VERMONT LABOR RELATIONS BOARD

LOCAL 2413, AFSCME	)	
	)	
v.	)	DOCKET NO. 90-35
	)	
TOWN OF ST. JOHNSBURY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 14, 1990, Local 2413, AFSCME ("Union"), filed an unfair labor practice charge against the Town of St. Johnsbury ("Town"). Therein, the Union contended that the Town had violated its duty to bargain in good faith by refusing a request by the Union to renegotiate provisions concerning the mode of grievance resolution with respect to charges that a police officer is guilty of negligence or dereliction of duty, or of conduct unbecoming an officer.

On August 14, 1990, the Vermont Labor Relations Board issued an unfair labor practice complaint, and scheduled a hearing for October 4, 1990. Attorney Alan Biederman of Biederman & Rakow has represented the Union in this matter. Attorney Robert Bent of Zuccaro, Willis & Bent has represented the Town. Prior to the hearing, the parties informed the Board that they had agreed to submit the case to the Board based on a stipulation of facts, and requested that the Board decide this matter without an evidentiary hearing. The October 4, 1990, hearing thus was cancelleld. On October 16, 1990, the parties filed with the Board a Stipulation of Facts, which stipulated facts are contained herein. The parties filed memoranda of law on October 25, 1990.

FINDINGS OF FACT

1. The Union is the collective bargaining representative of non-supervisory employees of the Town.

2. The Union and Town entered into a collective bargaining agreement ("Contract") dated December 30, 1988, which took effect January 1, 1989, and expires December 31, 1991. The Contract covers all regular members of the Town Police Department (ie., sergeants, patrol officers, dispatchers and meter enforcement officers), excluding individuals employed on a probationary, provisional or other non-permanent status, or on a temporary, seasonal, on-call or part-time basis.

3. The Contract provides in pertinent part as follows:

ARTICLE XII
Discipline and Discharge

> . . . An employee who has completed his probationary period shall not be disciplined or discharged except for just cause. Any dispute under this Section shall be expedited pursuant to Article XIII of this Agreement.
>
> . . .

ARTICLE XIII
Grievance and Arbitration Procedure

Section 1. Definition and Steps

> A grievance is any dispute concerning the interpretation or application of this Agreement except the charge that an officer is negligent or derelict in his/her official duty or is guilty of conduct unbecoming an officer, in which case 24 VSA Section 1932 shall apply. . .

ARTICLE XX
Miscellaneous

Section 1. Saving Clause

> Should any provision of this Agreement be held to violate a Federal law, State law, or Municipal Charter or Municipal Ordinance, all other provisions of this Agreement shall remain in force.
>
> . . .

ARTICLE XXI
Entire Agreement Clause

> This Agreement constitutes the entire agreement between the parties and includes all collective bargaining negotiations,

except as may by mutually agreed upon by the parties, for the term of this Agreement.

4. 24 VSA § 1932 provides in its entirety as follows:

> (a) Whenever it appears to the appointing authority by its own knowledge or when informed by a written petition signed by one or more responsible persons that any regular officer has become negligent or derelict in his official duty, or is guilty of conduct unbecoming an officer, the appointing authority shall set a date for a hearing before the legislative body upon the complaint, and shall give at least seven and not more than fifteen days written notice to the accused officer stating particularly the complainant, the charges against the officer and the time and place of hearing. The legislative body may suspend such officer from duty pending a hearing.
>
> (b) The officer is entitled to be represented by counsel, to answer the complaint and to be heard on the charges. He may waive in writing his right to a hearing.
>
> (c) The officer may file with the district court having territorial jurisdiction of such municipality and with the legislative body, at least twenty-four hours before the time set for said hearing, a notice of election to have the cause heard before said court. If such notice is duly filed, the district court shall set the matter for hearing within ten days from the filing of said notice and shall give at least five days written notice to the legislative body and the officer of the time and place for hearing. The court shall determine the facts and certify its findings, which shall be final, to the legislative body.
>
> (d) If the legislative body or the district court, as the case may be, finds after considering all the evidence offered in such hearing, that the officer is guilty of the charges as offered, the legislative body shall have the power by majority vote to remove said officer or to suspend him without pay for a period of time not to exceed sixty days.
>
> (e) Any officer found not guilty of the charges offered against him by either the district court or the legislative body shall have restored to him pay lost through suspension.

5. On May 11, 1990, the Vermont Supreme Court filed an opinion in the case, In re: Douglas Williams, Docket No. 87-362. Therein, the

Court ruled, inter alia, that the Vermont District Court lacked subject matter jurisdiction to hear appeals of police officers under 24 VSA §1932.

6. Subsequent to the Williams decision, on June 29, 1990, the Union requested in writing that the Town reopen negotiations with respect to Article XIII of The Contract.

7. By letter of counsel dated July 12, 1990, The Town has rejected the Union's request to reopen negotiations concerning Article XIII of the Contract during the term of the Contract.

OPINION

At issue is whether the Town committed an unfair labor practice by refusing a request by the Union, during the Contract term, to renegotiate provisions concerning the method of resolving charges against a police officer accused of being negligent or derelict in his/her official duty or is guilty of conduct unbecoming an officer.

Under the circumstances of this case, this issue presents a novel question for this Board to decide; namely, whether the fact that the Vermont Supreme Court, in a decision not involving the parties herein, altered the operation of the parties' Contract, and thus gave rise to a duty to bargain concerning the provision of the parties' Contract which was altered.

The Town contends that the Court decision, In re Williams (Sup. Ct. Docket No. 87-362, May 11, 1990), has not altered the Contract. We disagree. The pertinent Contract provision, Article XIII, Section 1, provides that 24 VSA §1932 "shall apply" when there is a "charge that an officer is negligent or derelict in his/her official duty or is guilty of conduct unbecoming an officer." By providing that the

provisions of 24 VSA §1932 "shall apply", the parties incorporated the terms of such statutory provision in the Contract.

Prior to the Williams decision, the officer against whom charges were brought had the option pursuant to 24 VSA §1932 of having the validity of the charges determined by either the Selectboard of the municipality or by a district court judge. As a result of the Williams decision, the option of having the validity of charges determined by the district court judge was eliminated. Thus, the operation of the parties' Contract in this respect has been substantially altered since the right of review of charges by a neutral tribunal, which was incorporated into the Contract, no longer exists. This represents a substantial change to affected employees' conditions of employment.

Nonetheless, the Town contends that, even if the provisions of 24 VSA §1932 are incorporated into the Contract by reference, the Board should hold that the parties have received all that they bargained for since they must be deemed to have understood that the statute could be modified, given that statutes are altered or repealed from time to time by the legislature or the courts. Again, we disagree. Neither side could have reasonably contemplated the Williams decision. It is a basic tenet of contract law that a contract represents a "meeting of the minds" on all essential particulars. Evarts v. Forte, 135 Vt. 306, 309 (1977). Accordingly, if an instrument that purports to be a complete contract does not contain, or erroneously contains, the substantial terms of a complete contract, it is ineffective as a legal document. Id. Here, there clearly was no meeting of the minds regarding the applicability of 24 VSA §1932 in its post-Williams form. What is left of this statutory provision is far different from what the parties agreed to apply to charges against police officers.

The parties contemplated that a Court ruling may render null and void certain parts of the Contract by negotiating the severability provisions of Article XX, Section 1, of the Contract. Under the precedent of Evarts v. Forte, supra, we conclude that the Contract provision incorporating the provisions of 24 VSA §1932 is null and void since there has been no meeting of the minds on the particulars of that statutory provision subsequent to the Williams decision, and since that Contract provision no longer contains the substantial terms of a complete agreement on the issue of resolving charges made against police officers. Simply put, the Williams decision has resulted in frustration of purpose and impossibility of performance of that portion of the Contract.

That having been decided, we need decide whether the Town violated its duty to bargain in good faith by refusing the Union's request to renegotiate the Contract provision incorporating the provisions of 24 VSA §1932. We conclude that such a determination is warranted under the provisions of the Municipal Employee Relations Act, 21 VSA §1721 et seq ("MERA"). It is the purpose and policy of MERA to "provide orderly and peaceful procedures for preventing the interference by either (municipal employees and employers) with the legitimate rights of the other." 21 VSA §1721. For the purpose of collective bargaining, the employer and the exclusive bargaining representative of employees are required to meet at any reasonable time and bargain in good faith with respect to wages, hours and conditions of employment, and shall execute a written contract incorporating any agreement reached. 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).

In applying these provisions of MERA to the circumstances of this case, we believe it is appropriate to apply, as far as is possible, our case precedent concerning unilateral changes in conditions of employment during the term of a contract. We recognize that, unlike the classic unilateral change case, the Town here made no unilateral change in conditions of employment. Nonetheless, a substantial change was made, and employees' rights should not be affected because the change was imposed from the outside by the Vermont Supreme Court. In applying that precedent here, the Town must negotiate during the term of the Contract concerning the methods of resolving charges brought against police officers. Burlington Firefighters Association, Local 3044, IAFF v. City of Burlington, 10 VLRB 53, 59 (1987). Dispute resolution procedures apply to bargaining disputes arising during the term of an agreement, and the Town may make no changes concerning the issue in dispute until mandated statutory impasse resolution procedures are exhausted. Burlington Firefighters Association v. City of Burlington, 4 VLRB 379, 387 (1981).

Thus, pursuant to 21 VSA §1727 (d), the Town shall cease and desist from refusing to bargain with the Union over this issue. §1727 (d) also gives us remedial authority to order the Town to take "affirmative action." We believe the appropriate affirmative action to order in this case, under the circumstances, is that any provisions negotiated by the parties concerning the method by which charges will be resolved against police officers should be retroactive to the date of the Williams decision. This is so because any change in conditions of employment mandated by the Supreme Court has meant the

changes have been in effect since the date of the Williams decision through no control of the parties.

Also, we wish to make clear that, by our decision, we are not invalidating that portion of Article XIII of the Contract providing that "a grievance is any dispute concerning the interpretation or application of this Agreement" for any Contract provisions other than charges brought against police officers.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The provision of Article XIII of the Contract concerning the applicability of 24 VSA §1932 to charges brought against police officers accusing officers of being negligent or derelict in his/her official duty or guilty of conduct unbecoming an officer is declared null and void;

2. The Town of St. Johnsbury shall cease and desist from refusing to bargain in good faith with Local 2412, AFSCME, concerning renegotiating the provisions of the Contract concerning the method by which charges brought against police officers accusing officers of being negligent or derelict in his/her official duty or guilty of conduct unbecoming an offier will be resolved; and

3. Any agreement entered into by the parties shall apply to all charges pending, or subsequent to, the effective date of the Vermont Supreme Court decision in In re: Williams (Supreme Court Docket No. 87-362).

Dated this 20th day of December, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Louis A. Toepfer