

VERMONT LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD	)	
OF POLICE OFFICERS, LOCAL 506	)	
	)	
v.	)	DOCKET NO. 00-1
	)	
TOWN OF BRATTLEBORO	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint in this matter. On January 7, 2000, the International Brotherhood of Police Officers, Local 506 ("Union"), filed an unfair labor practice charge against the Town of Brattleboro ("Town"). The Union contends that the Town violated its duty to bargain in good faith with the Union, in violation of 21 V.S.A. Section 1726(a)(5), by unilaterally assigning one police officer to the Brattleboro High School and Middle School and changing the hours worked by that employee.

The Town filed a response to the charge on January 19, 2000, contending that the actions taken by the Town were within its management rights established by the collective bargaining contract between the Town and the Union. Timothy Noonan, Board Executive Director, met with representatives of the Union and Town on March 7, 2000, in furtherance of the Board's investigation of the charge.

Factual Background

The pertinent factual background for the purpose of deciding whether to issue an unfair labor practice complaint, based on information gathered at the March 7 investigatory meeting, is as follows:

a) The Town Police Department generally operates with three shifts: the day shift, 6:30 a.m. – 4: 30 p.m.; the evening shift, 3:30 p.m. – 1:30 a.m.; and the night shift,

9:30 p.m. – 7:30 a.m. Police officers typically are scheduled to work four 10-hour shifts a week. The Town is divided into three sectors for police operations: North, South and Street. Generally, there is one patrol officer assigned to each sector per shift. The middle school and high school are part of the same complex and are in the South Sector.

b) Prior to the current school year, there was no single officer assigned to handle incidents arising in the school complex. Officers rotated among sectors and different shifts could handle calls involving the schools; this resulted in various officers responding to incidents at the schools. School officials became concerned about not having a consistent response among officers. Also, there often was a lag time in following through on incidents because an officer responding to a school incident might not work again in the South sector for several days due to being off-duty or assigned to a different sector.

c) Ultimately, the Town Police Department agreed to assign one officer to be the primary officer responding to incidents in the schools. The Town assigned patrol officer Michael Carrier to perform such duties. Carrier had received some training in handling school issues, and was interested in the assignment. Carrier's schedule was changed from working four 10 hour days on the normal shifts to working 7:00 a.m. – 3:00 p.m., Monday through Friday. Carrier is assigned to the South sector. He responds to incidents at the schools and also is the primary officer responsible for responding to incidents in the South sector. In carrying out his responsibilities at the schools, Carrier performs the same duties previously performed by officers responding to incidents at the schools and also has assumed the additional duty of walking through the school on a

daily basis. Once the school year is over, Carrier's schedule will revert back to the normal four 10-hour days per week for the summer months.

d) The Town implemented the assignment of duties to Carrier and his schedule change without consultation or discussions with the Union. As a result of the assignment and schedule change, Carrier no longer is regularly assigned to work weekends. If he does work weekends, it is on an overtime basis. The change resulted in some initial minor juggling of other employees' work schedules to accommodate the change in Carrier's schedule.

e) In addition to Carrier, there are four Town police officers in the bargaining unit represented by the Union who work different shifts than the three main shifts discussed above. A shift commander works 6:00 a.m. – 2:00 p.m., Monday through Friday. Also, the detective sergeant and the two patrol officers assigned as detectives work 8:00 a.m. – 4:00 p.m., or 8:30 a.m. – 4:30 p.m., Monday through Friday. These schedules have been in effect a number of years. Other than the change in Carrier's schedule, there have been no shift changes since the negotiation of the initial collective bargaining contract between the Union and the Town after the Union became representative in 1995.

f) The collective bargaining agreement between the Town and the Union, effective July 1, 1998 to June 30, 2001, provides in pertinent part as follows:

...

**Article 4 – Management Rights**

Except as otherwise modified in this Agreement the management and direction of the Police Department operations, as well as the means by which such operations are to be conducted, shall remain the sole and exclusive prerogative of the Town .

..

Management rights that are also included:

...

- Maintain efficiency
- ...
- Assign and reassign work to be performed
- ...
- Determine number and time of shifts, hours of work, days of week and number of hours and days in workweek
- Determine need for new positions . . .

#### **Article 8 – Grievance Procedure/Arbitration**

A grievance is defined as the alleged violation of a specific provision of this Agreement . . . (T)he Association may submit the grievance to Arbitration for final disposition . . . The authority of the arbitrator shall be limited to the terms and provisions of the Agreement. The arbitrator shall not have the authority to establish salaries or wages, or add to, subtract from, modify or otherwise change any of the terms or provisions of this Agreement unless the Town exercises its rights under Article 9 entitled Hours of Work / Pay Period . . .

#### **Article 9 – Hours of Work/Pay Period**

...  
The Association recognizes that employee's daily and weekly schedules are based on law enforcement requirements and public safety needs of the community, and are subject to change. The Town necessarily retains the right to schedule employees for work, and it is the obligation of the employee to work as scheduled.

...  
The Town reserves the right to change the regular starting and quitting time of a shift, to abolish existing shifts or to create new or additional shifts, to establish new day-off schedules, or to transfer employees from one regular shift to another regular shift. Prior to instituting any such change the Association shall be consulted and provided with an opportunity to express its views on the subject, unless the change is required in an emergency, in which event this consultation shall take place as soon as practical. The decision to make any change shall not be arbitrary and capricious, however, the sole and final authority to make the change shall reside with the Town and shall not be subject to grievance or arbitration . . .

...

g) The Union did not file a grievance pursuant to the collective bargaining agreement over the assignment of duties to Carrier and his schedule change.

#### **Parties' Positions**

The Union contends that the Town improperly created a new position by its assignment of duties to Carrier without negotiating with the Union. The Union also

contends that the change in Carrier's schedule, as well as the effect such a change has had on other employees' work schedules, carries bargaining obligations which the Town has not met.

The Town contends that the provisions of Articles 4 and 9 of the collective bargaining agreement grant the Town the management rights to take the actions in this case of assigning Carrier to be the primary officer for handling incidents at the schools and changing his work schedule. The Town contends that efficiency and public safety concerns warrant a single officer being assigned to the schools, and the agreement gave management the unilateral right to assign Carrier to the schools and change his schedule to address these concerns.

### Discussion

In exercising our discretion whether to issue an unfair labor practice complaint pursuant to 21 V.S.A. Section 1727(a), we look to the standards established in past cases concerning duty to bargain obligations during the term of a collective bargaining agreement. 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. VSCFF v. Vermont State Colleges, 149 Vt. 546, 549 (1988). 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, 231-232 (1981). The unilateral imposition of terms of employment during a contract term when the employer is under the 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, *supra*. Mt. Abraham, *supra*. VSEA v. State, 5 VLRB 303, 324-329 (1982).

In determining whether a party has waived its bargaining rights, the Board has required that it be demonstrated a party consciously and explicitly waived its rights. Local 98, IUOE, AFL-CIO v. Town of Rockingham, 7 VLRB 363 (1984). VSEA v. State of Vermont, 5 VLRB at 326. Mt. Abraham, 4 VLRB at 231. In such matters, the Board is further guided by the Vermont Supreme Court, which defines a waiver as the "intentional relinquishment of a known right". In re Grievance of Guttman, 139 Vt. 574 (1981).

The central issue in this case is whether the Union waived its right to bargain over the assignment of duties to Carrier and his schedule change through the negotiated terms of the parties' collective bargaining agreement. We conclude that the Union has waived its bargaining rights. Provisions of the collective bargaining agreement grant management the rights to assign and reassign work, change employees' daily and weekly schedules based on law enforcement requirements and public safety needs, create new or additional shifts, and establish new day-off schedules. These provisions provided the Town with ample authority to take the unilateral actions in this case of assigning Carrier to be the primary officer for handling incidents at the schools and changing his work schedule. By agreeing to these provisions, the Union consciously and explicitly waived the right to bargain over assignment of duties to Carrier and his schedule change, as well as the effect such a change has had on other employees' work schedules.

We recognize that the collective bargaining agreement provides that, prior to instituting any new or additional shifts and new day-off schedules, the Town shall consult with the Association and provide the Association with an opportunity to express its views

on the subject. There was no consultation with the Association here prior to placing Carrier on a new five day, 8 hour shift, and changing his days-off schedule to weekends. In order for the Town's actions to constitute an unfair labor practice, there has to be an obligation to bargain. Here, there was only an obligation to consult. The Association's remedy for the Town's failure to consult was to file a grievance pursuant to the collective bargaining agreement. Although the agreement provides that the Town has the authority to make shift and schedule changes and such changes shall not be subject to grievance or arbitration, a claim that the Town failed to consult with the Association prior to making the changes would be a subject for resolution through the agreement's grievance procedure.

NOW THEREFORE, based on the foregoing reasons, the Labor Relations Board declines to issue an unfair labor practice complaint in this matter and the unfair labor practice charge filed herein is ORDERED DISMISSED.

Dated this \_\_\_\_ day of March, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Catherine L. Frank, Chairperson

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Carroll P. Comstock

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Richard W. Park

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Edward R. Zuccaro