VERMONT LABOR RELATIONS BOARD

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 267	)	DOCKET NO. 98-21
v.	)	
UNIVERSITY OF VERMONT	)	
UNIVERSITY OF VERMONT	)	
v.	)	DOCKET NO. 98-25
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 267	)	

MEMORANDUM AND ORDER

At issue is whether we will issue unfair labor practice complaints on the unfair labor charges filed by the United Electrical, Radio and Machine Workers of America, Local 267 ("Union") and the University of Vermont ("Employer") concerning a dispute which has arisen in the negotiation of groundrules to govern collective bargaining negotiations. Board Chairperson Catherine Frank has not participated in this decision.

On April 3, 1998, the Union filed an unfair labor practice charge against the Employer (Docket No. 98-21). Therein, the Union alleged that the Employer has interfered with employee rights and refused to bargain in good faith, in violation of 3 V.S.A. §961(1) and (5), by refusing to bargain on substantive issues, and conditioning future bargaining on the Union's agreement with the Employer on a

groundrule limiting press releases and public statements during pre-impasse negotiations.

On April 10, 1998, the Employer filed an unfair labor practice charge against the Union (Docket No. 98-25). Therein, the Employer alleged that the Union has refused to bargain in good faith, in violation of 3 V.S.A. §962(4), by refusing to agree to the Employer's proposed limitation on press releases and public statements during pre-impasse negotiations.

Background Facts

The relevant facts necessary in determining whether to issue unfair labor practice complaints are not in dispute. In December, 1997, the Union prevailed in an unit determination and representation election conducted by the Labor Relations Board, and was certified to represent service and maintenance employees of the Employer (VLRB Docket No. 97-23). During February and March of 1998, the Union and the Employer met to negotiate groundrules to govern negotiations over a collective bargaining agreement covering the bargaining unit of service and maintenance employees.

The Employer proposed a set of 11 groundrules. The Union proposed that there be paid release time for the employee representatives on the Union's negotiations team. The Union agreed to 8 of 11 of the Employer's groundrules as proposed. One of the eight proposals agreed to included a provision that "no stenographic record shall be allowed, nor shall personal computers, taping, electronic monitoring or other recording devices be used". The parties agreed to 4 - 4 ½ hours

per negotiations meeting of paid release time for the employee representatives on the Union's negotiations team.

The parties agreed to modifications of two of the groundrules proposed by the Employer. The Employer proposed that bargaining meetings occur off campus. The parties agreed that "every effort will be made to hold such negotiations on campus or on University property". The Employer proposed that negotiations be conducted in private, and that only members of the designated bargaining teams, and a non-team member expert for each party, be allowed to attend such negotiations sessions. The parties agreed that "negotiations shall be conducted in private", and expanded the list of bargaining session attendees to include up to five members of the bargaining unit represented by the Union to attend sessions as observers.

The Union and the Employer failed to reach agreement on one proposed groundrule. The Employer proposed the following groundrule:

> Unless and until the parties have reached impasse (i.e., mediation and beyond), no press releases, interviews or other distribution of releases or information about the negotiations to the University community or to the general public shall be permitted, unless any such release has been approved by the other side. This shall not preclude communication by the bargaining teams with their respective constituencies.

The Union did not agree to this proposed groundrule, and the Employer indicated that it would not proceed further in negotiations without such a groundrule in place. Subsequently, the parties filed the unfair labor practice charges at issue herein. The parties met in a April 22, 1998, mediation session on the groundrule dispute with Ira Lobel of the Federal Mediation and Conciliation Service. The parties were unable to resolve their differences at the mediation session.

Discussion

We turn to addressing whether unfair labor practice complaints should be issued in these matters. We first address the Union's charge that the Employer has interfered with employee rights and refused to bargain in good faith by refusing to bargain on substantive issues, and conditioning future bargaining on the Union's agreement with the Employer on a groundrule prohibiting unilateral press releases and public statements until the parties have reached statutory impasse (i.e., mediation and beyond).

In exercising our discretion under the State Employees Labor Relations Act (3 V.S.A. §901, *et seq.*) ("SELRA") whether to issue an unfair labor practice complaint, we conclude that the Employer is neither interfering with employee rights nor bargaining in bad faith, and we decline to issue a complaint. The Employer's groundrules proposal is consistent with the parties' agreement that negotiations will be conducted in private without use of recording devices, and reflects accepted practices in the Vermont public sector of negotiations being conducted in private and unilateral public releases about negotiations sessions being prohibited prior to impasse. *See* e.g., Shaftsbury Town Board of School Directors v. Southwestern Vermont Education Association, Vermont NEA, 10 VLRB 124, 138-39 (1987).

It was reasonable for the Employer under the circumstances to decline to proceed to bargaining over substantive issues until an understanding was reached on whether unilateral press releases and public statements during pre-impasse negotiations would be allowed. The bargaining of negotiations groundrules is integral to the process of negotiating over substantive issues. Local 4003, VFT/AFT, AFL-

CIO v. Vermont State Housing Authority, 11 VLRB 344, 353-354 (1988). An understanding concerning allowance or prohibition of unilateral press releases and public statements during pre-impasse negotiations is integral to the dynamics of how negotiations over substantive issues will proceed. The lack of such an understanding in this case meant that the Employer had the choice of either seeking to resolve the public release issue, or proceeding with substantive negotiations and leaving itself open to the Union potentially engaging in unilateral, one-sided public release of information about negotiations. The Employer reasonably concluded that this latter route was undesirable given that the free exchange of views and compromise inherent in collective bargaining would be significantly hampered if one party engaged in unilateral press releases and public statements prior to impasse without consent of the other party. Appeal of Town of Exeter, 126 NH 685, 687; 495 A.2d 1288 (1988). Board of Public Utilities of the City of Springfield v. Crow, 592 S.W.2d 285, 291 (Mo. App. 1979).

The Employer's action of seeking to resolve the public release issue prior to proceeding with substantive negotiations is particularly understandable given that we have never ruled directly on whether one party can engage in public discussions of negotiations prior to impasse without consent of the other party. Our subsequent discussion herein will provide guidance to parties in the future, but the Employer did not have the benefit of our views when choosing the course to pursue in this matter.

We next address the Employer's unfair labor practice charge that the Union has refused to bargain in good faith by refusing to agree to the Employer's proposed limitation on press releases and public statements during pre-impasse negotiations.

We conclude that the express provisions of SELRA preclude us from issuing an unfair labor practice complaint against the Union based on the Union refusing to agree to the Employer's groundrule proposal. Section 981 of SELRA provides:

> For the purpose of this chapter to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be evidence direct or indirect, of a breach of this obligation.

Accordingly, the failure of the Union "to agree to a proposal" relating to limitation on press releases and public statements during pre-impasse negotiations cannot be evidence of a breach of the obligation to bargain in good faith.

We thus decline to issue unfair labor practice complaints on the charges filed by the Union and the Employer. We would be remiss, however, if we ended our treatment of this matter at this point given that collective bargaining negotiations have stalled over the issue of whether one party can engage in unilateral press releases and public statements prior to impasse without consent of the other party. In the interests of furthering the collective bargaining negotiations between the Union and the Employer, we believe it is appropriate for us to provide guidance to the parties on how we view this issue.

As indicated above, the failure of a party to agree to a groundrule proposal prohibiting unilateral press releases and public statements during pre-impasse negotiations is not an unfair labor practice. This does not necessarily lead to the conclusion, however, that the *conduct* of a party issuing press releases or otherwise

publicly disseminating information about negotiations, prior to impasse without consent of the other party, cannot be an unfair labor practice. Improper circumvention of the other party and the bargaining process constitutes refusal to bargain in good faith and is an unfair labor practice. Colchester Education Association v. Colchester Board of Education, 19 VLRB 108, 111-12 (1996). Essex Junction Education Association v. Essex Junction Prudential Committee, 14 VLRB 107, 122-25 (1991). In expressing our views on whether the conduct of a party engaging in unilateral public release of information about negotiations prior to impasse without consent of the other party is an unfair labor practice, it is of primary concern to us whether such conduct constitutes an improper circumvention of the other party and the bargaining process.

Although it does not address the specific question at issue, the Vermont open meeting law and the Vermont Public Records Act provide helpful starting points in our analysis. The open meeting law provides that a public body may hold an executive session from which the public is excluded to consider "contracts, labor relations agreements with parties . . . where premature general public knowledge would clearly place the . . . public body . . . at a substantial disadvantage". 1 V.S.A. §313(a)(1). The Public Records Act exempts from public inspection and copying "records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees". 1 V.S.A. §317(c)(15). These statutes constitute legislative recognition that there is a valid basis for collective bargaining negotiations, and discussion and records of such negotiations, not being viewed prematurely by the public.

The parties have cited us to decisions of other jurisdictions, in the context of public sector collective bargaining, concerning one party insisting on negotiating in public without the consent of the other party. Appeal of Town of Exeter, supra, 495 A.2d at 1290-91. Board of Public Utilities of the City of Springfield, 590 S.W.2d at 291. Board of Selectmen of Marion v. Labor Relations Commission, 388 N.E.2d 302, 303 (Mass. App. 1979). County of Saratoga v. Newman, 476 N.Y.S.2d 1020 (Sup. 1984). Burlington Community School District v. Public Employment Relations Board, 268 N.W.2d 517, 523-524 (Iowa, 1978). Carroll County Education Association v. Board of Education, 448 A.2d 345 (Md. App.1982). We recognize that the Union is not seeking public negotiations, and we are not expressing our views on this issue. In fact, the parties here have agreed that negotiations will be conducted in private.

Nonetheless, we believe that many of the concerns with respect to negotiating in public also are present, perhaps to a greater degree, when one party issues press releases, or otherwise publicly disseminates information about negotiations, prior to impasse without consent of the other party. These concerns are that such conduct tends to hinder the compromise inherent in successful collective bargaining as free and open discussion is hampered, parties may act unduly cautious, negotiators are less likely to move from fixed positions, and posturing tends to increase. Id. The second-hand discovering by the public of what occurs in negotiations significantly hampers the free exchange of views and compromise inherent in collective bargaining. In a setting where negotiations are being conducted in private, a party engaging in one-sided release of information about pre-impasse negotiations without

the consent of the other party generally improperly circumvents the other party and the bargaining process by essentially negotiating in public.

In the case before us, the parties have agreed to negotiate in private and the Employer has taken the position that unilateral press releases and public statements should be prohibited until the parties have reached statutory impasse (i.e., mediation and beyond). Under such circumstances, we hold the view that a party would engage in bad faith bargaining by issuing press releases, or otherwise publicly disseminating information about negotiations, without consent of the other party. Of course, this not preclude either party from communicating with their respective constituencies about negotiations, or filing unfair labor practice charges (which are a matter of public record) concerning alleged improper conduct of the other party in negotiations.

NOW THEREFORE, we decline to issue unfair labor practice complaints, and it is hereby ORDERED that the unfair labor practice charges filed by the United Electrical, Radio and Machine Workers of America, Local 267 and the University of Vermont are DISMISSED.

Dated this 22d day of May, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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