VERMONT LABOR RELATIONS BOARD

ST. JOHNSBURY POLICE CHAPTER, AFSCME LOCAL 2413	)	
	)	DOCKET NO. 89-64
v.	)	
	)	
TOWN OF ST. JOHNSBURY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 5, 1989, the St. Johnsbury Police Chapter, AFSCME Local 2413 ("Union"), filed an unfair labor practice charge against the Town of St. Johnsbury ("Town"). The Union alleged that the Town engaged in a unilateral change in conditions of employment without consultation or negotiations with the Union and thereby prevented the Union from representing employees, in violation of 21 VSA §1726 (a)(5), by providing that no employees may engage in union activities while on duty.

The Labor Relations Board issued an unfair labor practice complaint on October 24, 1989. A hearing was held before Board Members Louis Toepfer, Acting Chairman; William Kemsley, Sr.; and Catherine Frank on November 16, 1989, in the Board hearing room in Montpelier. Attorney Edward Zuccaro represented the Town. Ralph Crippen, Union Representative, represented the Union.

The Town filed Requested Findings of Fact and Memorandum of Law on December 1, 1989. The Union filed Requested Findings of Fact and Stipulations on December 5, 1989.

FINDINGS OF FACT

1. At all times relevant, the Union has been the exclusive bargaining representative for the sergeants, patrol officers,

dispatchers and meter enforcement officers employed by the Town Police Department (Joint Exhibit 3, page 1).

2. The present collective bargaining agreement between the Town and the Union is effective for the period January 1, 1989 through December 31, 1991 (Joint Exhibit 3) ("Contract").

3. Negotiation sessions leading to the Contract usually occurred while some employees who were on the Union negotiating team were on duty. These employees were paid for the time they spent in negotiation sessions. During negotiations, the Town's negotiator, Attorney Edward Zuccaro, proposed that employees not be paid for negotiating while on duty. Ralph Crippen, Union Representative, indicated that the Union would discuss this during the negotiations for the next Contract. The Town did not pursue the proposal any further. The Union meeting to ratify the Contract occurred while some employees were on duty. The on-duty employees, including dispatchers, were allowed to attend the meeting without reduction in pay, and the Chief and the Captain covered calls for the dispatchers.

4. On April 17, 1989, David Clark, Town Manager, issued a directive to Bruce Pratt, Town Police Chief, directing him to implement immediately an order providing that "(n)o officer shall conduct or engage in union business or activity while on duty" (Joint Exhibit 1).

5. On April 17, 1989, Chief Pratt issued an Order to all Police Department employees providing that "(n)o Department Personnel shall conduct or engage in union activities while on duty" (Joint Exhibit 2).

6. At no time did either Clark or Pratt explain to employees the intent or scope of the order prohibiting employees from engaging in union activities while on duty.

7. Article XII, Section 3, of the Contract provides for disciplinary action to be taken in the presence of the Union steward. Prior to April 17, 1989, and since that date, disciplinary action has been taken by the Town in the presence of an on-duty Union steward without the steward being docked in pay (Joint Exhibit 3, page 20).

8. Article XII, Section 5, of the Contract provides that employees shall have the right to inspect material in his or her personnel file during normal business hours. Prior to April 17, 1989, and since that date, on-duty employees have exercised that right without any reduction in pay (Joint Exhibit 3, page 21).

9. Article XIII, Section 1, of the Contract provides for a four-step grievance procedure with participation by the grievant and union steward or union representative at each step. Prior to April 17, 1989, and since that date, on-duty grievants and stewards have participated in the grievance procedure without any reduction in pay (Joint Exhibit 3, pages 21-22).

10. Article XIII, Section 2, of the Contract provides that the Union may pursue a grievance to arbitration. Prior to April 17, 1989, on-duty employees participated in arbitration hearings without loss of pay. Since April 17, 1989, no arbitration hearings have occurred necessitating the attendance of on-duty employees (Joint Exhibit 3, pages 22-23).

11. Article XIV, Section 1, of the Contract provides for the establishment of and the meeting of a safety committee which includes two members of the bargaining unit. Prior to April 17, 1989, and since that date, on-duty employees have participated in safety committee meetings without any reduction in pay (Joint Exhibit 3, page 24).

12. Article XX, Section 2, of the Contract provides for bulletin board space to be provided for Union business announcements. Prior to April 17, 1989, and since that date, bulletin board space has been provided for Union business announcements and on-duty employees have not been docked pay for posting or reading announcements (Joint Exhibit 3, page 29).

13. Article XX, Section 3, of the Contract provides that "(U)nion representatives will be granted access to the premises for individual discussion of grievances with employees, provided care is exercised not to interfere with work and provided the Town Manager is notified of his/her presence in advance." Prior to April 17, 1989, the Union representative came into the worksite while employees were on duty to discuss pending grievances. Since April 17, 1989, the Union representative has not come into the worksite while employees were on duty to discuss pending grievances due to a fear within the Union and by employees that on-duty employees may be charged with violating the April 17 order.

14. Prior to April 17, 1989, the Union held meetings after the conclusion of Police Department meetings since all employees were present. On-duty employees, including dispatchers, were allowed to attend the Union meetings without reduction in pay, and the Chief and Captain would cover calls for the on-duty dispatcher. Since April 17, 1989, the Union and employees have been unclear whether such meetings would be held to be in violation of the April 17 order.

15. Generally, the Union and employees are unclear which "union activities" specifically are prohibited under the April 17, 1989, order.

OPINION

At issue is whether the issuance by the Town of the April 7, 1989, order providing that no employees may engage in union activities while on duty constituted a unilateral change in conditions of employment, thus resulting in an unfair labor practice under 21 VSA §1726 (a) (5) in that it constituted a failure to bargain in good faith.

The unilateral imposition of terms of employment during the time an 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. Burlington Firefighters Association v. City of Burlington, 142 Vt. 433, 435-436 (1983). Absent a waiver of bargaining rights, an employer is required to bargain changes in mandatory bargaining subjects during the term of an agreement even if contract negotiations are not ongoing. Burlington Firefighters Association, Local 3044, IAFF v. City of Burlington, 10 VLRB 53, 59 (1987). Mt. Abraham Education Association v. Mt. Abraham Union High School Board, 4 VLRB 224, 231 (1981).

Under the Municipal Employee Relations Act, "wages, hours and other conditions of employment" are mandatory bargaining subjects. 21 VSA §1722(4); §1725(a). "Wages, 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(17).

We look to experience under the National Labor Relations Act ("NLRA"), 29 U.S.C.§141-187, for guidance in determining whether "union activities" engaged in by on-duty employees are mandatory subjects of bargaining. Resort to federal precedent is a practice that

has been approved by the Vermont Supreme Court in construing MERA's provisions which reflect similar provisions in NLRA. Burlington Firefighters Association, supra, at 435. Both MERA and NLRA, 29 U.S.C. 158(d), mandate bargaining over "wages, hours, and other conditions of employment."

Under NLRA, various matters which are properly considered union activities engaged in by on-duty employees have been found to constitute "conditions of employment" and, thus, mandatory subjects of bargaining. For example, proposals to establish orderly and just methods of presenting grievances and effective arbitration provisions have been found to be mandatory subjects for collective bargaining. NLRB v. Independent Stave Co., 591 F2d 443 (8th Cir., 1979)., cert. denied, 444 U.S. 829 (1979). United Electrical, Radio and Machine Workers of America v. NLRB, 409 F2d 150 (DC Cir., 1969). Hughes Tool Co. v. NLRB, 147 F2d 69 (5th Cir., 1945). Also, the issue of remuneration of employee members of a union negotiating committee for their loss of work time due to time spent in negotiating a collective bargaining agreement has been found to be a mandatory subject of collective bargaining, as has the issue of the payment of wages during working time presentation of grievances. Axelson, Inc., 234 NLRB 414 (1978), enforced, 599 F2d 91 (5th Cir., 1979). In Axelson, the 5th Circuit observed that remuneration benefits all members of the bargaining unit by encouraging the collective bargaining process, thus making it a mandatory subject.

Given this guidance, it is clear that the blanket prohibition by the Town against union activities by employees while on duty

constitutes a unilateral change in conditions of employment. For instance, and without being exhaustive, we note that on-duty employees on the Union bargaining team engaged in contract negotiations, and were paid their regular wages, prior to the Town order prohibiting union activities by employees while on duty. Also, prior to the Town order, on-duty employees discussed pending grievances with the Union representative at the worksite. These were union activities engaged in by on-duty employees which constituted conditions of employment and, thus, mandatory subjects of bargaining. Accordingly, the blanket prohibition by the Town prohibiting union activities by on-duty employees constituted a unilateral change in conditions of employment in violation of 21 VSA §1726(a)(5).

As indicated in the Findings of Fact, there are various "union activities" under the Contract which the Town did not intend to cover by its blanket prohibition against union activities by on-duty employees. However, by failing to specifically delineate in its order those union activities by on-duty employees which the Town considered barred, and failing to explain to the Union or employees the intent or scope of the order, the Town left the Union and employees in a position where they had to guess which activities were prohibited. This interfered with employee rights to be fairly represented by the Union. For us to sanction the blanket order of the Town would be contrary to the provisions of MERA protecting employee rights to self-organization and to bargain collectively.

As a remedy, the Union requests that we order the Town to rescind its order. We conclude that this is the appropriate remedy under 21 VSA §1727(d).

ORDER

Now therefore, based on the foregoing findings of fact and the foregoing reasons, it is hereby ORDERED that the Town of St. Johnsbury shall cease and desist from implementing the order issued April 17, 1989, providing that no St. Johnsbury Police Department employees shall conduct or engage in union activities while on duty, and shall immediately rescind such order and remove such order from all places where notice of order was posted.

Dated this 17th day of January, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer, Acting Chairman

William G. Kemsley, Sr.

Catherine L. Frank