

VERMONT LABOR RELATIONS BOARD

IBEW LOCAL 300)	
)	
v.)	DOCKET NO. 03-56
)	
TOWN AND VILLAGE OF LUDLOW)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint. On December 24, 2003, IBEW Local 300 (“Union”) filed an unfair labor practice charge against the Town and Village of Ludlow (“Employer”). The Union filed a letter with the Board on January 6, 2004, clarifying the charge. The Union contends that the Employer failed to bargain in good faith in violation of 21 V.S.A. §1726(a)(5) of the Municipal Employee Relations Act, and discriminated in terms of employment to discourage membership in the Union in violation of §1726(a)(3) of the Act. The Union alleges that the Employer committed violations by representing during negotiations with the Union that employees represented by the Union would pay the same portion of health insurance premiums as employees not represented by the Union, and then not requiring non-union employees to make such contributions. The Union requests as a remedy that employees represented by the Union be reimbursed the full amount they have contributed towards health insurance premiums.

The Employer filed a response to the charge on January 14, 2004. The Employer disputes that the Employer made any promises to the Union during negotiations that non-union employees would pay the same portion of health insurance premiums as employees represented by the Union. The Employer further contends that the Union’s claim is

precluded by the express terms of the collective bargaining contract entered into by the Union and the Employer.

Labor Relations Board Executive Director Timothy Noonan had a telephone conference call with the parties on February 3, 2004, in furtherance of the Board's investigation of the charge and to attempt to informally resolve the dispute. The parties subsequently informed the Board that they were not able to resolve the dispute. On February 20, 2004, the Union filed a letter supporting the issuance of an unfair labor practice complaint.

The Board has discretion whether to issue an unfair labor complaint and hold a hearing on an unfair labor practice charge. 21 V.S.A. §1727(a). In exercising its discretion, the Board will not issue a complaint unless the charging party sets forth sufficient factual allegations for the Board to conclude that the charged party may have committed an unfair labor practice. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

The exercise of our discretion in this case necessarily begins with a review of the terms of the collective bargaining contract entered into by the parties. We examine the terms of the contract to the extent necessary to determine whether the Union has waived its rights to seek a change in the mandatory bargaining subject of employee contributions toward health insurance premiums. NLRB. v. C & C Plywood, 385 U.S. 421 (1967). In determining whether a party has waived its rights, the Board has required that it be demonstrated a party consciously and explicitly waived its rights. Local 98, IUOE, AFL-CIO v. Town of Rockingham, 7 VLRB 363 (1984). VSEA v. State of Vermont, 5 VLRB 303, 326 (1982). Mt. Abraham Education Association v. Mt. Abraham Union High

School Board of School Directors, 4 VLRB 224, 231 (1981). The Board is further guided by the Vermont Supreme Court, which defines a waiver as the "intentional relinquishment of a known right". In re Grievance of Guttman, 139 Vt. 574 (1981).

Article 7.4(B) of the collective bargaining contract entered into by the Employer and the Union requires that the Employer provide employees covered by the contract with medical, drug and hospitalization insurance, and states: "Effective July 1, 2003 employees shall contribute pre-tax 4% of the annual premium for the plan in which they are enrolled." Previously, no employees of the Employer had contributed towards health insurance premiums. Article 15.1 of the contract provides that "(t)his Agreement represents the final resolution of all matters in dispute between the parties, constitutes the entire Agreement between the parties, and shall not be changed or altered unless the change or alteration has been agreed to and evidenced in writing by the parties hereto." Article 15.2 states: "The parties acknowledge that during negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands with respect to any subject or matter . . . and that the understandings and agreements arrived at by parties after the exercise of that right and opportunity are set forth in this Agreement".

The Union requests that we look beyond the terms of the contract and consider unwritten understandings of the parties, resulting in the effective voiding of the contract terms concerning employees' contributions to medical insurance premiums. We conclude that such an examination and result is expressly precluded by the contract. The contract provides for employees contributing 4 percent of the premiums for the health insurance plan. It further provides that the contract represents the final resolution of all matters in dispute between the parties, constitutes the entire agreement between the parties, and

shall not be changed or altered unless agreed to by the parties. It specifies that the understandings and agreements arrived at by the parties, after the exercise of the unlimited right and opportunity to make demands with respect to any subject or matter, are set forth in the contract.

These terms of the contract lead to a conclusion that the Union has waived its rights to use any alleged unwritten understandings to void the contract language concerning employees' contributions to medical insurance premiums. Unstable and unproductive labor relations would result if we were to sanction consideration of alleged unwritten understandings on a bargaining subject that is clearly and completely addressed by the terms of a collective bargaining contract.

Based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is ordered that the unfair labor practice charge filed by IBEW Local 300 in this matter is dismissed.

Dated this 23rd day of March, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Chairperson

Carroll P. Comstock

John J. Zampieri

Edward R. Zuccaro

Joan B. Wilson