VERMONT LABOR RELATIONS BOARD

AFSCME LOCAL 1201, CASTLETON EMPLOYEES	)	
	)	DOCKET NO. 00-23
v.	)	
TOWN OF CASTLETON	)	

MEMORANDUM AND ORDER

In this unfair labor practice case, AFSCME Local 1201 ("Union") contends that the Town of Castleton ("Town") violated its duty to bargain in good faith by making the unilateral change of eliminating the zoning administrator/assessor position that was represented by the Union. As a remedy, the Union requests that the zoning administrator/assessor be reinstated, and that the Town negotiate in good faith. The Town requests that the Board defer this charge to the parties' grievance procedure. The Union objects to deferral. The Board needs to decide whether to defer this case to the grievance procedure.

Factual Background

The pertinent factual background for the purpose of deciding whether to defer in this case is based on materials filed by the parties and the information gathered on October 25, 2000, when Board Executive Director Timothy Noonan met with the parties in furtherance of the Board's investigation of this charge.

The Union has represented Town employees for several years. The zoning administrator was added to the bargaining unit of Town employees represented by the Union in 1991 pursuant to a Labor Relations Board Order of Certification issued subsequent to a representation election (Board Docket No. 91-24). Subsequently, the collective bargaining agreement has specifically included wages, hours and conditions of

employment for the zoning administrator. The Labor Relations Board never issued an Order including the Town assessor in the bargaining unit, but at least since 1996 the collective bargaining agreement between the Town and the Union has specifically included negotiated hours and wages for the assessor. Prior to April 1, 2000, Patricia Ryan held both positions of zoning administrator and assessor.

On September 14, 1999, at which point the Union and Town were negotiating a successor collective bargaining agreement to the 1996-1999 agreement, Town attorney James Carroll sent a letter to Union representative George Lovell which provided in pertinent part as follows:

> I write this letter to clarify the Selectboard's current opinions regarding several positions certified as within the Local 1201 bargaining unit . . . In doing so, I want to assure you that Castleton does not expect, or desire, to put these matters in issue as part of the current negotiations. Nor does the Selectboard view these matters as an appropriate subject of collective bargaining . . .
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> . . . (T)he Selectboard is currently considering a restructuring of some positions within Castleton. Specifically, the Selectboard is considering the reallocation of those job responsibilities which are currently assigned to the Assessor/Zoning Administrator and the elimination of the current position. It is expected that the Town Listers may undertake the assessor's functions and that the Town Manager may be appointed as Castleton's zoning administrator. It is anticipated that such a change would occur as of April, 2000 . . .

On March 14, 2000, Town Selectboard Chair Patrick Egan sent a letter to Patricia Ryan. The letter provided in pertinent part:

> As you know, your three-year appointment to the position of Town Zoning Administrator expires on March 31, 2000. Pursuant to 24 V.S.A. Section 4442, the Planning Commission must appoint a successor Zoning Administrator, with approval of the Selectboard, to assume the duties of the position as of April 1, 2000. The Selectboard has made a request to the Planning Commission that it appoint Town Manager Beverly Davidson as Zoning Administrator, effective April 1, 2000. If Ms. Davidson is

> appointed as Zoning Administrator, she will assume the duties of that position in addition to her duties as Town Manager . . .

The Planning Commission subsequently concurred with the Selectboard recommendation. The statutory provision cited by Egan in his letter, 24 V.S.A. Section 4442, provides in pertinent part as follows:

> (a) An administrative officer, who may hold any other office in the municipality, shall be appointed for a term of three years by the planning commission, with the approval of the legislative body . . . An administrative officer may be removed for cause at any time by the legislative body after consultation with the planning commission . . .

On March 17, 2000, Egan sent another letter to Ryan. The letter provided in pertinent part:

> At the March 9, 1999 Town Meeting the voters of the Town of Castleton approved a ballot item to "recommend to the Select Board the elimination of the position of Assessor". As you may be aware, the current budget contains no funding for the position. The Board intends to consider and act upon the voters' recommendation to eliminate the position of Assessor at its March 27, 2000 meeting. The position of Assessor will be eliminated effective March 31, 2000, and beginning April 1st the Listers will assume the duties and responsibilities previously handled by the Assessor position . . .

At its March 27, 2000, meeting, the Selectboard acted to eliminate the Assessor position. 32 V.S.A. Section 4041 provides in pertinent part as follows:

> . . . When a board of listers are of the opinion that expert advice or assistance is needed in making any appraisal required by law, they may, with approval of selectmen or by vote of the town, employ such assistance.

On April 20, 2000, the Union filed a grievance on behalf of Ryan concerning her removal from the zoning administrator and assessor positions. The grievance requested that Ryan be reinstated with back pay and benefits. The grievance cited the following

provisions of the collective bargaining agreement as having been violated: Sections 101, 105, 503 and 505. Section 101 is the Recognition clause of the agreement, and includes "office workers" among the employees represented by the Union. Section 105 prohibits discrimination against employees on the basis of race, color, creed, national origin, sex, age, handicap, political affiliation or disability. Section 503 provides that "employees may only be disciplined for just cause", and sets forth a four-step procedure of progressive discipline: oral warning, written warning, up to 10 days suspension, discharge. Section 505 is entitled "Seniority", and provides that in the event of a reduction in force, layoff shall be in inverse order of seniority within each department.

In its June 7, 2000, response to the grievance, the Town Selectboard denied the applicability of any of the above-cited provisions of the agreement and took the position that the matter was not grievable. The response further indicated that, if the agreement did apply in this matter, the Town's actions were supported by the following management rights provisions of the agreement:

> Section 111 – Management Rights
>
> A. The Town retains all of the rights and functions necessary to effectively manage the Town except to the extent that they are expressly and specifically modified or limited by the written provisions of this Agreement. These rights include, but shall not be limited to the right to:
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> 1. plan, direct, schedule, assign, transfer and control employee work assignments and duties;
>
> . . .
>
> 4. create, revise and eliminate positions;
>
> . . .

The collective bargaining agreement contains a grievance procedure ending in final and binding arbitration. The Union appealed the grievance to arbitration, and an arbitration hearing was scheduled for December 7.

The Union and Town reached a successor agreement to the 1996-99 agreement in early May 2000. The provisions of the 1996–99 agreement remained in effect until the successor agreement became effective. There were no changes negotiated with respect to language applying to the zoning administrator and assessor except for wage changes.

Discussion

The Town contends that any dispute regarding the Town's authority in terminating the employment of the zoning administrator/assessor is properly a matter for resolution through the grievance procedure of the parties' collective bargaining agreement. The Town argues that the pending grievance arbitration proceeding may resolve the dispute between the parties, and the Board should defer to the parties' grievance procedure.

The Union contends that the contractual violations alleged in the grievance concerning the termination of employment of the zoning administrator/assessor are not necessarily synonymous with the violations of bargaining obligations alleged in the unfair labor practice charge. The Union argues that deferring to arbitration would not afford the Union with adequate redress for the alleged wrongs in this case, and requests that the Board deny the Town's request to defer to arbitration.

A threshold issue which has been decided in unfair labor practice cases is whether the Board should defer to a contract's grievance procedure in lieu of issuing an unfair labor practice complaint. The Board has not ruled on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and where 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. National Radio Co., 198 N.L.R.B. 527, 531 (1972). The exhaustion doctrine does not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation. Champlain Water District, 156 Vt. at 520. The exhaustion doctrine also does not bind the parties if an overriding statute negates deferral, or if the Board's own deferral guidelines indicate that deferral would not serve the purpose of the statute. Champlain Water District, 156 Vt. at 520.

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. A grievance has been filed, and now awaits an arbitration decision, concerning whether the Town violated various provisions of the collective bargaining agreement by terminating the employment of the zoning administrator/assessor. In the grievance, it is requested that the zoning administrator/assessor be reinstated with back pay and benefits. The termination of the zoning administrator/assessor also is at issue in the unfair labor practice charge, and the reinstatement of the zoning administrator/assessor is requested as a remedy.

Since the alleged improper termination of employment may be remediable through the binding arbitration provisions of the collective bargaining agreement, we conclude that it is appropriate to require the parties to exhaust the available remedies provided through grievance arbitration before proceeding with an unfair labor practice complaint. Teamsters Local 597 v. Chittenden County Transportation Authority, 23 VLRB 240, 243 (2000). Champlain Water District, supra. This fosters the parties'

collective relationship and the policy favoring voluntary arbitration and dispute settlement. Id.

Further, there is no overriding statute or deferral policy that leads us to not defer to the grievance procedure. We recognize the Union is claiming the Town has violated its duty to bargain in good faith by its actions in terminating the employment of the zoning administrator/assessor. However, the arbitration decision may resolve the dispute between the parties, making it unnecessary to proceed with the unfair labor practice charge. Since contract interpretation may resolve the dispute, deferral to the arbitration procedure is "merely the prudent exercise of restraint, a postponement of the use of the Board's processes to give the parties' own dispute resolution machinery a chance to succeed." Milton Education and Support Association v. Milton Board of School Trustees, (Sup. Ct. Docket No. 97-218, July 14, 2000), slip op. at 10-11; *citing* In re United Technologies Corp., 268 N.L.R.B. 557, 560 (1994).

Such deferral does not necessarily bar the Board's later consideration of this 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 deter 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 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.

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, or within 30 days of the issuance of this decision, whichever date is later.

Dated this 22nd day of December, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Catherine L. Frank
Catherine L. Frank, Chairperson

/s/ Richard W. Park
Richard W. Park

/s/ John J. Zampieri
John J. Zampieri

/s/ Edward R. Zuccaro
Edward R. Zuccaro