher evaluations and split sessions. There is no

mention of these changes, however, in the August 31 letter setting forth the school board's interim policies. Furthermore, both of these changes were instituted last year while the old agreement was still in effect. They are not covered by the old master agreement and while they may have changed the terms and conditions of employment as set forth in the old agreement, the Association could have resolved the issue through the grievance procedure at the time the changes were instituted last year. (c.f. Burlington Education Association v. Burlington Board of School Commissioners Docket No. 78-48R, 1978)

An unfair labor practice charge alleging a refusal to bargain in violation of 21 V.S.A. §1726(a)(5) can only be supported by evidence of subjective bad faith or a per se violation such as unilaterally changing terms of employment while continuing to bargain. Lacking any evidence in this case of either subjective bad faith or a per se violation, we find that no unfair labor practice was committed by the Mt. Anthony School Board.

The Association has also alleged that the School Board circumvented the Association by implementing unilateral changes in violation of 21 V.S.A. §1726(a)(1). Since there is no finding that the School Board's letter to the teachers of August 31 did in fact change the conditions of employment, this charge is also unsupported by the evidence.

In conclusion, unlike the Chester School Board, the Mt. Anthony School Board did not take a contradictory posture by on the one hand continuing to negotiate and on the other imposing unilateral changes. In their desire to avoid the unpleasant

repercussions of dictatorial actions under §2008, not only did they not resort to the subterfuge of §563, but they preserved the status quo on all essential issues.

In their brief the Mt. Anthony School Board indicates some naivety about labor law on their part:

> "In its innocence (not knowing much about labor law), the School Board merely dealt with what required action by way of no change continuation of necessary things so school could open"

In our view, their actions reflect a desire to deal fairly with the union and their employees which in the final analysis is not only legally correct but consonant with good human relations.

ORDER

The unfair labor practice charge brought by the Southwestern Vermont Education Association against the Mt Anthony School Board is hereby ORDERED dismissed and it is DISMISSED.

Dated this 21 day of December, 1978 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

Robert H. Brown