

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

ANTHONY PARENTE AND
THE HAMDEN EDUCATION
ASSOCIATION

DECISION NO. 3974

-and-

MAY 17, 2004

VINCENT VIRGULTO

CASE NO. TUPP-22,263

A P P E A R A N C E S:

Attorney Ronald Cordilico
For Parente and the Association

Attorney John Anthony Radziunas
For the Complainant

DECISION AND DISMISSAL OF COMPLAINT

On February 5, 2001, Vincent Virgulto (the Complainant or Virgulto) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that Anthony Parente (Parente) and the Hamden Education Association (the Association) violated the School Board Teachers Negotiation Act (TNA or the Act) by breaching its duty of fair representation. Specifically, the Complainant alleges that the Association violated its bylaws during contract negotiations when it, *inter alia*, submitted an unratified stipulated award to an interest arbitration panel.

After the requisite preliminary steps had been taken, the matter was scheduled for a formal hearing before the Labor Board. On February 21, 2002, the Association filed a Motion Requesting the Right to Seek Reasonable Costs Including Attorney's Fees at the conclusion of the case. On February 27, 2002, the Association filed a Motion to Dismiss claiming the Complainant lacks standing to bring this complaint because he is a retiree. On March 22, 2002,

the Complainant filed an Objection to the Motion to Dismiss, claiming that at the time of the Association's alleged breach of its duty of fair representation he was a member in good standing and, therefore, has standing to file the instant complaint. By letter dated March 28, 2002 from the Labor Board's General Counsel the parties were notified that the Labor Board denied the Association's Motion to Dismiss. On April 5, 2002, the Association filed a Motion for Articulation. The Complainant did not respond to the Motion for Articulation. On August 16, 2002, the Labor Board issued its Articulation of Reasons for Denial of the Motion to Dismiss.

Subsequently, the parties came before the Labor Board for a hearing on September 12, 2002, April 1, 2003 and May 19, 2003. All parties were represented by counsel, allowed to present evidence, to examine and cross-examine witnesses, and to make argument. The various motions and responses described above were entered into the record. All parties filed post-hearing briefs, the last of which was received by the Labor Board on August 14, 2003. In its brief, the Association did not make a request for costs or reasonable attorney's fees. On the basis of the entire record before us, we make the following findings of fact and conclusions of law, and we dismiss the complaint.

FINDINGS OF FACT

1. The Association is an employee organization within the meaning of the Act and at all material times has represented a bargaining unit including teachers employed by the Hamden Board of Education (Board of Education).
2. At all material times Parente was the president of the Association.
3. At all material times the Complainant was a teacher in Hamden and was a member in good standing of the Association.
4. The Association Constitution (Ex. 11) provides, in relevant part:

ARTICLE VI OFFICERS

Section 1. The officers of this organization shall be a President, Vice President, Secretary and Treasurer.

ARTICLE VII EXECUTIVE BOARD AND ARBITRATION COMMITTEE

Section 2. Membership of the Executive Board shall consist of the officers and three members of the Representative Council elected by secret ballot.

ARTICLE VIII
REPRESENTATIVE COUNCIL

Section 1. The Representative Council shall consist of representation from each school plus four (4) Representatives-at-Large elected in accordance with procedures defined in the Bylaws. Each school/building shall have one representative, plus one for each additional twenty-five (25) members or major fraction thereof above the initial twenty-five (25). The officers shall serve as ex-officio members of the Representative Council.

5. The Association has established bylaws (Ex. 12) which state in relevant part:

ARTICLE VI
EXECUTIVE BOARD, ARBITRATION COMMITTEE,
NEGOTIATIONS TEAM

Section I The Executive Board Shall:

- A. Have the authority to speak and act for the Association between meetings of the Representative Council, formulate policies, and carry on the programs of the Association.
- B. Assist the Treasurer in the preparation of the annual budget.
- C. Perform such other functions as stipulated in the Constitution and these bylaws, and such other duties as are customarily assumed by the Executive Board of an Association.
- D. Submit any proposed contract changes to a vote of the entire membership with the exception of (1) changes affecting Article XVIII of the contract, and (2) any issue which is excluded by a two-thirds majority of the Executive Board and the Representative Council.
- E. Inform members, in writing, of all contract changes.

Section III The Negotiations Team

- A. The Chairperson(s) and Team members will be appointed by the President with the approval of the Representative Council. This Team will represent the HEA in negotiating a contract.

6. The Association and the Board of Education were parties to a collective bargaining agreement with effective dates of July 1, 1996 through June 30, 1999 (Ex. 21) that provided in relevant part:

Section 17.6 Benefits for Retirees

The Board shall pay Blue Cross-Blue Shield and major medical coverage for those teachers who retire with twenty (20) years of service in Hamden Public Schools. This coverage shall also be provided for the teacher's spouse and eligible dependents.... The retiree (retired employee) shall not contribute to the

cost of the "Plan" for either the retiree or any eligible dependents.

7. The Association appointed a Negotiations Team in the spring of 1998 for the successor contract. The committee consisted of eleven (11) members, six (6) of whom had twenty (20) or more years of service with the Board of Education, of whom three (3) had more than thirty (30) years of service with the Board of Education. (Ex. 18).

8. Parente was a member of the Negotiations Team.

9. In addition to the eleven-member Negotiations Team, Wanda Williams McCormick (McCormick), a Connecticut Education Association (CEA) staff representative, was the spokesperson for the Association in the contract negotiations.

10. On or about August 4, 1998, the Association and the Board of Education entered into negotiations for a successor contract to cover the period of July 1, 1999 through June 30, 2002.

11. Despite requests by its membership, the Association's Negotiations Team and Parente would not speak about contract negotiations because Parente claimed there were negotiation "ground rules" that prevented him from doing so. However, Parente did state that the Association was "going to give up medical benefits for retirees over my dead body."

12. On or about October 2, 1998 the Association and the Board of Education entered into mediation as required under the Act.

13. Unable to settle on contract language, on or about November 2, 1998 the Association and the Board of Education entered into binding arbitration pursuant to the Act.

14. The arbitration panel consisted of three members pursuant to the Act.

15. Eighty-two issues were submitted to the arbitrators for their determination. (Ex. 22).

16. The Board of Education proposed eliminating health care benefits for future retirees.

17. On or about November 16, 1998 the Association and the Board of Education submitted a stipulated award to the arbitration panel.

18. By memo dated November 17, 1998 (Ex. 10), Parente informed the Association membership that a package was submitted to an arbitration panel on November 16, 1998 to become a stipulated award and that the submission contained the following relevant contract changes:

1. The level of medical coverage of our current plan will be maintained, however the change in carrier language will be reactivated. The premium share of 3% will be increased to 6% in year one, 8% in year two and 10% in year three. The prescription co-pay will increase to \$5/\$10/\$3 for generic, brand name and mail order respectively. The benefit level will remain unlimited. The

office co-pay will increase from \$5 to \$10. This will also apply to retirees.

19. The panel issued its Award dated November 19, 1998 containing the contract provision described above. The contract also provides health care benefits for spouses and eligible dependents with the same deductible as retirees. (Ex. 13).
20. The Association never presented the proposed stipulation to its membership for a ratification vote.
21. As a result of the changes in the health care provisions, the Complainant had to choose between foregoing free lifetime medical health insurance by continuing to work as a teacher or retire.
22. The Complainant elected to retire.
23. Upon retirement, the Complainant was required to give up his positions as the head coach of the baseball team and as assistant coach with the football team.
24. During the contract negotiations, Parente met with the Negotiations Team and from time to time would report to the Representative Council regarding the status of the contract negotiations. (Ex. 20).
25. The Negotiations Team did not maintain records of its contract negotiation meetings or meetings with the Board of Education's representatives.

CONCLUSIONS OF LAW

1. An employer and a certified bargaining representative are obligated to bargain concerning wages, hours, and terms and conditions of employment with respect to the bargaining unit.
2. The manner in which the parties agree to negotiate a contract is normally a matter left to the discretion of the parties within the parameters of their statutory bargaining obligations.
3. A union breaches its duty of fair representation when its conduct toward a member is arbitrary, discriminatory, or in bad faith.
4. The complainant failed to establish that the Union breached its duty of fair representation by its actions during interest arbitration.

DISCUSSION

The Complainant alleges that the Association breached its duty of fair representation by violating its bylaws when it submitted to an arbitration panel an unratified stipulated award for the 1999 – 2002 collective bargaining agreement. The Complainant also claims that the

Association acted with bad faith, dishonesty, and hostility toward its members when the Association failed to keep its members informed of the positions of the parties during contract negotiations, failed to determine the concerns of its members, and failed to keep records of the negotiations.

The Association argues that it did not violate its bylaws and that, even if it did, that violation did not rise to the level of a breach of its duty of fair representation. The Association further contends that its actions during contract negotiations were not a breach of its duty of fair representation.

In this case, we find that even if the Association violated its bylaws, such violation alone did not constitute a prohibited practice in this case. We also find that the Association did not otherwise breach its duty of fair representation during contract negotiations.

Our case law concerning a union's duty of fair representation is well established:

[t]his Board has elaborated on the standards to which a Union must adhere in fulfilling its duty of fair representation. We have stated that a Union breaches its duty of fair representation only when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. Only when the Union's conduct is motivated by hostility, bad faith, or dishonesty does a prohibited practice exist.

(internal citations and quotations omitted) *Local 1565, Council 4, AFSCME, AFL-CIO (David Bishop)*, Decision No. 3510, (1997); *A.C.E.S. Education Association (Krajewski)*, Decision No. 3329 (1995). See *Vaca v. Sipes*, 386 U.S. 411, 87 S. Ct. 903 (1967). In determining if a union breaches its duty of fair representation when it makes a choice that adversely effects one member or class of members our case law states:

[i]nvariably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

(internal citations and quotations omitted) *University of Connecticut AAUP*, Decision No. 2714 (1989); *Board of Education, City of Ansonia*, Decision No. 1141 (1973). See, *Humphrey v. Moore*, 375 U.S. 335 (1964). Concerning contract negotiations, the Connecticut Supreme Court has similarly stated that “[i]f a union breached its duty of fair representation of unit members every time it made a concession, collective bargaining would be impossible.” (internal quotation marks omitted; internal cites omitted) *Labbe v. Pension Commission*, 239 Conn. 168, 194 (1996). In *Waterbury Firefighters Association, Local 1339 v. State Board of Labor Relations, et al.*, Dkt No. CV97 0570953 (May 6, 1998, McWeeny, J)(reversing *City of Waterbury*, Decision No 3496 (1997)), the Superior Court quoted the U.S. Supreme Court, stating:

We hold that the rule announced in *Vaca v. Sipes*...that a union breaches its duty of fair representation if its actions are either “arbitrary, discriminatory or in bad

faith” – applies to all union activity, including contract negotiation. We hold that a union’s actions are arbitrary only if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a “wide range of reasonableness”...as to be irrational. *Airline Pilots Association v. O’Neill*, 499 U.S. 65 (1991).

In this case, the Complainant first argues that the Association breached its duty of fair representation when it violated the bylaws by failing to submit proposed contract changes to a vote of the Association membership. The basis of the Complainant’s claim is Article VI section D of the bylaws. It states in relevant part that:

The Executive Board shall:

- D. Submit any proposed contract changes to a vote of the entire membership with the exception of (1) changes affecting Article XVIII of the contract, and (2) any issue which is excluded by a two-thirds majority of the Executive Board and the Representative Counsel.

The Complainant argues that the language requires that all contract changes, except for the two named, be put to the membership for a vote, including contract changes that are to be submitted to interest arbitration. The Association argues that Article VI section D does not apply to contract changes made during the binding arbitration process. We believe that the Complainant’s interpretation of the bylaws is the sounder of the two. The language clearly states that “any proposed contract changes with the exception of” A submission made during binding arbitration is not one of the stated exceptions.

However, even if the Association violated its bylaws, such a breach, standing alone, does not constitute a violation of its duty of fair representation. In *City of Waterbury, supra*, the court held that for a complainant to prove a union violated its duty of fair representation by failing to follow its own bylaws, he or she must also present “evidence of actions which are intentionally or dishonestly misleading.” In this case, the Complainant did not submit any evidence that would indicate the Association’s interpretation of the bylaws was dishonest or that the failure to submit proposals to the membership was intentionally deceitful. The Association claimed that it did not believe Article VI section D applied to proposals submitted to interest arbitrators and offered testimony that previous stipulated awards were not presented to the membership for ratification. No reliable evidence exists to the contrary.

Finally, the bylaws state only that the Executive Board “shall submit proposed changes to a vote of the entire membership” The bylaws are silent as to what the Negotiations Team was to do if the membership vetoed the proposed changes. Thus, the evidence is not clear that the membership would have the “final say” on contract proposals, even in the event of a negative vote. Based on all of the above, we do not find a violation based on the bylaws alone.

Our analysis, however, does not end there. We turn now to the question of whether the Association’s other actions in the context of bargaining rise to the level of a breach of its duty of

fair representation. In this regard, the Complainant claims that the Association also failed to keep the membership informed during the contract negotiation process, and ultimately agreed to contract terms that were contrary to prior statements made by the Association regarding acceptable terms. Virgulto's argument centers on the fact that the Association President informed him that the Association would not agree to alter health care benefits to retirees.

We begin with the charge that the Association's failure to keep its membership informed about the contract negotiation positions of the Association during the bargaining period amounts to bad faith. The Labor Board has previously considered the need for confidentiality in negotiations and has held that with certain limitations, confidentiality of bargaining proposals is a necessary element of collective bargaining. See *Killingly Board of Education*, Decision No. 2118, (1982) and cases cited therein. Generally, negotiators have wide latitude to determine how best to conduct negotiations. In this case, the chief negotiators decided that they would not discuss the details of the negotiations with individuals outside of the negotiation process. The Complainant did not establish why, in this circumstance that decision was dishonest, in bad faith, or deceitful.

The Complainant also appears to argue that the Association's failure to conduct a survey of its members establishes that the Association acted in bad faith. However, the record shows that the Association understood retirees' health care benefits were vitally important.

The Complainant further contends that the Association's failure to keep records of the contract negotiation positions and strategy is a breach of its duty of fair representation. Again, we disagree. While we may think of many reasons a union would choose to maintain such records that is not the question before this Board. We must only answer if its failure to do so rises to the level of a prohibited practice. Again the Complainant did not present any evidence that the failure to maintain records were due to a decision on the Association's part to intentionally mislead its membership. As such, we cannot hold that the Association's failure to maintain records of the negotiation constitutes a breach of its duty of fair representation.

Based on the above, the Complainant has not proven that the Association failed in its duty to represent him. Accordingly we dismiss the complaint. To the extent the Association maintains its claim for Attorney's fees and costs, that request is denied.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the School Board Teachers Negotiations Act, it is hereby

ORDERED the complaint filed herein be, and the same hereby is, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Wendella A. Battey
Wendella A. Battey
Board Member

CERTIFICATION

I hereby certify that the foregoing was mailed postage prepaid this 14th day of May, 2004 to the following:

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