VERMONT LABOR RELATIONS BOARD

LOCAL 4003, VFT/AFT, AFL-CIO	)	
	)	
v.	)	DOCKET NO. 88-43
	)	
VERMONT STATE HOUSING AUTHORITY	)	
LOCAL 4003, VFT/AFT, AFL-CIO	)	
	)	
v.	)	DOCKET NO. 88-44
	)	
VERMONT STATE HOUSING AUTHORITY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

Local 4003, VFT/AFT, AFL-CIO ("Union") filed an unfair labor practice charge (Docket No. 88-43) on September 22, 1988, alleging that the Vermont State Housing Authority ("VSHA") violated 21 VSA §1726(a)(5) in failing to bargain in good faith by refusing to meet with the Union negotiating committee unless the committee stipulated prior to the meeting that it accepted a salary and wage reclassification schedule.

The Union also filed a second unfair labor practice charge (Docket No. 88-44) on September 22, 1988, alleging that the VSHA violated 21 VSA §1722(9), §1726(a)(1) and §1726(a)(5) by declaring an impasse prior to 60 days of bargaining collectively with the Union.

The Vermont Labor Relations Board consolidated Docket Nos. 88-43 and 88-44 and issued an unfair labor practice complaint on October 11, 1988. A hearing was held before Board Members Charles McHugh, Chairman; Catherine Frank and Dinah Yessne on October 27, 1988. Attorneys Peter Anderson and Jerome Diamond represented the Union. Attorney Richard Bland represented the VSHA.

The Union and VSHA filed briefs on November 2, 1988.

FINDINGS OF FACT

1. The Union is the exclusive bargaining representative of approximately 28 employees of the VSHA.

2. The VSHA and Union are parties to a collective bargaining agreement which expired on September 30, 1988.

3. By letter dated May 20, 1988, Anne Duplin, Union President, requested the commencement of bargaining for a successor agreement. The letter, addressed to Richard Williams, the VSHA Executive Director, provided in pertinent part as follows:

> On behalf of the Vermont State Housing Authority Staff Federation, I am requesting that we begin bargaining towards the Agreement which is to be effective beginning October 1, 1988.
>
> We suggest that our initial meeting be held on Tuesday, June 28.
>
> This will be subsequent to the meeting which you scheduled for Wednesday afternoon the 15th of June at which time MMA Consulting will present the draft of the Wage Comparability Study. It will also allow us some time to begin to understand the implications of the study's findings upon our membership.
>
> ... We anticipate discussing ground rules and the subsequent negotiating schedule. (VSHA Exhibit 1)

4. The Wage Comparability Study referred to in Duplin's May 20th letter was a wage and reclassification study of positions at VSHA conducted by an independent consulting firm, MMA Consulting. The study was initiated by VSHA because it was having difficulty retaining employees due to non-competitive salaries.

5. The study was presented on June 15, 1988. The draft was made available to employees at VSHA.

6. The VSHA agreed to meet on June 28. The Union negotiating team consisted of Duplin, Jeanne Nicholson and Joyce Germain.

Management's negotiating team included Williams, Tom Peterson and Paul Dettman (VSHA Exhibit 2).

7. At the June 28 meeting, the parties negotiated and agreed to groundrules and agreed to a negotiations schedule. The groundrules agreed to on June 28 were somewhat different than those proposed by VSHA, and similar to those proposed by the Union. The groundrules covered areas such as spokespersons, bargaining team composition, privacy of negotiations, press releases, meeting places, negotiations dates, meeting agendas, cancelling meetings, and tentative agreements. At the meeting, VSHA stated that it was not in a position to negotiate further until the MMA study had been discussed by the VSHA Board in mid-July. This was agreed to by the Union. The parties agreed that bargaining proposals would be exchanged on August 2, 1988, and that negotiation sessions would be held on August 9, 18, 23 and September 1 (VSHA Exhibits 3, 12).

8. The final MMA study released in July included a proposed salary and classification plan for all VSHA employees and contained two options with respect to salary: 1) establishing salary ranges; or 2) establishing step increases. Williams recommended to the VSHA Board that VSHA implement the recommendations in the final study. In July, 1988, the VSHA Board agreed to adopt the recommendations in the final study with the option of salary ranges.

9. On July 25, 1988, Williams informed VSHA staff by memorandum that the VHSA was going to implement Exhibit D of the MMA study on October 1, 1988. Exhibit D of the MMA study was the classification and compensation schedule for all employees for Fiscal Year 1988. Percentage adjustments in salaries for employees under the plan ranged from no increase to a 24 percent increase (Union Exhibit 5).

10. Duplin informed Williams that he could not unilaterally implement the MMA study without negotiating with the Union. Williams replied he did not have to bargain concerning the study. Duplin informed Williams that if he did not rescind the unilateral implementation, the Union would file an unfair labor practice charge.

11. Classification of employees had been the subject of negotiations between the Union and VSHA during 1984 and the parties ultimately entered into a side agreement on the classification of positions (Union Exhibit 6).

12. By memorandum of July 29, 1988, Williams informed Duplin:

> After considerable deliberation, I have decided to withdraw the October 1st implementation of the MMA study. This decision was not arrived at easily because I firmly believe the implementation of this study does not require management to negotiate its implementation.
>
> However, it has been my personal goal this past year to strive for a better working relationship with the Federation than has occurred in previous years, and to conduct collective bargaining discussions in a more congenial atmosphere. I simply could not envision fruitful collective bargaining discussions with an unresolved labor practice complaint pending with the State Labor Relations Board. Therefore, I am prepared to discuss the MMA study in negotiations.
>
> I have also made a decision not to present an economic package, at this time, to the Federation. We look forward to receiving your proposal on August 2nd (Union Exhibit 4)

13. The Union presented its bargaining proposal to VSHA on August 2, 1988. The Union presented among its proposals a reclassification proposal which differed from the MMA recommendations. The Union also proposed that employees have their base salaries increased by $2,200 on October 1, 1988, and $1,700 on October 1, 1989. The VSHA gave the Union no proposals at this time (Union Exhibit 1).

14. The Union cancelled the negotiation session scheduled for August 9, 1988 (VSHA Exhibit 4).

15. A negotiation session did take place on August 18, 1988. The Union responded to management's questions about the Union bargaining proposals. The parties reached tentative agreement on some minor language changes. At the meeting, VSHA advised the Union that VSHA would present a counter-proposal at the next scheduled negotiation session on August 23 (Union Exhibit 2).

16. At the August 23 negotiation session, the VSHA presented a counter-proposal to the Union. Included among the proposals were to increase base salaries by 3.9 percent effective October 1, 1988, and to increase base salaries an additional 4 percent effective October 1, 1989. Also included among VSHA's proposals was one that the VSHA and Union enter into a side agreement separate from the successor agreement agreeing to the implementation of the MMA study prior to October 1, 1988. The Union indicated that it wished to negotiate concerning the MMA study. The VSHA indicated that it would listen to the Union's proposals but that the VSHA viewed the MMA study as the "cornerstone" of an agreement and was holding firm on implementing it (VSHA Exhibit 11).

17. Another bargaining session occurred on September 1, 1988. The Union presented its response to the VSHA's counter-proposals. Williams indicated that some major movement was needed and sought to discuss the MMA reclassification and compensation plan. The Union indicated that it was not prepared to discuss those issues at that meeting. The parties agreed that the next scheduled negotiations session on September 9 would be limited to discussing wages and reclassification.

18. At the September 9 session, the Union indicated that it would accept a modified version of the MMA reclassification and salary plan if the VSHA agreed to a salary schedule step plan based on longevity of service. The VSHA rejected the Union's proposal and made a counter-proposal to accept a step plan based on merit provided the Union accepted the MMS reclassification plan. The Union indicated that it would not accept this counter-proposal. Williams then stated that it appeared the parties had reached an impasse in negotiations. The Union did not object to VSHA's declaration that the parties were at impasse (VSHA Exhibit 13).

19. By letter of September 9, 1988, to Duplin, Williams indicated that he was disappointed the parties were at impasse and informed Duplin that it was VSHA's "desire to utilize the the services of the Federation Mediation and Conciliation Service for the mediation stage of the contract dispute." Williams also informed the Commissioner of Labor and Industry that the parties were at impasse (VSHA Exhibits 5, 6).

20. By letter of September 13, 1988, Duplin informed Williams that the Union "also wishes to utilize the services of the Federation Mediation Service for the mediation stage of our on-going contract negotiations" (VSHA Exhibit 7).

21. At the time it was agreed to proceed to mediation, the Union was unaware of the following definition of impasse under the Municipal Employee Relations Act:

> "Impasse" means a controversy concerning wages, hours and conditions of employment arising from the inability of a municipal employer and an exclusive bargaining agent to reach agreement after both parties have bargained collectively in good faith for not less than 60 days. 21 VSA §1722(9).

22. On or before September 20, 1988, Duplin became aware of the provisions of 21 VSA §1722(9). On September 20, she sent a letter to Williams which provided:

> On September 13, 1988, I received your letter stating that you notified the Commissioner of Labor and Industry that the negotiations between VSHA and Local 4003 were at an impasse. In your letter to me, you cited VSA, Section 1731 as your basis for the notification.
>
> I have reviewed the cited section and other areas of the Act. In doing so I further discovered that "Impasse" cannot be declared until "both parties have bargained collectively in good faith for not less than 60 days" [21 VSA §1722(9)].
>
> By my count, "bargaining collectively" did not commune until August 18, 1988. We have not come close to the statutory 60 days necessary to declare impasse.
>
> I am therefore requesting that you and I immediately establish times and dates at which we may meet for continuing collective bargaining. I trust that you will agree with my reading of the statutes and that we can again attempt to meet reasonable compromises in which your employees and my Union members can accept (VSHA Exhibit 9).

23. Williams responded on September 21 by sending a letter to Duplin which provided:

> I have received and reviewed your letter dated September 20, 1988, and do not concur with your interpretation of the Labor Law [21 VSA §1722(9)].
>
> Collective bargaining negotiations commenced at the time of the signing of Ground Rules (June 28, 1988); therefore, it is the position of the Vermont State Housing Authority that it has satisfied the "bargaining collectively" section of the law, in which you referenced.
>
> I believe our negotiating team did "bargain in good faith"; however, if the position of the Federation has changed thus that further negotiation sessions shall be productive, I would be more than willing to return to the bargaining table.
>
> However, if the Federation's position remains unchanged, then I firmly believe it is in everyone's best interest to continue expediting the mediation process; otherwise if the process is stopped, it will only serve to further delay a resolution to our contract discussions (VSHA Exhibit 10).

OPINION

The first issue before us is whether VSHA committed an unfair labor practice in violation of 21 VSA §1726(a)(5) by failing to bargain in good faith with respect to the MMA classification and salary plan and by conditioning negotiation of other issues upon the Union's acceptance of the plan.

The Municipal Employee Relations Act (MERA) requires representatives of the employer and employees to meet at any reasonable time and bargain in good faith with respect to wages, hours and conditions of employment and execute a written contract incorporating any agreement reached; provided, however, that neither party shall be compelled to agree to a proposal nor to make a concession. 21 VSA §1725(a). It is an unfair labor practice for an employer to refuse to bargain collectively in good faith with the exclusive bargaining agent. 21 VSA §1726(a)(5).

The duty to bargain in good faith implies an open mind and a sincere desire to reach an agreement, as well as a serious intent to adjust differences and to reach an acceptable common ground. Chittenden South Education Association, Hinesburg Unit v. Hinesburg School Board, 8 VLRB 219, 236 (1985). Aff'd, 147 Vt. 286 (1986). The totality of the employer's conduct must be analyzed and the context in which the bargaining took place must be evaluated to determine if bad faith exists. An employer is not required to make concessions as evidence of good faith but may may hold a bargaining position to the point of impasse, so long as that position is based on sound reasons and is not taken to frustrate bargaining. IBEW, Local 300 v. Enosburg Falls Water and Light Department, 8 VLRB 193, 208 (1985). Aff'd, 148 Vt. 26 (1987). Hinesburg, supra, at 237.

In examining the totality of VSHA's conduct during negotiations, we conclude VSHA did not violate the duty to bargain in good faith. While VSHA made no concessions with respect to the classification aspect of the MMA plan and held that position to the point of impasse, it is evident their position was based on what could be considered to be sound reasons. The MMA plan, arrived at by an independent consulting firm, was the result of an attempt by VSHA to achieve competitive salaries to attract and retain employees. That VSHA would remain firm in implementing the study and view it as the "cornerstone" of an agreement was a valid bargaining position to take to the point of impasse.

Our conclusion that VSHA was proceeding in negotiations with an open mind and a serious intent to adjust differences and reach an acceptable common ground, and was not adopting a "take it or leave it" approach, is bolstered by the fact that, in response to Union salary proposals, VSHA made counter-proposals providing for cost-of-living increases and step increases based on merit. These counter-proposals indicated that VSHA remained flexible on wage issues while remaining firm on the reclassification plan. Such "hard bargaining" under the circumstances does not constitute bad faith bargaining. Rutland School Board v. Rutland Education Association, 2 VLRB 250, 273-276 (1980).

The declaration of impasse by the VSHA also does not indicate bad-faith bargaining even though it is apparent that the parties had not bargained to the point of deadlock on all issues. Declaration of impasse under MERA, in contrast to to the private sector, does not mean that parties have reached a genuine deadlock; that they have

irreconcilable differences. Instead, it merely represents a realization that third-party assistance is needed to continue productive bargaining. Burlington Fire Fighters Association v. City of Burlington, 4 VLRB 379 (1981). [Reversed on other grounds, 142 Vt. 434 (1983)]. Here, the parties had reached a stalemate in the major economic area of wages and classification just three weeks prior to the contract expiration date, and VSHA understandably sought the assistance of a mediator.

The final issue before us is whether VSHA violated 21 VSA §1722(9), and §1726(a)(1) and (5) by declaring impasse prior to 60 days of collective bargaining.

Pursuant to 21 VSA §1722(9), impasse may not be declared until "both parties have bargained collectively in good faith for not less than 60 days". "Collective bargaining" means the process of negotiating in good faith... wages, hours or conditions of employment" 21 VSA §1722(4). "(W)ages, hours and other conditions of employment" means any condition of employment directly affecting the economic circumstances, health, safety or convenience of employees but excluding matters of managerial prerogative. 21 VSA §1722(7). "Managerial prerogative" means any non-bargaining matter of inherent managerial policy. 21 VSA §1722(11).

The crux of the issue here is whether collective bargaining began on June 28, 1988, when the parties agreed to groundrules for further negotiations, on August 8, 1988, when the parties first discussed substantive bargaining proposals. We conclude that bargaining began on June 28, 1988, when the parties first met. Not only do we view the bargaining of the framework for subsequent

negotiations as integral to the process of negotiating actual wages, hours and other conditions of employment, but nothing required the parties to begin with such procedural topics, nor to conclude there. 21 VSA §1722(4).

Thus, collective bargaining commenced here on June 28, 1988, more than 60 days prior to the declaration of impasse by VSHA on September 9, 1988. VSHA did not prematurely declare impasse and committed no unfair labor practice. Given this conclusion, there is no need to address the issue of whether the Union waived its right to contest the impasse based on the fact that the Union agreed to impasse and then withdrew that agreement upon becoming aware of the statutory 60-day requirement.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the unfair labor practice charges in these matters are DISMISSED.

Dated this 21st day of November, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

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