

VERMONT LABOR RELATIONS BOARD

IBEW LOCAL 300

v.

BARTON VILLAGE TRUSTEES

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DOCKET NO. 00-3

MEMORANDUM AND ORDER

The issue is whether the Labor Relations Board should grant the Employer's motion to defer this unfair labor practice charge to the grievance and arbitration procedure set forth in the collective bargaining agreement between IBEW Local 300 ("Union") and the Village of Barton Trustees ("Employer"). On January 18, 2000, the Union alleged that the Employer violated its duty to bargain in good faith by deciding on January 10, 2000, to not reimburse employees effective January 1, 2000, for the \$50 deductible on prescription drugs. On February 3, the Employer filed a response to the charge. Board Executive Director Timothy Noonan met with the parties on March 29 in furtherance of the Board's investigation of this charge. On April 11, the Employer filed a motion to defer this dispute to the grievance and arbitration procedure set forth in the collective bargaining agreement between the parties. On April 25, the Union filed a response to the Employer's motion to defer.

Factual Background

The pertinent factual background for the purpose of deciding whether to grant the Employer's motion is based on the materials filed by the parties and the information gathered at the March 29 investigatory meeting. In 1994, the Employer instituted a policy to reimburse employees for the deductible on prescription drugs. The Employer continued to reimburse employees for the deductible until January 2000.

The collective bargaining agreements between the Union and the Employer, effective February 1, 1997 through December 31, 1999, and effective January 1, 2000 through December 31, 2002, each provided for health insurance to be offered to employees through Vermont League of Cities and Towns Health Trust insurance policies. The agreements have differences with respect to Employer contributions to health insurance coverage. The 1997-1999 agreement provided as follows in this regard:

The IBEW and BIV agree that BVI shall contribute for the combination of health care and prescription drug insurance not less than BVI's "base contribution" during the period of this agreement . . . The "base contribution at the start of this contract period follows:

each single person	\$1840
each 2-person plan	\$3770
each family plan	\$5125

If during the period of this contract there are increases in premiums, BVI will absorb 50% of all increases and the balance of all increases will be deducted from employees' wages . . . If during the contract period the premiums are lessened, BVI and the employees will share equally in the savings. If during the contract period the total premium is less than BVI's "base contribution", the savings will be retained by BVI . . .

The above language in the 1997-1999 agreement is not contained in the 2000-2002 agreement. In its place, the following language is included in the health insurance article of the 2000-2002 agreement:

Health insurance premiums shall be split on the basis of a 75/25 percent ratio between BVI and the bargaining unit employees. That is, BVI will pay a flat 75% of the costs of the health insurance premium and the bargaining unit employees will pay a flat 25% of the health insurance premium. No other costs associated with health care shall be incurred by BVI.

Neither the 1997-1999 agreement nor the 2000-2002 agreement included explicit language on deductibles for prescription drugs. In negotiations leading to the 2000-2002

agreement, deductibles for prescription drugs were not specifically discussed. The Employer's prescription drug coverage is through a Vermont League of Cities and Towns policy. The prescription drug policy is a separate policy from the health insurance policy offered by the Employer through the League of Cities and Towns.

At its regular Trustees meeting on January 10, 2000, Barton Village Trustees approved a motion "to not reimburse any employee for their \$50.00 deductible on Prescription Drug Program as of January 1, 2000."

The 2000-2002 collective bargaining agreement provides for a three-step grievance procedure to resolve grievances. A grievance is defined as "a disagreement concerning the interpretation or application of the terms of this Agreement". The third and final step of the grievance procedure is final and binding arbitration by a single arbitrator selected by the parties through the services of the Federal Mediation and Conciliation Service. The Union submitted a grievance, dated January 20, 2000, stating "we want the Village to pay the \$50 deductible on the drug prescription". The Employer denied the grievance. The Union has requested that the FMCS appoint an arbitrator to resolve the grievance.

Discussion

The Union contends that the language of the 2000-2002 agreement providing that "(n)o other costs associated with health care shall be incurred by BVI" does not apply to deductibles for prescription drugs. The Union takes the position that this language refers to health insurance premiums, and does not encompass prescription drug deductibles. The Union contends that Employer reimbursement of the prescription drug deductibles constituted a binding past practice that the Employer inappropriately changed at the

January 10, 2000, meeting. The Union takes the position that the Board should determine that the Employer violated its duty to bargain in good faith with the Union through this unilateral action, and requests that the Board not defer to the grievance and arbitration procedure.

The Employer contends that this dispute should be deferred to the parties' grievance and arbitration procedure because the issue in the grievance is the same issue raised in the unfair labor practice charge: whether the Trustees impermissibly decided no longer to reimburse employees for their deductible relating to prescription drug purchases. In light of the Union's submission of the issue to arbitration, the Employer contends that the Board should defer to that process.

In previous cases, the Board has declined to rule on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and employees had an adequate redress for the alleged wrongs through the grievance procedure. Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9 VLRB 195 (1986). Fair Haven Graded School Teachers Association, Vermont-NEA v. Fair Haven Board of School Directors, 13 VLRB 101, 109-110 (1990). Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 518 (1991).

The Board begins its analysis by considering if the issue contained in the charge is subject to arbitration, irrespective of whether it might also be an unfair labor practice. Id.

at 519. If the issue is subject to arbitration, the contract grievance procedure should be applied, barring an overriding statute or deferral policy. Id. In Champlain Water District, the Court cited with approval the following statement by the Board in Burlington, 1 VLRB at 340:

If this Board hears as an unfair labor practice a complaint which is a grievance without first requiring the complainant to utilize the dispute resolution procedures agreed to in the collective bargaining agreement, the collective bargaining process would be undermined . . . (A)n exhaustion of contract remedies doctrine . . . insures the integrity of the collective bargaining process by requiring the parties to collective bargaining agreements to follow the procedures they have negotiated to resolve contract disputes. This policy also encourages the parties to negotiate grievance procedures to resolve contract disputes which is sound labor relations policy. Labor relations stability depends on the parties working together to resolve disputes which directly affect them.

Abstention cannot be equated with abdication of the Board's statutory duty to prevent and remedy unfair labor practices; instead the parties are directed to seek resolution of their disputes under the provisions of their own contract, thus fostering the collective relationship and the policy favoring voluntary arbitration and dispute settlement. Champlain Water District, 156 Vt. at 519-520. The exhaustion doctrine does not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation. Id. at 520. Interpretation of an agreement may involve interpolating from a written text solutions not expressly spelled out in the text. Id. Textual interpretations may be blended with “contracts implied in fact” in the form of established past practices. Id. at 520-21. An arbitrator is ideally poised to consider and resolve such issues; they are issues concerning the “law of the shop” as opposed to the “law of the land”. Id. at 521.

In applying these standards to this case, we believe it is appropriate to defer to the grievance procedure and not rule on the unfair labor practice charge at this time. The Union has filed a grievance over the Employer's failure to reimburse employees for the deductible on prescription drugs, and is seeking the appointment of an arbitrator to decide the grievance. It is apparent that the dispute involves the interpretation or application of the collective bargaining agreement's health insurance provisions, including the blending of textual interpretations with established past practices; such dispute should be resolved through the parties' grievance procedure before proceeding with the unfair labor practice case. Champlain Water District, 156 Vt. at 520-21. The Union appears to have an adequate recourse for the alleged wrongs through the grievance procedure ending in binding arbitration. Further, there is no overriding statute or deferral policy that leads us to not defer to the grievance procedure.

Such deferral does not necessarily bar the Board's later consideration of the matter. The Board retains jurisdiction for the purpose of entertaining a motion that grievance arbitration of the underlying issue in this matter has failed to meet the following criteria necessary for the Board to defer to an arbitrator's award: 1) fair and regular arbitration proceedings; 2) agreement by all parties to be bound; 3) the decision is not repugnant to the purpose and policies of the Municipal Employee Relations Act; 4) the arbitrator clearly decided the unfair labor practice issue; and 5) the arbitrator decided issues within his or her competency. Bennington, 9 VLRB at 195-196.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED:

- a. The Labor Relations Board declines to rule on this unfair labor practice charge at this time and defers this matter to the grievance procedure; and

b. The Labor Relations Board retains jurisdiction in this matter for the purpose of entertaining a motion that grievance arbitration has failed to meet the applicable criteria set forth above, which motion shall be filed within 30 days of issuance of the final arbitration decision of the underlying issues in this matter.

Dated this 23rd day of June, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Carroll P. Comstock

John J. Zampieri

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