VERMONT LABOR RELATIONS BOARD

TEAMSTERS LOCAL 597	)	
	)	
v.	)	
	)	
GREEN MOUNTAIN TRANSIT AGENCY	)	
	)	DOCKET NOS. 04-3
GREEN MOUNTAIN TRANSIT AGENCY	)	and 04-5
	)	
v.	)	
	)	
TEAMSTERS LOCAL 597	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 20, 2004, Teamsters Local 597 ("Union") filed an unfair labor practice charge (Docket No. 04-3) against Green Mountain Transit Agency ("Employer"). The Union alleges that the Employer engaged in a refusal to bargain in good faith, and failure to recognize the Union as bargaining agent, in violation of 21 V.S.A. Section 1726(a)(5) by refusing to execute a tentative collective bargaining contract entered into with the Union. The Union requests as a remedy that the Labor Relations Board issue an order requiring the Employer to sign the contract and implement the agreed wage and benefit increases.

On February 9, 2004, the Employer filed a counter-unfair labor practice charge in Docket No. 04-3 against the Union. The Employer alleges that the Union committed an unfair labor practice in violation of 21 V.S.A. Section 1726(b)(1), (2) and (3) by insisting that the Employer execute a contract which has not been ratified by the covered employees, directly contrary to representations made by the Union concerning the

requisite Union ratification process. The Employer contends that the Union is attempting to coerce the Employer into creating a contract bar to the employees' right to petition the Board for decertification of the Union as representative of the employees.

On February 2, 2004, the Union filed a second unfair labor practice charge against the Employer (Docket No. 04-5). The Union contends that the Employer violated 21 V.S.A. Section 1726(a)(1), (3) and (5) by unilaterally implementing an employee handbook covering many mandatory subjects of bargaining. The Union contends that the Employer's actions constitute bargaining directly with employees and failing to recognize the Union as the exclusive bargaining representative of the employees. The Union further contends that the Employer's actions improperly resulted in the employees filing a petition in early January 2004 (Labor Relations Board Docket No. 04-1) to decertify the Union as the representative of the employees.

The Union requests the following remedies in Docket No. 04-5: 1) that the Employer immediately cease and desist bargaining directly with employees; 2) that the Employer be required to inform all bargaining unit employees that they continue to recognize the Union as the employees' exclusive bargaining representative; 3) that the Employer be required to retrieve all copies of the employee handbook distributed to the employees; 4) that the Employer be required to negotiate with the Union concerning the provisions of the handbook addressing mandatory subjects of bargaining; 5) that the Board order the Employer to cease and desist its campaign to have the Union decertified; 6) that the Board dismiss the decertification petition filed by employees in January 2004; and 7) that the Employer sign and accept the tentative contract negotiated with the Union.

On February 24, 2004, the Labor Relations Board issued unfair labor practice complaints against the Employer and the Union, and scheduled a hearing on the complaints for March 18, 2004. At the time the Board issued the complaints, the Board also indicated that it was deferring action on the decertification petition filed in Docket No. 04-1 until the unfair labor practice cases were resolved.

On March 17, 2004, the Employer filed an amended answer to the unfair labor practice charge in Docket No. 04-5. The Employer indicated in the amended answer that it is not contesting the Union's assertion that the Employer should not have implemented the employee handbook. The Employer further agreed to the Union's proposed remedies #1, #2, #3 and #4 set forth above. The Employer continues to object to proposed remedies #5, #6 and #7.

Labor Relations Board Members Edward Zuccaro, Acting Chairperson; Carroll Comstock and Richard Park conducted a hearing on the complaints on March 18, 2004, in the Board hearing room in Montpelier. Attorney Joseph McNeil, Jr., represented the Employer. Attorney Hugh Beins represented the Union. The Union and the Employer filed post-hearing briefs on April 13 and 15, 2004, respectively.

FINDINGS OF FACT

1. Wheels, Inc., provided bus services in central Vermont until early 2003. The Union was the exclusive bargaining representative of the bus drivers employed by Wheels. The National Labor Relations Board had jurisdiction over Wheels. Wheels and the Union negotiated a collective bargaining agreement effective July 2, 2002 through December 31, 2003 (Joint Exhibit 1).

2. Wheels went out of business in early 2003. The Employer, a subsidiary of Chittenden County Transportation Authority (which is under the jurisdiction of the Vermont Labor Relations Board as a municipal employer), assumed responsibility for providing public transportation services in central Vermont in the spring of 2003. The Employer offers fixed route bus service; parking, supermarket and school shuttles; a ridesharing program; transportation for Medicaid recipients; and other commuter services (Joint Exhibit 8, page 5).

3. The Employer and the Union entered into an interim agreement on April 30, 2003. The Employer agreed to voluntarily recognize the Union as the exclusive bargaining representative of the bus drivers of the Employer. The Employer and the Union also agreed that the Employer would not be bound by the terms and conditions of the collective bargaining agreement between Wheels and the Union. They agreed to wages, certain benefits and conditions of employment for the bus drivers pending negotiation of a collective bargaining contract by the Employer and the Union. The interim agreement provided in part as follows:

> . . .
> 6. During the duration of this Interim Agreement, the employees so hired shall be paid at the following rates of pay:
> a. CDL Drivers - $12.50 per hour (with a passenger endorsement)
> b. Van Drivers assigned to fixed route or commuter bus route - $12.00 per hour
> c. Van Drivers - $10.00 per hour
> 7. During the duration of this Interim Agreement, full-time employees so hired shall receive managed care health insurance and the employer shall contribute eighty (80%) percent toward the premium cost for single insurance coverage. Employees may purchase coverage for spouse and the employer shall contribute seventy (70%) percent toward the premium cost for such coverage. Employees may also purchase family plans, and the employer shall contribute (60%) percent toward the premium cost for such coverage. Such employees shall also be afforded statutory workers' compensation insurance coverage.
> . . .

11. The parties agree to resolve any and all disputes that arise over the application of this Interim Agreement through the following process:

    1. The employees shall report any dispute to the shop steward within eight (8) working days. The steward shall attempt to adjust the matter with the Regional Manager within five (5) working days.
    2. Failing to resolve the dispute the shop steward shall report the matter to the Union which shall attempt to adjust the matter with CCTA's General Manager, whose determination shall be final.

. . .
(Joint Exhibit 2)

4. Union Business Agent Duane Messier represented the Union in negotiations between the Union and the Employer for a collective bargaining contract. There were no bus drivers of the Employer on the Union bargaining team. Chris Cole, the Employer's chief executive officer, expressed concern to Messier during the discussion of negotiation groundrules that there were no employees in the bargaining unit represented by the Union on the Union bargaining team. Messier informed Cole that the Union would present a tentative collective bargaining contract for approval to all employees in the bargaining unit represented by the Union. Cole informed Messier that the Employer would present a tentative contract to its Board of Directors for ratification. The parties agreed to negotiation groundrules on July 7, 2003. The groundules did not address contract ratification. There is no written agreement between the Union and the Employer concerning procedures for ratification of the contract (Joint Exhibit 3).

5. On July 22, 2003, certain bus drivers of the Employer filed a petition with the Board to decertify the Union as the exclusive bargaining representative of employees. Board Executive Director Timothy Noonan had a conference call on September 26, 2003, with the Union, Employer and the employee who had filed the decertification petition on

behalf of employees. During the conference call, the parties agreed to the following provisions:

- The withdrawal of the decertification petition;
- The Union and the Employer shall engage in negotiations for a collective bargaining agreement for 90 days, beginning September 26, without a pending decertification petition;
- If agreement is not reached on a collective bargaining agreement at the end of the 90 day period, employees may file a decertification petition with the Board; and
- If such a petition is filed, the Board shall make an inquiry concerning the status of negotiations between the Union and the Employer and determine whether to proceed towards conducting an election in which employees would vote on whether they wished to be represented by the Union (Joint Exhibit 5).

6. The Board issued an order on October 6, 2003, dismissing the decertification petition pursuant to its withdrawal (Joint Exhibit 4).

7. One of the items in dispute during negotiations was whether a union security clause, requiring employees covered by the contract to either pay Union dues or a financial core fee in lieu of Union dues, would be included in the Contract. Cole expressed concern to the Union about agreeing to such a provision since it was an issue in a strike that occurred at Wheels when the Union represented the Wheels drivers. Messier informed Cole on several occasions that the Union would present a tentative collective bargaining contract for approval to all employees in the bargaining unit represented by

the Union, and thus the drivers could decide whether to approve the union security clause.

8. In negotiations on a union security clause, there was an issue whether the Union would agree to waive the initiation fee for new members of the Union. The Union eventually agreed to waive initiation fees for employees of the Employer who joined the Union within 30 days of the date the tentative agreement between the Union and the Employer was ratified. The Union and the Employer ultimately agreed to a union security clause as part of a tentative agreement on the entire contract. The Employer agreed to the union security clause with the understanding that all employees in the bargaining unit would vote on whether to ratify the contract (Union Exhibit 3, Joint Exhibit 6).

9. In November of 2003, the Employer and the Union reached tentative agreement on a three-year contract. Among the agreed provisions was that employees would receive a $.50 per hour wage increase in the first year of the contract. The tentative agreement stated that "(t)he Employer shall provide a managed care health insurance package to full-time employees and the Employer shall contribute eighty (80%) percent toward the premium cost for single, seventy (70%) percent toward the premium cost for two-person, and sixty (60%) percent toward the premium cost for family, for each employee that requests insurance coverage." The tentative contract also provided that the "Employer shall not discipline, discharge or suspend an employee without just cause." It further provided for a three-step grievance procedure culminating in binding arbitration (Joint Exhibit 6).

10. Cole sent a letter to Messier dated December 4, 2003, which stated: "Upon ratification of the tentative collective bargaining agreement by both the GMTA Board of

Directors and the employees of GMTA, the wage scale for CDL Drivers with passenger endorsement shall increase from $12.50 an hour to 12.75 an hour and non-CDL Drivers from $10.00 to $10.25 an hour" (Employer Exhibit 1).

11. The Board of Directors of the Employer voted to ratify the contract. The Union organized a meeting on December 7, 2003, for employees to vote on ratification of the contract. The Union sent the announcement of the meeting to all employees in the bargaining unit and provided the opportunity for all such employees to vote on contract ratification. The employees voted 6 – 2 against ratification of the contract. The Union asked employees what changes they wished to see in the tentative contract. The employees indicated that they did not seek any changes (Joint Exhibit 7).

12. On December 8, 2003, Union Secretary Treasurer Ron Rabideau informed Cole of the vote against ratification of the contract and the employees' position that they were not seeking any proposed changes. Rabideau stated: "Therefore we have no proposed changes to bring back to you. As such I am requesting if you have any voluntary changes you might make to improve the agreement or is this the last best final offer from the company?" (Joint Exhibit 7).

13. Cole sent Rabideau a letter dated December 15, 2203, that stated:

> As you know, GMTA bargained in good faith with Local 597 to the point of Tentative Agreement. The Tentative Agreement was then taken to our Board and ratified. We remain prepared to execute a contract containing the terms of the Tentative Agreement.
>
> We understand that those members of the bargaining unit present and voting at your ratification meeting determined not to authorize execution of the Agreement. We also understand that the employees offered no specific suggestions for changes to the Tentative Agreement.
>
> GMTA has determined that it will hold the offer of the Tentative Agreement open and available for the employees. It would also be willing, at your request, to

return to the bargaining table to discuss any changes which you might propose. You should understand, of course, that we will be very reluctant to make changes that benefit the employees without corresponding attention to provisions which would benefit the Agency.

As of this juncture, however, the Agency is reluctant to either declare a final offer or formally implement the Tentative Agreement. Instead, we will allow some time to pass to see if this situation clarifies.
(Joint Exhibit 9)

14. On January 2, 2004, Stephen Tavekelian, a member of the bargaining unit represented by the Union, filed a petition with the Labor Relations Board to decertify the Union as the exclusive bargaining representative of the bus drivers of the Employer (Joint Exhibit 13).

15. Cole sent Messier a letter dated January 5, 2004, that provided:

I wanted to inform you of my intention to establish personnel policies at Green Mountain Transit Agency (GMTA). These policies will be distributed to all GMTA employees in the form of an employee handbook similar to what has been distributed to Chittenden County Transportation Authority employees previously. This handbook will cover various company policies and procedures, applicable state and federal employment statutes and how to access employee benefits that the company provides.

As you know, the GMTA Board ratified the tentative agreement that was derived from collective bargaining negotiations between GMTA and Teamsters Local 597. GMTA stands ready to implement the tentative agreement once ratified by the bargaining unit of GMTA.
(Joint Exhibit 10)

16. On January 8, 2004, Cole met with the bus drivers of the Employer. Cole did not inform the Union of the meeting. At the meeting, Cole distributed to the drivers a document entitled "Green Mountain Transit Agency Employee Handbook January 8, 2004". He then discussed provisions of the handbook with the drivers. Cole did not give a copy of the Handbook to the Union at or prior to the meeting. The Handbook provided in part as follows:

I. Handbook Guidelines

GMTA has prepared this handbook to acquaint you with our policies, procedures, and philosophy. This handbook is intended to provide you with information about our organization's employment practices, benefits, and other general information. Please understand that this handbook only highlights GMTA's policies, practices, and benefits for your personal education and, therefore, cannot be construed as a legal document. This handbook is not a contract of employment.

Circumstances may occur which will require the policies, practices, and benefits described in this handbook to change from time to time. GMTA management reserves the right to amend, supplement, rescind, or otherwise change any or all of the provisions of this handbook without prior notice as it deems appropriate at its sole and absolute discretion.

. . .

V. General Employment Information

. . .

B. Employment At Will

It is the policy of GMTA that employees who do not have a written employment contract with the company for a specific, fixed term of employment are employed at the will of GMTA for an indefinite period. This means that all such employees are subject to termination of employment at any time with or without cause, with or without giving reasons for the termination, and with or without notice. It must be emphasized that examples given in this Handbook of conduct that may result in discipline or termination are not exclusive, and do not modify GMTA's at-will policy, under which termination is appropriate without cause. Likewise, all employees may terminate their employment with GMTA at any time and for any reason. Supervisors are not authorized to modify this policy for any employee or to enter into any agreement, oral or written, that attempts to change this at-will relationship.

. . .

VI. SUMMARY OF EMPLOYEE BENEFITS

. . .

Q. Health Insurance

Employees contribute a percentage of the premium to include spouses and dependents on the GMTA plan. Please see Human Resources for details on the current health care coverage.

. . .

Summary of Benefits

These plans are subject to change at the discretion of GMTA management, with notification to affected employees.

Health Insurance
GMTA's current plan is called Vermont Health Partnership through Blue Cross Blue Shield. Employees pay a percentage of the insurance premiums through payroll deductions and this percentage varies based on the type of plan chosen. For single person plans, the employee pays 20% of the premiums and the employer pays 80%; for two person and family plans, the employee pays 30% of the premiums and the employer pays 70%. . .
(Joint Exhibit 8)

17. During the January 8, 2004, meeting, Tavekelian asked Cole if the drivers were going to receive a $.25 wage increase effective on the implementation date of the Handbook. Cole responded that the employees would not receive this wage increase because the Handbook was not a contract. The handbook contains no provisions on employee wages (Joint Exhibit 8).

18. On a date prior to January 19, 2004, the Executive Board of the Union approved the tentative agreement reached between the Union and the Employer. The Executive Board directed Messier to sign the agreement and forward it to the Employer for signature so the agreement would go into effect (Joint Exhibit 11).

19. On January 19, 2004, Messier informed Cole of the January 18, 2004, action of the Union Executive Board, and requested the Employer to sign the tentative agreement. Cole told Messier that the Employer would not sign the agreement until the employees in the bargaining unit represented by the Union voted to ratify it (Joint Exhibit 11).

20. On January 20, 2004, the Union filed the unfair labor practice charge in Docket No. 04-3, alleging that the Employer committed an unfair labor practice by refusing to execute a tentative collective bargaining contract entered into with the Union.

21. On January 28, 2004, the Union conducted a vote limited to members of the Union employed by the Employer on whether to ratify the tentative agreement between the Union and the Employer. The Union members voted 3 – 1 in favor of ratifying the agreement.

22. Rabideau sent Cole a letter dated January 28, 2004, that provided:

> On January 21, 2004, I contacted Local 597's legal counsel concerning the issues involving the company's refusal to sign the contract and the bargaining units(sic) acceptance vote of the agreement.
>
> During this conversation the Local Unions(sic) attorney advised that as provided by the Local Union Bylaws and I.B.T. Constitution only members of the Local Union have the privilege of voting on the ratification of the contract. I was advised to immediately take a revote on the contract within the group of members of the Local Union employed at G.M.T.A.
>
> This vote was completed on 1/28/04 and the result was an acceptance of the agreement by a vote of 3 to 1.
>
> Local 597 again demands that the company sign the contract and implement the negotiated contract improvements immediately.
>
> (Joint Exhibit 12)

23. In late January 2004, a driver of the Employer gave Messier a copy of the Handbook implemented by Cole on January 8, 2004. Until then, Messier was unaware of Cole meeting with the drivers and implementing the employee handbook on January 8, 2004.

24. On February 2, 2004, the Union filed the unfair labor practice charge in Docket No. 04-5, alleging that the Employer committed an unfair labor practice by unilaterally implementing an employee handbook covering many mandatory subjects of bargaining.

25. The Local Bylaws of the Union provides that the Executive Board "is empowered to . . . determine the membership which shall vote on agreements and strikes" and to "(d)o all acts, not expressly authorized herein, which are necessary or proper . . .

for the benefit of the organization and members." Section 14(13) and (17). Section 27(A) of the Bylaws provides that "whenever a collective bargaining agreement is about to be negotiated, . . . the principal executive officer shall call a meeting at which the membership shall determine and authorize the bargaining demands to be made." Section 27(C) of the Bylaws provides that "ratification of agreements . . . shall be subject to vote in the same manner as provided for in connection with bargaining demands as set forth in Section 27(A)". Section 25 of the Bylaws provide that "(t)he Local Union acknowledges that the Constitution of the International Brotherhood of Teamsters supercedes any provisions of these Bylaws herewith or hereinafter adopted which may be inconsistent with such constitution" (Union Exhibit 1).

26. Article XII, Section 1(a) of the Constitution of the International Brotherhood of Teamsters provides that "(a)greements shall either be accepted by a majority vote of those members involved in negotiations and voting, or a majority of such members shall direct further negotiations before a final vote on the employer's offer is taken" (Union Exhibit 2).

OPINION

We first address the Union's allegation in Docket No. 04-3 that the Employer engaged in a refusal to bargain in good faith, and failure to recognize the Union as bargaining agent, in violation of Section 1726(a)(5) of the Municipal Employee Relations Act, 21 V.S.A. Section 1721 *et seq.* ("Act"), by refusing to execute a tentative collective bargaining contract entered into with the Union. The Union requests as a remedy that the Labor Relations Board issue an order requiring the Employer to sign the contract and implement the agreed wage and benefit increases.

The Union relies on the U.S. Supreme Court decision, H.J. Heinz Co. v. NLRB, 311 U.S. 514 (1941), to support this allegation. In Heinz, the Court affirmed a National Labor Relations Board decision that an employer engaged in an unfair labor practice of refusing to bargain in good faith by refusing to sign a written contract embodying terms of agreement between the employer and union concerning wages, hour and working conditions of employees. The Court stated that "experience has shown that refusal to sign a written contract has been a not infrequent means of frustrating the bargaining process through the refusal to recognize the labor organization as a party to it and the refusal to provide an authentic record of its terms which could be exhibited to employees". Id. at 523-524. The Court reinforced this point by stating that such a refusal "discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining." Id. at 526.

The Heinz decision, however, does not support the Union's allegation. Unlike Heinz, this is not a situation where an employer engages in a blanket refusal to sign an agreement embodying complete terms agreed upon by the parties. Instead, the Employer's refusal to sign the agreement is based upon the absence of a condition precedent voluntarily advanced by the Union itself that the agreement would be ratified by a majority of the employees in the bargaining unit represented by the Union.

Nonetheless, the Union contends that the Employer's position on ratification is indefensible pursuant to the U.S. Supreme Court decision in NLRB v. Wooster Division of Borg Warner, 356 U.S. 342 (1958). Therein, the Court concluded that an employer acted contrary to its obligation to bargain in good faith by insisting, as a condition precedent to accepting any collective bargaining contract, that the contract contain a

clause requiring a pre-strike vote of union and non-union employees on the employer's last offer in negotiations. The Court concluded that the clause addressed an issue which was not a mandatory subject of bargaining. The Union contends here that since contract ratification is not a mandatory subject of bargaining, but instead constitutes internal union business upon which an employer is not free to intrude, than the Employer's insistence on it is an unfair labor practice.

Again, the Union is relying on precedent that does not square with the facts of the matter before us. Unlike Borg Warner, this is not a case where the employer insists that it would be unwilling to accept an agreement unless the Union committed to a ratification process which gave all covered employees the right to vote. Instead, the Employer relied on the Union's voluntary statement that this would be the case, and the Employer made a concession on a union security clause on the basis of the Union's representations.

The Union now is seeking to hold the Employer to the execution of a contract even though covered employees have not ratified the contract. The Employer is not acting contrary to its good faith bargaining obligation by refusing to execute a contract under these circumstances. The Employer made concessions in negotiations in reliance on the Union's representations and is entitled to insist that the Union follow-through on its representations as a condition precedent to executing the contract.

The Employer alleges, in its counter-unfair labor practice charge in Docket No. 04-3, that the Union committed an unfair labor practice in violation of 21 V.S.A. Section 1726(b)(1), (2) and (3) by insisting that the Employer execute a contract which has not been ratified by the covered employees, directly contrary to representations made by the Union concerning the requisite Union process. The Employer contends that the Union is

attempting to coerce the Employer into creating a contract bar to the employees' right to petition the Board for decertification of the Union as representative of the employees.

The Employer has not demonstrated that the cited sections of the Act enumerating unfair labor practices apply to the Union's actions. Section 1726(b)(1) provides that it is a union unfair labor practice "to restrain or coerce employees in the exercise of the right(sic) guaranteed to them by law, rule or regulation." The allegation by the Employer alleges coercion of the Employer, rather than coercion of employees that is covered by this section.

Section 1726(b)(2) makes it an unfair labor practice for a union to "restrain or coerce an employer in the selection of representatives for the purposes of collective bargaining or adjustments of grievances". The facts here do not implicate this section in any respect. The Employer also has not articulated any basis for the applicability of Section 1726(b)(3)'s prohibition of a union "caus(ing) or attempting to cause an employer to discriminate against an employee in violation of this title or to fail or refuse to represent all employees in the bargaining unit without regard to membership in such organization."

In the post-hearing brief, the Employer makes an additional allegation that the Union's insistence that the Employer execute a contract which has not been ratified by the covered employees violates Section 1726(b)(4). This subsection makes it an unfair labor practice for an employee organization "to refuse to bargain collectively in good faith with a municipal employer".

It would be unfair and prejudicial to the Union for us to consider the merits of this allegation. Section 35.3 of the Board *Rules of Practice* requires that an unfair labor

practice charge contain a "concise statement alleging the applicable sections of the Act which are alleged to have been violated and a brief statement of facts concerning the alleged violations." This provides the party responding to the charge with notice as to alleged violations so as to adequately respond to them and prepare a defense. If we permitted raising of issues for the first time in a post-hearing brief, then the responding party would lack notice and would be left without an opportunity to present evidence and argument on the issue. We decline to permit such a result.

Similarly, we decline to consider the merits of an issue raised by the Union for the first time during the hearing. The issue involved is the posting on the Employer's bulletin board of a decertification petition, which the Union alleges in its post-hearing brief is "illegal conduct" by the Employer and "part and parcel of a pattern of conduct by Chris Cole to rid himself of the Union and become the dictator." The Union did not raise this issue in the two unfair labor practice charges which it filed. As a result, the Labor Relations Board did not have an opportunity to decide whether to issue a complaint on the issue and the Employer did not have an opportunity to prepare a defense on the issue. It would be inappropriate for us to rule on the merits of this issue given these circumstances.

The remaining issue that we need to address in these cases is the effect of the Employer's action in unilaterally implementing an employee handbook addressing mandatory subjects of bargaining. The Union alleged in its charge in Docket No. 04-5 that such unilateral implementation was an unfair labor practice, and the Employer is not contesting the Union's assertion that the employee handbook should not have been unilaterally implemented. The Employer also agrees to the following remedies proposed

by the Union in Docket No. 04-5: 1) that the Employer immediately cease and desist from bargaining directly with employees; 2) that the Employer be required to inform all bargaining unit employees that they continue to recognize the Union as the employees' exclusive bargaining representative; 3) that the Employer be required to retrieve all copies of the employee handbook distributed to the employees; and 4) that the Employer be required to negotiate with the Union concerning the provisions of the handbook addressing mandatory subjects of bargaining.

However, the Employer objects to the following remedies requested by the Union: 1) that the Board order the Employer to cease and desist its campaign to have the Union decertified; 2) that the Board dismiss the decertification petition filed by employees in January 2004 in Docket No. 04-1; and 3) that the Employer sign and accept the tentative contract negotiated with the Union. The Employer contends that it has not been waging a campaign to have the Union decertified. The Employer takes the position that the decertification petition should be left to be resolved by the Board, the petitioning employees and the Union. Finally, the Employer objects to being required to execute the tentative contract, contending that the implementation of the handbook provides no basis to order the execution of the tentative contract.

The Union contends to the contrary that the Employer's direct dealings with employees through implementation of the handbook warrants an order requiring the Employer to sign the contract and cease and desist its campaign to have the Union decertified. The Union further contends that the decertification petition must be dismissed "since it has been tainted and polluted by the Employer's unfair labor practices".

The Employer committed a serious unfair labor practice here by unilaterally implementing an employees' handbook that addressed mandatory bargaining subjects. An employer's unilateral imposition of terms of employment, during the time the employer is under a legal duty to bargain in good faith with a union, is the very antithesis of bargaining and is a *per se* violation of the duty to bargain. Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 434, 435-36 (1983).

In determining remedial action for this unfair labor practice, the Board is authorized to require 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 consistent with the policies of the statute. 21 V.S.A. Section 1727(d). In exercising its broad powers to remedy unfair labor practices, Board orders are remedial "make whole" orders, and are not punitive. VSCFF v. VSC, 17 VLRB 1, 17 (1994). Cavendish Town Elementary School Teachers' Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16 VLRB 378, 391 (1993). In ordering affirmative action, the task of the Board is to restore the economic status quo, and recreate the conditions and relationships, that would have existed but for the employer's wrongful act. VSCFF v. VSC, 17 VLRB at 17. Burlington Education Association v. Burlington School District, 16 VLRB 398, 410-11 (1993).

In applying these standards here, we review those remedies requested by the Union and agreed upon by the Employer to determine whether they are sufficient or whether the additional stringent remedies requested by the Union are appropriate. In seeking to restore the economic status quo, and recreate the conditions and relationships that would have existed but for the improper unilateral implementation, the timing of the

Employer's announcement of the implementation of the handbook is significant. It happened at a January 8, 2004, meeting when Employer Chief Executive Officer Chris Cole informed employees represented by the Union of the implementation of the handbook.

This was a month after employees represented by the Union had rejected the tentative contract, and six days following employees filing a decertification petition with the Board. If the unilateral implementation occurred earlier so as to affect the employees' rejection of the contract, the Union's proposed remedy of requiring the Employer to execute the contract would have greater merit. The timing of the action, however, does not support a conclusion that it had any effect on the employees' rejection of the contract. The employees not only rejected the contract a month earlier but there had been no intervening negotiations or changes in bargaining positions. The timing of the action, as well as consideration of all other evidence presented in this case, provides no basis to grant the Union's proposed remedy that the Employer be required to execute the tentative contract.

Similarly, if the announcement of the unilateral implementation occurred earlier so that it could be surmised that it prompted employees to file the decertification petition, the Union's requested remedy of dismissing the petition would have merit. Since the announced implementation was subsequent to the filing of the petition with the Board, however, then there can be no conclusion that the announcement prompted the petition.

This leaves the remaining question whether the unilateral implementation of the handbook has compromised the integrity of the election process so that the Board should not proceed towards conducting an election in Docket No. 04-1. Upon weighing the

democratic rights of the employees with the effects of the Employer's improper action, we are not inclined to dismiss the decertification petition filed in Docket No. 04-1.

The petition was filed subsequent to a 90-day period in which the Employer and the Union engaged in negotiations for a collective bargaining agreement without a pending decertification petition. Prior to the 90-day period, all parties involved in a pending decertification agreed that, if the Union and Employer did not reach agreement at the end of the 90-day period, then the Board would make an inquiry concerning the status of negotiations between the Union and the Employer and determine whether to proceed towards conducting an election in which employees would vote on whether they wished to be represented by the Union.

In conducting this inquiry, we look to standards developed by the National Labor Relations Board. In situations where an employer voluntarily recognizes a union, such as occurred here, the NLRB has held that an employer and union are entitled to a reasonable time to bargain and to execute the contracts resulting from such bargaining before a decertification petition is timely. Keller Plastics Eastern, Inc., 157 NLRB 583, 587 (1966). What constitutes a "reasonable time" is not measured by the number of days or months spent in bargaining, but by what transpired and what was accomplished in the bargaining sessions. MGM Grand Hotel, 329 NLRB 464, 466 (1999). In determining whether a reasonable time has passed, the Board examines the factual circumstances unique to the parties' recognition and bargaining to determine whether, under the circumstances, the parties have had sufficient time to reach agreement. Id. In so doing, the Board looks to the degree of progress made in negotiations, whether or not the parties were at an impasse, and whether the parties were negotiating for an initial contract.

We conclude that the Union and the Employer have had a reasonable time to bargain and execute a contract. The parties in fact were successful in reaching a tentative agreement, and conducting their respective contract ratification procedures, within the 90-day period in which the Employer and the Union engaged in negotiations for a collective bargaining agreement without a pending decertification petition. The Employer ratified the contract, but the employees represented by the Union voted to not ratify it. The employees also indicated to the Union that they did not seek any changes in the contract, and contract negotiations did not resume. In sum, the parties had a reasonable time to negotiate a contract and execute it, their efforts ultimately failed and the decertification petition was timely filed.

Given these circumstances, there would be no doubt that we would proceed towards conducting an election in which employees would vote on whether they wished to be represented by the Union if the Employer had not unilaterally announced the implementation of the handbook. If we viewed it otherwise, employees would be prevented from questioning the incumbent union's majority status by means of a representation petition at reasonable intervals. We do not believe the Vermont General Assembly intended such a result when it granted employees the right to file a petition to "assert that the individual or employee organization currently certified as bargaining agent is no longer supported by at least 51 percent of employees in the bargaining unit". 21 V.S.A. Section 1724(a)(1). Town of Castleton and AFSCME, AFL-CIO, 13 VLRB 127, 136 (1990). There is a significant question whether the Union is supported by a majority of the employees in the bargaining unit after the Union has had a reasonable

time to negotiate a contract on their behalf and employees have declined to approve a contract.

Nonetheless, the Employer's unilateral implementation of the handbook requires us to review whether the Employer's ill-advised action affects the viability of a representation election. Employers improperly interfere with the free exercise of employee rights concerning whether they wish to be represented by a union when they promise or unilaterally grant employees benefits to influence the outcome of an election. The U.S. Supreme Court explained the impact of a grant of benefits in NLRB v. Exchange Parts Co., 375 U.S. 405 (1964): "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." We need to safeguard the integrity of our election process and ensure that the Employer's improper action does not prevent employees from making a free and untrammeled choice of whether they wish to be represented by the Union. IUOE Local 98 and Town of Springfield, 3 VLRB 221, 225-26 (1990). UPIU v. Town of Wilmington, 20 VLRB 1, 3-4 (1997).

We ultimately conclude that those remedies requested by the Union which are agreed upon by the Employer generally are sufficient to redress the Employer's unfair labor practice and preserve the integrity of a representation election. They restore the status quo and recreate the conditions and relationships that would have existed but for the Employer's improper unilateral implementation. They also serve to allow employees

to exercise a free and untrammeled choice of whether they wish to be represented by the Union.

The status quo is restored through the Employer rescinding the handbook and retrieving all copies of the employee handbook distributed to the employees. The employees' wages, hours and other conditions of employment are returned to what existed prior to improper implementation of the handbook. This is the appropriate state of affairs given the status of contract negotiations.

Conditions and relationships are recreated that would have existed but for the Employer's improper unilateral implementation by requiring the Employer to: 1) cease and desist from bargaining directly with employees, 2) inform all bargaining unit employees that the Employer continues to recognize the Union as the employees' exclusive bargaining representative, and 3) negotiate with the Union concerning the provisions of the handbook addressing mandatory subjects of bargaining. This is sufficient to remedy the ill effects of the Employer improperly bypassing the Union and imposing unilateral changes directly on employees. These measures make it clear to employees represented by the Union that the Employer's unilateral action was improper and the Employer needs to negotiate with the Union. Further, the remedies requested by the Union which are agreed upon by the Employer suffice to allow employees to freely choose whether they wish to be represented by the Union absent the deleterious effects of improper action of the Employer.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The unfair labor practice charges filed by Teamsters Local 597 ("Union") and the Green Mountain Transit Agency ("Employer") in Docket No. 04-3 are dismissed;
2. The unfair labor practice charge filed by the Union in Docket No. 04-5 is sustained. The Employer committed an unfair labor practice by unilaterally implementing an employee handbook on January 8, 2004;
3. The Employer shall immediately rescind implementation of the employee handbook that it distributed to employees represented by the Union on January 8, 2004;
4. The Employer shall forthwith retrieve all copies of the employee handbook distributed to employees;
5. The Employer shall immediately cease and desist from bargaining directly with its employees represented by the Union;
6. The Employer shall forthwith inform all bargaining unit employees that the Employer continues to recognize the Union as the employees' exclusive bargaining representative;
7. The Employer shall negotiate with the Union concerning the provisions of the handbook addressing mandatory subjects of bargaining;
8. The Employer shall forthwith post copies of the Findings of Fact, Opinion and Order issued herein at all places in the workplace normally used for employer-employee communications;
9. The Employer shall forthwith distribute copies of the Findings of Fact, Opinion and Order issued herein to each employee in the bargaining unit represented by the Union; and
10. The Vermont Labor Relations Board shall proceed towards conducting an election in Board Docket No. 04-1 in which employees represented by the Union determine whether they wish to be represented by the Union.

Dated this 21st day of May, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____
Edward R. Zuccaro, Acting Chairperson

_____
Carroll P. Comstock

_____
Richard W. Park