

VERMONT LABOR RELATIONS BOARD

LOCAL 1343, AFSCME, AFL-CIO)	
)	
v.)	DOCKET NO. 91-10
)	
CITY OF BURLINGTON)	

MEMORANDUM AND ORDER

At issue is whether the Vermont Labor Relations Board should issue an unfair labor practice complaint in this matter. On January 30, 1991, Local 1343, AFSCME, AFL-CIO ("Union"), filed an unfair labor practice charge against the City of Burlington ("City"). Therein, the Union alleged that the City refused to bargain in good faith in violation of 21 VSA §1726(a)(5) by making a proposal for an addendum to the collective bargaining contract between the City and the Union, effective July 1, 1989 - June 30, 1991 ("Contract"), and then withdrawing the proposal from the bargaining table, when agreement was not reached, and ending negotiations without proceeding to mediation. The City filed a response to the charge on February 13, 1991.

Timothy Noonan, Executive Director of the Vermont Labor Relations Board, met with the parties on April 10, 1991, in furtherance of the Board's investigation of the charge and to informally attempt to resolve the issue in dispute. The issue in dispute was not resolved.

The pertinent factual background, which is not in dispute, is as follows: The City was preparing to install new water meters

in city residences and had received bids from outside contractors to do the installation. The City approached the Union and indicated that the City might be willing to have its own employees install the meters if certain temporary changes could be made in the Contract. The Union asked the City to make a proposal. The City made a proposal, which included changes in the Contract with respect to vacations, scheduling and hours of work. The Union proposed changes to the City's proposal. Subsequent discussions occurred between the Union and the City, but the parties could not reach an agreement on the changes to the Contract. The City then withdrew its request for any changes to the Contract, and has declined to proceed to mediation. Article XIX, Section 1, of the Contract states as follows:

This Agreement represents the final resolution of all matters between the parties hereto, and supersedes and cancels all prior contractual agreements unless expressly stated to the contrary herein. It shall not be changed or altered unless the change or alteration has been agreed to in writing by the parties.

At issue in deciding whether to issue an unfair labor practice complaint is whether the City is required to proceed through the statutory dispute resolution procedure of mediation upon the failure of the City and Union to agree to proposed changes in the existing Contract which were initiated by the City, or may the City withdraw its proposed changes and end negotiations prior to mediation.

Absent a waiver by either the terms of the collective bargaining contract or by actual negotiations, the employer has a

duty to bargain changes in mandatory bargaining subjects during the term of a contract. Burlington Firefighters Association, Local 3044, IAFF v. City of Burlington, 10 VLRB 53, 59 (1987). VSCFF v. Vermont State Colleges, 149 Vt. 546, 549 (1988). Mt. Abraham Education Association v. Mt. Abraham Union High School Board, 4 VLRB 224, 231-232 (1981). Dispute resolution procedures apply to bargaining disputes arising during the term of an agreement where a duty to bargain exists, just as they apply to disputes arising in negotiation of an agreement. VSEA v. State of Vermont (re: Implementation of "6-2" Schedule at Vermont State Hospital, 5 VLRB 303, 321 (1982).

Here, we conclude that the City did not commit an unfair labor practice by refusing to proceed to mediation on the issues in dispute because no duty to bargain existed. No duty to bargain the proposed changes to the Contract with respect to vacations, scheduling and work hours ever existed in this matter since the parties contractually provided that the Contract "shall not be changed or altered unless the change or alteration has been agreed to in writing by the parties." Once the City proposed changes in the Contract, this did not mean that they acquired the duty to bargain during the term of the Contract and proceed to mediation on unresolved issues. Pursuant to the contractual language agreed to by the parties, either party was entitled to end the negotiations process at any time by deciding to no longer pursue changes to the Contract.

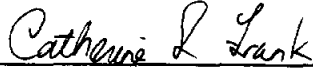
Now therefore, based on the foregoing reasons, the Vermont Labor Relations Board hereby declines to issue an unfair labor practice complaint in this matter, pursuant to 21 VSA 1727(a), and this matter is DISMISSED.

Dated this 6th day of May, 1991.

VERMONT LABOR RELATIONS BOARD



Charles H. McHugh, Chairman



Catherine L. Frank



Leslie G. Seaver