VERMONT LABOR RELATIONS BOARD

LOCAL 1343, AFSCME, AFL-CIO	)	
	)	
v.	)	DOCKET NO. 93-68
	)	
TOWN OF HINESBURG	)	

FINDINGS OF FACT, OPINION AND ORDER

On November 15, 1993, Local 1343, AFSCME, AFL-CIO ("Union") filed an unfair labor practice charge against the Town of Hinesburg ("Town"). Therein, the Union alleged that the Town had committed an unfair labor practice by unilaterally changing conditions of employment in requiring employees to pay part of the cost of their health insurance. On March 17, 1994, the Labor Relations Board issued an unfair labor practice complaint.

A hearing was held before Board members Charles McHugh, Chairman; Leslie Seaver and Carroll Comstock on April 14, 1994. Union President Lindol Atkins, Jr., represented the Union. Attorney E.M. Allen represented the Town. The parties did not file post-hearing briefs.

FINDINGS OF FACT

1. The Union filed a Petition for Election of Collective Bargaining Representative with the Labor Relations Board on April 15, 1993, to represent employees of the highway department of the Town. The Union and the Town agreed to the composition of the bargaining unit, and the Town agreed to voluntarily recognize the Union as the exclusive bargaining representative of the employees in the bargaining unit. On May 20, 1993, the Labor Relations Board issued a Certification of Voluntary Recognition, certifying the Union as the exclusive bargaining representative

of all employees of the highway department, excluding the highway superintendent. There are four employees in the bargaining unit (Labor Relations Board Docket No. 93-23).

2. Beginning in May, 1993, Town Administrator Kathleen Ramsey sent out a series of memoranda to all Town employees, Town Selectboard Members, and Union President Lindol Atkins concerning possible changes in personnel policies and health insurance. On May 7 and May 11, Ramsey sent out memoranda on group health insurance deductions. As of May, 1993, the Town was paying 100 percent of the health insurance premiums for employees.

3. At some point prior to July 1, 1993, Ramsey, Atkins and Town employees met with representative of the Vermont League of Cities and Towns to discuss ways to reduce health insurance costs.

4. At a June 15, 1993, meeting at which Atkins, Ramsey and Attorney E.M. Allen were present, Atkins indicated that he was eager to meet with the Town Selectboard and initiate the collective bargaining process. Allen inquired of Atkins whether the Town would be receiving the Union's proposals shortly.

5. On July 5, 1993, the Town Selectboard voted to give all fulltime Town employees, including the four employees in the bargaining unit represented by the Union, a 3 percent raise effective July 2, 1993. The Selectboard took such action without notification to, or negotiations with, the Union.

6. Shortly thereafter, one of the employees in the bargaining unit represented by the Union informed Atkins of the raise. Atkins did not subsequently notify the Town that the Union

agreed to, or objected to, the raise. Some of the employees in the bargaining unit complained about receiving a 3 percent pay raise, as opposed to a 5 percent increase. Since July 2, 1993, the employees have received the 3 percent increase in their paychecks.

7. At various times during the summer of 1993, Atkins informed Ramsey that he was working on the Union's bargaining proposals. Neither the Union nor the Town submitted bargaining proposals to each other during the Summer of 1993.

8. The Town issued a revised Personnel Manual on August 30, 1993. Atkins had received a copy of the proposed Personnel Manual well before its enactment. The Manual provided for, among other things, a more flexible leave time policy, more holidays and a changed health insurance policy. The provisions of the Manual were effective August 30, 1993, except that the health insurance changes were not effective until October 1, 1993 (Town Exhibit 1).

9. Section 4.1 of the Personnel Manual provides in pertinent part:

> The Town's employees are enrolled in a health insurance Program toward which the Town contributes 100% of each employee's premium. Upon request, the Town will furnish family and dependent medical coverage toward which the Town contributes 75% of the premium . . . (Town Exhibit 1).

10. These provisions resulted in an employee with one covered dependent on the health insurance plan paying $16 a week for health insurance premiums, and an employee with at least two

covered dependents paying $20 a week for premiums. Premiums went up an additional $8 and $10, respectively, effective January 1, 1994. The Town applied these provisions to each member of the bargaining unit. Each member of the bargaining unit had either one covered dependent or two or more covered dependents on the health insurance plan.

11. Section 1.3 of the Personnel Manual provides in pertinent part:

> These regulations . . shall . . not cover employees covered by collective bargaining agreements where the specific provisions of the collective bargaining agreement differ from the provisions of these rules and regulations and where these rules and regulations are not incorporated in the agreement by direct reference.

12. In mid-September, 1993, Atkins informed Ramsey that she would receive the Union's bargaining proposals the following week. The Union did not submit proposals the following week. The Union did not submit bargaining proposals until February 10, 1994, although the Union had completed its proposals by October 21, 1993. As of the date of the hearing before the Board, the Town had not responded to the Union's proposals.

13. As of April 1, 199-, each of the four employees in the bargaining unit had received more monies as a result of the 3 percent wage increase than they had lost as a result of having to pay health insurance premiums. The difference was $270 for one employee, $105 for another employee, $60 for a third employee, and $95 for the remaining employee.

OPINION

At issue is whether the Town of Hinesburg committed an unfair labor practice by requiring employees to pay a percentage of health insurance premiums under the Town's health insurance plan without negotiating such changes with the Union. The Union contends that the Town was required to maintain the condition of employment that the Town paid 100 percent of health insurance premiums until a collective bargaining contract was negotiated.

The unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith is the very antithesis of bargaining and is a per se violation of the duty to bargain in good faith under the Municipal Employee Relations Act, 21 V.S.A. §1721, et seq. Burlington Fire Fighters v. City of Burlington, 142 Vt. 434 (1983).

Here, it is clear that the Town unilaterally made the changes in the mandatory bargaining subject of health insurance coverage without negotiating such changes with the Union. Also, the Union did not waive the right to bargain over such issue even though the Union delayed in submitting bargaining proposals to the Town. In determining whether a party has waived its bargaining rights, it must be demonstrated that a party consciously and explicitly waived its rights. Local 98, IUOE, AFL-CIO v. Town of Rockingham, 7 VLRB 356, 374 (1984). It is evident that the Union never explicitly and consciously waived its right to bargain since the Union informed the Town on several occasions that proposals were forthcoming; its delay in following through quickly on submitting proposals does not translate into

waiver. Thus, the Town's unilateral imposition of changed conditions of employment with respect to health insurance premiums was a per se violation of the duty to bargain.

We now must decide what remedy to apply as a result of the Town's unfair labor practice. 21 V.S.A. §1727(d) authorizes the Board to issue an order requiring a party committing an unfair labor practice "to cease and desist from the unfair labor practice and to take such affirmative action as the Board shall order".

Under this provision, the Town is required to cease and desist from requiring employees to pay a percentage of health insurance premiums. However, the Town contends that if it is required to rescind the health insurance changes, then employees also should forfeit the 3 percent wage increase, since this too was unilaterally imposed by the Town. The Union contends that it accepted the 3 percent wage increase because employees accepted paychecks containing the increase, and thus should not have to forfeit such increase.

We cannot conclude that accepting pay checks containing the increases constitutes acceptance by the Union. Acceptance in the collective bargaining context occurs when there is notification of acceptance after proposals are made. No such proposals or notification of acceptance occurred here. The 3 percent increase was improperly given by the Town and employees are not entitled to it. Rockingham, 7 VLRB at 377-78.

We have considered whether it is appropriate to restore the status quo effective as of the dates the unilateral changes in

health insurance premiums and wages were made by the Employer, but we have decided not to direct such a remedy. If we were to do so, affected employees would end up paying between $60-270 to the Town. Employees should not be placed in such a situation due to an employer's unfair labor practice. Thus, simply a cease and desist order is the most appropriate remedy in this case.

In closing, we note that the facts of this case demonstrate that neither the Employer nor the Union proceeded consistent with their collective bargaining obligations. The Employer violated such obligations by making unilateral changes in conditions of employment without negotiations with the Union. The Union neglected such obligations by not timely submitting bargaining proposals to the Employer. Hopefully, with the conclusion of this matter, the parties will turn their energies to serious collective bargaining negotiations and work on developing a productive relationship. The remedy which we have structured here should be considered as applicable only under the circumstances of this case. We believe the remedy most appropriate to provide incentive to the parties to take seriously their obligation to bargain.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. Effective as of the pay period immediately following the issuance of these Findings of Fact, Opinion and Order, the Town of Hinesburg shall cease and desist from implementing the unilateral changes in health insurance premiums which the Town instituted on October 1, 1993, and the wage increase which the Town instituted effective July 2, 1993, with respect to employees in the bargaining unit represented by Local 1343, AFSCME, AFL-CIO;

2. The Town of Hinesburg shall negotiate in good faith with Local 1343, AFSCME, AFL-CIO, concerning hourly rates of pay and the health insurance plan for employees in the bargaining unit represented by Local 1343, AFSCME, AFL-CIO; and

3. The Town of Hinesburg shall post copies of this Order at all places normally used for employer-employee communications for a period of sixty consecutive days.

Dated this 24th day of May, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Leslie G. Seaver

Carroll P. Comstock