VERMONT LABOR RELATIONS BOARD

LOCAL 2323, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS	)	
v.	)	DOCKET NO. 89-25
CITY OF RUTLAND	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 13, 1989, Local 2323, International Association of Firefighters ("Union") filed an unfair labor practice charge with the Vermont Labor Relations Board ("Board") against the City of Rutland ("Employer"). Therein, the Union alleged that the Employer violated 21 VSA §1726 by unilaterally implementing new job descriptions and job classifications for "firefighter/emergency medical technician" and "firefighter/paramedic" with the requirement that any person hired under these new classifications must maintain his/her Vermont certification as a paramedic or emergency medical technician as a condition of employment.

The Board issued an unfair labor practice complaint on July 18, 1989. Hearings were held in the Board hearing room in Montpelier on September 14, 1989, and January 4, 1990, before Board members Charles McHugh, Chairman; Catherine Frank and Leslie Seaver. Anthony DiRocco, of Thealan Associates, and City Attorney Frank Zetelski represented the Employer. Attorney Alan Biederman represented the Union at the September 14, 1989, hearing,but disqualified himself at the conclusion of the hearing. Attorney S. Scott Smith represented the Union at the January 4 hearing.

The parties filed briefs January 16, 1990.

FINDINGS OF FACT

1. The Rutland City Fire Department ("RCFD") consists of approximately 34 employees. The chief governing officer of the RFCD is the chief engineer. At all times relevant, the chief engineer has been Gerald Lloyd.

2. At all times relevant, the Union has been the certified collective bargaining representative for all non-probationary firefighters of the RCFD, excluding officers. Firefighters generally serve a probationary period of up to one year. There are 26 members of the bargaining unit (Employer's Exhibit 5).

3. As of 1979, two RCFD employees classified as firefighters, Michael Walsh and Gary Gregorio, were certified as emergency medical technicians ("EMT's"). Walsh and Gregorio incorporated their EMT skills with their other firefighter duties, and used these skills on the job. Since 1979, RCFD has had an agreement with the Rutland Regional Medical Center to provide emergency medical services.

4. In 1981, Walsh and Gregorio took additional courses leading to their certification as paramedics, a higher level of skill than an EMT. Walsh and Gregorio applied their paramedic skills to their firefighter duties, and used these skills on the job.

5. Persons providing EMT or paramedic services must be certified and licensed by the State to be able to provide such services (Employer's Exhibit 4).

6. Subsequently, other RCFD firefighters became certified as EMT's and paramedics. At present, seven firefighters are licensed and certified as paramedics, and three firefighters are licensed and certified as EMT's. Most of the firefighters who became certified to

provide such emergency services received necessary training at the expense of the Employer.

7. State law governing certification of EMT's and paramedics requires ongoing practice of the relevant skills to maintain certification. At some point after Walsh and Gregorio became certified as paramedics in 1981, the RCFD began a program of providing emergency medical services to outlying towns in the Rutland area. At the time there was not sufficient call for these services within the City of Rutland, and servicing outlying areas provided the necessary hours of practice to employees. Initially, the RCFD provided such services to outlying towns on a non-contractual, non-paid basis.

8. In 1984, the Rutland City Public Safety Committee held a widely-attended meeting concerning the future of the RCFD's EMT-Paramedic Program. The Public Safety Committee issued a report to the Rutland Board of Aldermen which contained, in pertinent part, the following decision of the Committee:

> The paramedics and the fire chief will work together drawing up a job description and financial consideration salary guide for an in-service (in-house) paramedic/fireman to be in charge, under the chief of the EMT-Paramedic Rescue 8 Team. This person will also be a fireman and will be responsible under the chain of command to the proper authority in the fire department for all firefighting duties, but will be the person in authority (under the chief) for the paramedic team (Employer's Exhibit 1).

9. On March 25, 1986, the members of the Union passed a resolution expressing their support for continuation of the EMT-paramedic program. On March 29, 1986, the Union sent a letter communicating the resolution to Chief Lloyd. The letter noted that a paramedic committee had been appointed to "address and relate vital concerns of this program", and asked Chief Lloyd to give "the utmost

attention to this valuable and important service" (Employer's Exhibit 2).

10. On June 3, 1987, six RCFD firefighters providing paramedic services wrote a letter to City Mayor Jeffrey Wennberg, asking him to "address certain problems which have existed in the paramedic program for several years" (Employer's Exhibit 3).

11. In the contracts negotiated between the Union and the City prior to the contract effective July 1, 1987 - June 30, 1990 ("1987-90 Contract"), firefighters who provided paramedic or EMT services received a pay differential of $5 per week more than did firefighters who did not provide such services.

12. In the 1987-90 Contract, the parties agreed to raise the pay differential for firefighters who provided paramedic services. Article IX of the Contract provides in pertinent part:

> ...c. The present practice effective August 23, 1979 of compensating Emergency Medical Technicians (EMT's) an additional five dollars ($5.00) per week shall be continued.
>
> d. Paramedics acting in that capacity for the Fire Department shall receive, in addition to the sums set forth in Appendix B and under Paragraph C of this article, the following additional sums per week:
>
> > Commencing July 1, 1987, the sum of twenty-five dollars ($25.00)
> >
> > Commencing July 1, 1988, the sum of thirty dollars ($30.00) per week.
> >
> > Commencing July 1, 1989, the sum of thirty-five dollars ($35.00).
>
> (Employer's Exhibit 5)

13. Prior to the incidents that are the subject of this unfair labor practice charge, there never existed any requirement that employees who had obtained EMT or paramedic certification must

maintain their certification as a condition of employment. If employees let their certification lapse, they would only lose the pay differential for performing EMT or paramedic services.

14. Sometime during early 1988, the RCFD entered into compensatory agreements, effective July 1, 1988, with outlying towns adjacent to the Rutland area for provision of emergency medical services. The compensation helped defray the costs of equipment and differential pay to the EMT's and paramedics, and the contract for services helped to ensure that the RCFD firefighters providing such services would have adequate practice opportunity to enable them to maintain their certification. However, in response to the added commitment to provide medical services, Chief Lloyd believed that the RCFD needed to recruit and keep additional EMT's and paramedics.

15. In early 1988, Chief Lloyd asked Walsh and Gregorio to help draft formal job descriptions for the positions of firefighter/EMT and firefighter/paramedic, based on their years of experience with the paramedic program. Walsh and Gregorio believed that maintaining certification once it was acquired was essential to the continuity of the program. Walsh and Gregorio included a requirement in the job descriptions that firefighters/EMT's and firefighter/paramedics must maintain their certification after being hired. The two descriptions, as drafted, stated identically in relevant part:

> RECOMMENDED AND/OR MINIMUM QUALIFICATIONS:
> ...
> Must maintain all licenses and certification that is (sic) required for this position (Employer's Exhibit 7).

16. Both Walsh and Gregorio understood that the job description applied only to new hires, and that if a new hire allowed the

certification to lapse, their employment would be terminated. Walsh and Gregorio discussed the requirement of maintaining certification with the other paramedics and EMT's, and also informed them that the new descriptions applied only to new hires. Walsh and Gregorio never discussed these specific issues in connection with a Union meeting or other Union business, and did not have authorization to bind the Union with respect to the new job descriptions.

17. At the time the job descriptions were drafted, Walsh was president of the Union, and Gregorio was part of the Union bargaining team. Both Walsh and Gregorio believed that they were drafting the job descriptions in their capacity as RCFD employees, and not as Union representatives.

18. On May 16, 1988, the City of Rutland aldermen approved a set of job descriptions for all positions within the RCFD. The job descriptions approved included those for firefighter/EMT and firefighter/paramedic drafted by Walsh and Gregorio. The job descriptions were posted June 7, 1988. One posting occurred in Rutland City Hall, another in the Department of Public Works, and two others in the RCFD (Employer's Exhibit 8, 9 and 10).

19. The intent of the Employer upon posting of the job descriptions for firefighter/EMT and firefighter/paramedic, and at all times subsequent, was that employees hired into these positions would be required to maintain their EMT or paramedic certifications as a condition of employment, and that these employees would be discharged if they allowed their certification to lapse. Other than the job description itself, no notice was provided by the Employer to the Union or employees that this was the intent.

20. During the summer of 1988, two firefighter/EMT and one firefighter/paramedic were hired under the new job descriptions. The EMT's were hired subject to a one-year probationary period, during which time they were not eligible for Union membership. Mark Meszaros, the firefighter/paramedic hired on July 11, 1988, under the new job description, was hired as a permanent employee. On July 11, 1988, Chief Lloyd hand-delivered a letter to Ernest Chioffi, Union president, informing the Union of Meszaros' permanent status. Meszaros applied for membership in the Union on July 15, 1988, and his Union membership became effective that day (Employer's Exhibits 12, 13, and 14).

21. On January 1, 1989, Donald Moore, Jr. was elected president of the Union. Moore was unaware that the requirement for new firefighter/EMT's and firefighter/paramedics of maintaining certification was a condition of employment. Moore believed that new hires who let their certification lapse would revert to the classification of firefighter, rather than being discharged.

22. On January 25, 1989, Moore met with Chief Lloyd. During that meeting, Chief Lloyd informed Moore that firefighter/EMT's and firefighter/paramedics must maintain certification as a condition of employment, and that if such certification lapsed, the employee would be discharged.

OPINION

The Union contends that the Employer committed an unfair labor practice in violation of 21 VSA §1726(a)(5) by unilaterally imposing a policy providing that certain firefighters serving as paramedics and emergency medical technicians ("EMT's") in the bargaining unit would

be terminated if they allowed their certifications as paramedics or EMT's to lapse. Prior to implementation of this policy, a firefighter who served as a paramedic or EMT was free to allow his certification to lapse without being terminated. The firefighter would continue in employment as a firefighter not providing paramedic or EMT services, and would lose only the pay differential accompanying the providing of such services.

The Employer contends that the unfair labor practice charge was untimely filed and that this matter should be dismissed. We agree.

21 VSA §1727(a) provides:

> No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board... The Board may waive the six-month period if it finds that (a) the aggrieved person did not understand that an unfair labor practice had been perpetrated against him; or (b) the offending person had actively concealed his or its perpetration of that unfair labor practice.

The six month clock begins running on an alleged unilateral change in a condition of employment upon the implementation of the change. Mt. Abraham Education Association v. Mt. Abraham Union High School Board of School Directors, 4 VLRB 224, 228-229 (1981). A bargaining duty does not survive after a failure to assert it for a period of six months; the failure of a union to protest an alleged unilateral change in a condition of employment within the six month period for filing an unfair labor practice means the union has waived the right to bargain over it during the term of the present contract. VSEA v. State of Vermont, Department of Public Safety, 6 VLRB 217, 225-226 (1983).

Here, the implementation of the alleged unilateral change in a condition of employment occurred on June 7, 1988, when the Employer

posted job descriptions for the positions "firefighter/paramedic" and "firefighter/emergency medical technician". The new job descriptions provided that the position incumbent "must maintain all licenses and certification that is (sic) required for this position". In enacting this provision, the Employer intended to establish a policy that new hires would be terminated if they allowed their necessary certifications and licenses to lapse. The posting of the job descriptions provided clear notice to the Union that the job descriptions were thereby implemented. The Union did not file an unfair labor practice charge or otherwise protest the alleged unilateral charge in a condition of employment until more than six months after the implementation of the alleged change.

Nonetheless, the Union contends that the job descriptions do not, on their face, apply differently to "new" hires and "old" hires, and that the posting of the job descriptions did not put the Union on notice that the Employer now intended to fire a new hire if he or she did not maintain paramedic or EMT certification. The Union contends that only when Chief Lloyd met with Union president Donald Moore in January, 1989, did the Union realize that it was the City policy, under the job descriptions, to discharge new hires if they did not maintain their paramedic or EMT certifications.

While it is true that the job descriptions on their face do not distinguish between old hires and new hires, existing paramedics and EMT's understood that the new job descriptions applied only to new hires. Also, the content of the job description clearly indicates that the position incumbents would be subject to dismissal if they allowed their paramedic or EMT certification to lapse. The providing

of paramedic or EMT services is an integral part of the job duties of the positions, and an employee cannot provide such service unless they are licensed and certified by the State to provide those services. Given this, a reasonable conclusion to be drawn from the requirement that a position incumbent "must maintain" necessary certifications and licenses is that a person hired into the position will be terminated if they allow their certifications and licenses to lapse and thereby can no longer perform an integral part of their job. In interpreting contracts, we are guided by the rule of construction that a contract will be interpreted by the common meaning of its words when the language is clear, and terms should not be read into a contract unless they arise by necessary implication. In re Stacy, 138 Vt. 68, 71 (1980). Similarly here, a necessary implication to be drawn from the requirement to maintain necessary certifications and licenses is that failure to do so will result in termination from the position.

Thus, through the posting of the job descriptions, the Employer provided fair notice to the Union concerning its new policy, and the Union should have been reasonably aware, at the time the job descriptions were posted, that the Employer intended to discharge new hires who allowed their certification to lapse.

However, the Union further contends that an unfair labor practice charge filed on account of the posting would have been premature. The Union reasons that the new job descriptions did not relate to any person represented by the Union, and had no impact on the Union, because persons hired under the new job description would not be part of the bargaining unit represented by the Union until they completed

their probationary period. Taken to its logical conclusion, the Union position would result in an unfair labor practice charge normally not maturing until a person hired under the new job description completes the probationary period for the position - up to 12 months. This would mean that a charge could be timely if filed as many as 18 months after a person is first hired under the new job descriptions. To permit a union to dredge up an "old" alleged unfair labor practice, when the employer had been led to believe by the union's inaction that its action was not a source of dispute, would be contrary to the purpose and policy of the Municipal Employee Relations Act to "provide orderly and peaceful procedures" for resolving disputes. 21 VSA §1721. VSEA v. Department of Public Safety, supra, at 226.

Even assuming that the Union is correct in its position that the unfair labor practice charge did not mature until a new hire covered by the new job description completed a probationary period, and thus became part of the bargaining unit, the unfair labor practice charge here still would be untimely. Mark Meszaros was permanently appointed, with the normal probationary period waived, under the new firefighter/paramedic position on July 10, 1988. Thus, he became a part of the bargaining unit represented by the Union at that time and the new job description did relate to a member of the bargaining unit. The Union did not file an unfair labor practice charge, or otherwise protest, concerning the new job descriptions within six months of that date.

Finally, the Union requests that, even if the Board concludes that the Union could have brought the charge in June, 1988, the Board waive the time limits under 21 VSA §1727(a), if the Board concludes

that the Union was ignorant of the facts giving rise to the charge through no lack of diligence. As previously discussed, we believe the Union had fair notice and should have been reasonably aware of the alleged unilateral change in conditions of employment at the time the new job descriptions were posted on June 7, 1978. Thus, we decline to waive the six month time limit.

In sum, we conclude that the failure of the Union to file an unfair labor practice charge within six months of the date the new job descriptions for firefighter/paramedic and firefighter/EMT were posted results in this unfair labor practice charge being untimely.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the unfair labor practice complaint in this matter is DISMISSED.

Dated this 22nd day of March, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh

Charles H. McHugh, Chairman

Catherine L. Frank

Catherine L. Frank

Leslie G. Seaver

Leslie G. Seaver