



October 14, 2016

Filed via hand-delivery on October 14, 2016

Timothy J. Noonan, Esq.
Executive Director
State of Vermont Labor Relations Board
13 Baldwin Street
Montpelier, Vermont 05602

RE: Burlington Education Association (Petitioner) and
Burlington School District Board of Directors (Respondent)

Dear Mr. Noonan:

Please find enclosed the original and four (4) copies of the Petitioner's Unfair Labor Practice Charge in the above-referenced matter. Copies have been forwarded this day to the Respondent's attorney, Joseph McNeil.

If you have any questions, please do not hesitate to contact me. Thank you, in advance, for your attention to this matter.

Sincerely,

Rebecca P. McBroom, Esq.
Legal Counsel, Vermont-NEA

cc via USPS mail: Joseph McNeil, Esq., McNeil, Leddy & Sheahan, PC
Mark Porter - Chair, Burlington School District Board of Directors
Liz Curry - Clerk, Burlington School District Board of Directors
Yaw Obeng - Superintendent, Burlington School District

VERMONT LABOR RELATIONS BOARD

BURLINGTON EDUCATION)	
ASSOCIATION,)	
Affiliated with Vermont-NEA,)	
Petitioner,)	
)	Case No.: _____
)	
v.)	Charge of an
)	Unfair Labor Practice
BURLINGTON BOARD OF)	
SCHOOL COMMISSIONERS,)	
Respondent.)	
)	

INTRODUCTION

The Burlington Education Association (“BEA”) charges the Burlington Board of School Commissioners (“BSD” or “Employer”) with violations of 21 V.S.A. §§ 1726(a)(1) and (5), and of 16 V.S.A. § 2008 when it failed to bargain in good faith with the BEA.

THE PARTIES

1. The petitioner, Burlington Education Association, is a labor organization affiliated with Vermont-NEA and the National Education Association (hereinafter the “Association” or “BEA”). The Association is the exclusive bargaining agent of the teachers employed by the BSD, pursuant to 16 V.S.A. § 1991(a). The Association’s address is c/o Vermont-NEA, 10 Wheelock Street, Montpelier, Vermont 05602-3737.

2. The Respondent, Burlington Board of School Commissioners, is the employer of the teachers at the Burlington Schools, as defined by 16 V.S.A. § 1981(3) & (4). The

Burlington School District's address is 150 Colchester Avenue, Burlington, Vermont
05401.

JURISDICTION

3. The Vermont Labor Relations Board has jurisdiction over this matter pursuant to
21 V.S.A. §§ 1727 and 1735.

FACTS

4. The parties are signatories to a collective bargaining agreement that expired August 31, 2016.

5. In June 2015, BSD's attorney Joe McNeil, Esq. and Interim BSD Superintendent Howard Smith requested that the Association meet with them over the summer of 2015 with the goal of reaching an expedited settlement for a simple one-year extension of the 2013-2016 agreement for the 2016-2017 school year. BSD stated that the only topics of conversation would be compensation and related economic factors, and the formation of labor-management study committees. BSD stated that health insurance would be expressly excluded from these conversations. BSD suggested that if the parties were unable to reach agreement by September 1, 2015, they would proceed with regular negotiations. The Association agreed with this arrangement, and engaged in at least three informal meetings with McNeil and Smith during the Summer of 2015.

6. By September 1, 2015, the parties' informal discussions had not resulted in an agreement. Therefore, the parties began to formally bargain for a successor agreement. At the onset of negotiations, the Association requested various information, including: the number of teachers who had retired the previous school year; whether the retirees had been replaced; a list of teachers who replaced the retired teachers; lists related to staff seniority; information related to BSD's local and state revenue; and federal sources of revenue for fiscal years 2012 through 2016. Most of these inquiries went unanswered, including information concerning retirees, teacher lists, and details related to BSD's revenue sources.

7. The parties agreed to ground rules on October 28, 2015, whereby they were to limit themselves to five (5) financial bargaining proposals. The parties also agreed (among other items) to exchange all financial proposals at a date to be determined.

8. On December 9, 2015, the parties exchanged financial proposals. The BSD's original proposals included: (1) a salary schedule with a proposal to achieve the "middle of the middle" status as compared with other FY 17 Chittenden County teachers; (2) the elimination of the "middle of the middle" language; (3) a provision permitting the superintendent to determine starting salaries for new teachers based on the "qualifications" rather than years of experience; (4) cuts to column movement; (5) a provision requiring district approval for courses taken in anticipation of credits contributing towards a future compensation increase; (6) a requirement that tuition reimbursement only be provided for participation in courses and/or workshops that the District required a teacher to attend; (6) an increase in employee contribution for health insurance from 15% to 19% of premium; (7) cuts to personal days; and (8) cuts to sick leave accrual.

9. On December 15, 2015, BEA reiterated its information requests to BSD and indicated that it would not be able to offer counterproposals to BSD's December 9th proposals without the requested data.

10. On January 20, 2016, just twelve (12) days before the parties were scheduled to reach impasse pursuant to the ground rules, BSD finally provided some information to BEA concerning total salaries, benefits and supply costs per department. The information did not provide the level of detail that BEA had requested, or allow it to adequately prepare counterproposals.

11. The parties reached impasse on February 1, 2016, after participating in six bargaining sessions. During these bargaining sessions, only Interim BSD Superintendent Howard Smith and Respondent's attorney Joe McNeil, Esq. appeared for the School Board. No Burlington School Board members appeared at any of the pre-impasse bargaining sessions.

12. On March 23, 2016, the parties met for a mediation session with mediator, Annie Rutsky from the Federal Mediation and Conciliation Services. The mediation session lasted less than four (4) hours and the parties made no progress toward agreement.

13. On June 30, 2016, John Cochran conducted a fact-finding hearing with the parties and provided them with an opportunity to present evidence on the remaining issues in dispute. According to Mr. Cochran, the issues in dispute included: total compensation, including salary and benefits; the number of authorized personal days; the elementary teacher work day; and the high school teacher work day.

14. During the June 30, 2016 fact-finding hearing, the BSD presented two options. BSD referred to the first option as an offer and the second option as an "alternative suggestion" that was "not to be taken as an official offer unless accepted by the Association." The first option included: the elimination of the "middle of the middle contract language"; a 1.8% salary increase; the ability for the District to place a newly hired teacher on the salary grid at a place that reflected the "market value" of the teacher's qualifications; new money should be applied as a flat dollar amount across the board; and that reduction of personal days from four (4) to three (3) annually. The second option or "alternative suggestion that was not an offer" included: implementing a salary grid with a 2.5% increase in new money with no step movement; limiting tuition reimbursements to

graduate courses or workshops that the District requests its teachers to take, increasing the teachers' contribution rate for health insurance from 15% to 19% of premium; and eliminating the payout of accumulated unused sick leave upon separation.

15. At the June 30, 2016 fact-finding hearing, the Association made one proposal: a new money salary increase of 5.29%, which the Association believed was required to meet the "middle of the middle" contractual provision.

16. On August 15, 2016, Fact Finder John Cochran issued his report. Cochran found that, first and foremost, he would not make any recommendation about BSD's "alternative suggestion that was not an offer" because the parties had never had an opportunity to negotiate over it. Cochran, therefore, limited his recommendation to the BSD's only "offer" and the Association's sole proposal. Cochran recommended a 3.25% increase in new money, suspending the "middle of the middle" language until negotiations for the successor agreement, and not reducing personal days.

17. On August 17, September 12, and September 14, 2016, the parties engaged in further mediation sessions with Mediator Ira Lobel.

18. On September 14, 2016 BSD provided the BEA with its "last and best offer" but did not indicate that it was its final offer. It turned out that this was its final offer, and it included a new money increase of 2.75%; a step freeze for the 2016-2017 contract year; an increase in teacher health care contribution from 15% to 16% of premium effective January 1, 2017; a limit to BSD's financial exposure for tuition reimbursement to \$80,000; a requirement for advance approval for reimbursement; a provision that employees who receive tuition reimbursement and separate from employment with the BSD must pay back a percentage of that reimbursement; the deletion of the "middle-of-the-middle" language; a

requirement that any request for personal leave after Memorial Day or on any day that is pre-scheduled as a district wide in-service day is subject to the advance written approval of the superintendent; that new employees will not be eligible for any payment for accumulated sick leave benefits upon separation from employment; and that initial step placement of a new employee be at the discretion of the Superintendent. At this meeting, the BEA indicated it would accept the factfinder's report. The Employer indicated that it needed to discuss the BEA's proposal with the rest of the Burlington School Board. BSD never stated nor intimated that negotiations were over or that it planned to impose finality at this time. The parties ended the mediation session at 5 p.m. that day.

19. On the evening of September 14, 2016, just hours after its mediation session with the Association ended, the Burlington Board of School Commissioners imposed working conditions on its teachers. The terms of the imposition were similar to BSD's last offer with the exception, however of a new condition that the grievance procedure would not apply to denied tuition reimbursement requests. The Employer never raised this condition during negotiations.

20. On September 19, September 23, September 26, and October 1 the BEA made requests for information from the BSD for: (1) the percentage of BSD's operating budget required to fulfill the cost of funding the fact-finder's recommended 3.25% salary increase; and (2) the percentage required to fund the BEA's "middle of the middle" proposal. To this date, the BSD has provided none of this information.

21. On September 28, 2016, the BSD indicated to the Association that it was willing to recommence negotiations with the Association, but only on condition that the Association agree to the 2.75% increase in new money that it had imposed on September 14, 2016.

CHARGE I: Engagement in Regressive Bargaining in Order to Frustrate the Possibility of Reaching an Agreement

22. Paragraphs 1 – 21 are incorporated herein by reference.

23. Pursuant to 21 V.S.A. § 1726(a)(1) and (5), Respondent committed an unfair labor practice by interfering with, restraining and coercing employees in the exercise of their rights and refusing to bargain in good faith by engaging in regressive bargaining for the purpose of frustrating the possibility of an agreement.

24. The Respondent initially asserted that it was only seeking a one-year extension of the current agreement and requested to meet with the Association in expedited negotiations to accomplish this one-year rollover. The Respondent promised that these expedited sessions would focus on economics and would specifically not include any changes to health care benefits and other provisions of the agreement. However, when the parties were unable to reach agreement, the BSD proposed significant rollbacks to the current agreement, including: a salary increase of 1.8%, which failed to fulfill the “middle of the middle” language; elimination of that language; a step freeze; a 4% increase to employee premium contribution for health care; drastic cuts to tuition reimbursement; cuts to personal leave; cuts to sick leave; and elimination of other essential elements of the agreement. The Employer thereby bargained in bad faith and engaged in regressive bargaining by moving from its original position of a one-year rollover, to substantial cuts to employee wages, benefits and working conditions.

25. Although the ground rules indicated that the parties would limit themselves to five (5) new proposals each, the Employer proposed at least eight (8) bargaining proposals, several of them with multiple parts. At impasse, the Employer had failed to move off most

of its original proposals, and made some of the original proposals more regressive. For example, in its initial proposals, the Employer had agreed to achieve the “middle of the middle” status for its teachers; at fact-finding, however, it stated that this was not possible. The employer also stated that tuition reimbursements must be approved by the superintendent; at imposition, however, it went further by limiting tuition reimbursement for the entire teaching staff to a pool of \$80,000. In short, the Employer engaged in regressive, bad faith bargaining by steadily proposing harsher and more unacceptable offers throughout the bargaining process.

26. At fact-finding, the Employer presented two options. *See Paragraph 14.*

Introducing a new salary grid for the first time at fact-finding was bad faith bargaining and frustrated the possibility of reaching agreement.

27. Furthermore, the fact finder was not able to make a recommendation on this “suggestion” because the BSD had not provided the BEA any opportunity to bargain over this “suggestion.” However, the BSD’s resulting offers and final imposition included all of the elements of the “suggestion” that were not submitted as a formal offer, or even issues in dispute at the fact-finding hearing on June 30, 2016. As a result of the Employer’s failure to indicate all matters in dispute at the fact-finding hearing, rather than being closer together after this hearing, they were further apart. This is the very antithesis of good faith bargaining.

28. Furthermore, in June 2015, the employer started negotiations with one (1) offer: a rollover contract. In December 2015, the employer made eight (8) bargaining proposals. On June 30, 2016, there were four (4) issues in dispute at fact finding. However, on September 14, 2016, the employer imposed eleven (11) new conditions of employment.

Many of the imposed conditions of employment were never raised, let alone analyzed by the fact finder at the June 30, 2016 hearing. This constitutes regressive, bad faith bargaining by the BSD.

CHARGE II: Failure to Provide Information Requested by the Association

29. Paragraphs 1 – 21 are incorporated herein by reference.

30. Pursuant to 21 V.S.A. § 1726(a)(5), the Respondent committed an unfair labor practice by failing to respond to some information requests altogether, and by failing to respond to other information requests in a timely fashion. Employers must respond to information requests in a timely manner. *American Signature Inc.*, 334 NLRB 880, 885 (2001). Unreasonable delays in filling information requests is as much a violation of the duty to bargain in good faith as a refusal to furnish the information at all. *Id.* Throughout the pre-impasse process, the Association requested relevant information from the District. These requests included revenue and grant information, figures related to retirees, breakage data, and other budgetary figures. The BSD failed to respond to some of these requests in a timely fashion, and failed to respond to other requests at all. The Association has made further requests on multiple occasions post-imposition. To date, the Employer has not responded to any of these requests. The Employer's failure to respond at all to some requests and its untimely responses to others throughout the bargaining process constitutes failure to bargain in good faith.

CHARGE III: Failure to Fund the Contract

31. Paragraphs 1 – 21 are incorporated herein by reference.

32. Pursuant to 21 V.S.A. § 1726(a)(1) and (5), the BSD committed an unfair labor practice by interfering with, restraining and coercing employees in the exercise of their

rights and by refusing to bargain in good faith by failing to fund a 2016-2017 agreement. Based on the “middle-of-the-middle” language contained in the 2013-2016 agreement, the Employer was on notice for many years what it needed to fulfill its obligations for the successor agreement. The Employer failed its obligation to bargain in good faith by failing to analyze and budget for its pre-determined contract obligations.

CHARGE IV: Imposition of an Employment Policy Before Statutorily Permitted

33. Paragraphs 1 – 21 are incorporated herein by reference.

34. The Employer violated 16 V.S.A. § 2008, when it imposed finality on September 14, 2016. The factfinder’s report was issued on August 15, 2016 and the BSD’s imposed on the September 14, 2016. September 14 was the 30th day following issuance of the factfinder’s report. By law (21 V.S.A. § 1730(a), extended to teacher collective bargaining by *Green Mountain Board et. al. v. Chester Education Association*, 2 VLRB 90 (1979)), the Respondent could impose finality, if at all, only *after* 30 days. As a result, the respondent violated 16 V.S.A. § 2008 by purporting to impose finality previous to fulfilling all statutorily mandated impasse procedures.

CHARGE V: Conditioning of Bargaining in Order to Frustrate the Possibility of Reaching an Agreement

35. Paragraphs 1 – 21 are incorporated herein by reference.

36. Pursuant to 21 V.S.A § 1726(a)(5) Respondent committed an unfair labor practice in its September 28, 2016 letter to the Association where it conditioned future bargaining on the Association’s agreement to the Respondent’s imposed salary increase.

**CHARGE VI: The Imposition by the Employer Unlawfully differed from its
Final Offer in Negotiations**

37. Paragraphs 1 – 21 are incorporated herein by reference.

38. Pursuant to 21 V.S.A. § 1726(a)(5) and *Chittenden South Education Association, Hinesburg Unit v. Hinesburg School Board*, 8 VLRB 219 (1985), Respondent committed an unfair labor practice by deleting the grievance arbitration from a provision of the collective bargaining agreement in its imposition. Removing access to arbitration constitutes a substantial change in a significant condition of employment. *Id.* at 245. Furthermore, since this language was not raised during negotiations it was not a matter in dispute and therefore cannot be unilaterally imposed. *Id.*

WHEREFORE, the Association requests the following relief:

1. A declaration the Respondent's imposition of finality was unlawful.
2. A declaration that Respondent unlawfully bargained in bad faith.
3. A requirement that Respondent post copies of the Labor Relations Board's decision in all of the BSD schools in places commonly used for communications between it and its employees and the public.
4. An order directing the Respondents to bargain in good faith concerning the terms and conditions of employment.
5. An order directing Respondents to pay the Association's attorney's fees.

CONCLUSION

For the reasons stated above, the Association requests the Labor Relations Board to conduct a hearing on the merits of this charge, to conclude that the Respondents committed the unfair labor practices as charged, and to provide the relief requested.

Dated at Montpelier, Vermont, this 13th day of October 2016.

Burlington Education Association

By: Rebecca P. McBroom
Rebecca P. McBroom, Esq.
Legal Counsel
Vermont-NEA
10 Wheelock Street
Montpelier, Vermont 05602-3737
(802) 223-6375

State of Vermont County of Washington

In said county on the 13 day of October, 2016, personally appeared Rebecca McBroom who swore to the truth of the foregoing response and counter charge. Mary G. Hayes
Notary Public