VERMONT LABOR RELATIONS BOARD

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

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint in this matter. On April 12, 2000, AFSCME Local 1201, Castleton Employees ("Union") filed an unfair labor practice charge, contending 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 requested that the zoning administrator/assessor be reinstated, and that the Town negotiate in good faith.

The Labor Relations Board already has issued two decisions in this matter. 23 VLRB 338 (2000). 25 VLRB 140 (June 21, 2002). As a result of the most recent decision, the only remaining question is whether the Town committed an unfair labor practice in selecting Town Manager Beverly Davidson, who is not in the bargaining unit which is represented by the Union, to assume zoning administrator duties previously performed by an employee in the bargaining unit. The Union and the Town filed briefs on August 12, 2002, on the issue of whether the Town committed an unfair labor practice by transferring the zoning administrator duties out of the bargaining unit.

The Board previously has determined that the transfer of bargaining unit work to non-bargaining unit employees constitutes a mandatory subject of bargaining, and that an employer violates its duty to bargain in good faith pursuant to 21 V.S.A. Section 1725(a) by transferring work out of the bargaining unit without negotiating with the union.

Burlington Education Association v. Burlington School District, 16 VLRB 398, 406-407 (1993). The test for whether work has been transferred away from a bargaining unit is whether, as a result of decisions by the employer, the bargaining unit in question has suffered an adverse impact. Id. Road Sprinkler Fitters Union v. NLRB, 676 F.2d 826, 831-32 (D.C. Cir. 1982). The proper question is whether work was allocated in such a way so as to cause the bargaining unit to lose work which, in light of past practices, the bargaining unit otherwise would have been expected to perform. Id. Also, the employer may not shift work away from the bargaining unit without bargaining simply because it is to the employer's economic advantage. Id.

In this case, the precedents concerning transfer of bargaining unit work must be considered along with the statutory mandate of 24 V.S.A. Section 4442(a), which provides as follows with respect to the appointment of zoning administrators: "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." The question thus raised is whether this statutory provision negates the responsibility of an employer to negotiate with a union over the transfer of zoning administrator work out of the bargaining unit represented by the union.

Municipal employers and unions representing municipal employees are required by the Municipal Employee Relations Act, 21 V.S.A. Section 1721 *et seq.*, to "bargain in good faith with respect to wages, hours and conditions of employment". 21 V.S.A. Section 1725(a). " 'Wages, hours and . . conditions of employment' means any conditions of employment directly affecting the economic circumstances, health, safety or convenience of employees but excluding matters of managerial prerogative . . ." 21

V.S.A. Section 1722(17). " 'Managerial prerogative' " means any nonbargainable matters of inherent managerial policy." 21 V.S.A. Section 1722(11).

In considering these provisions of the Municipal Employee Relations Act together with our precedents concerning transfer of bargaining unit work and 24 V.S.A. Section 4442(a), we conclude that a matter of managerial prerogative was involved which negates the responsibility of the Town to bargain with the Union. Through enactment of Section 4442(a), the Vermont General Assembly provided municipal employers with the discretion to not reappoint a zoning administrator at the conclusion of a three-year term, and to appoint as a zoning administrator a person who may hold any other office in the municipality. This indicates a legislative intent to make it a matter of inherent managerial policy with the selectboard of a town to appoint persons to perform zoning administrator duties for a limited tenure and without restriction as to who may be selected.

Accordingly, the Town acted within its express statutory authority by appointing the town manager to perform zoning administrator duties. The fact that the town manager is excluded from the bargaining unit represented by the Union, and that the Town did not negotiate with the Union concerning the transfer of zoning administrator work out of the bargaining unit, does not constitute a violation of the Town's duty to bargain in good faith pursuant to the Municipal Employee Relations Act. The Town was exercising a managerial prerogative in this regard and was not required to negotiate with the Union.

Certainly, the Town could have exercised its managerial prerogative by appointing a person to perform zoning administrator duties who was not excluded from the bargaining unit represented by the Union. If the Town did so, that person would have been represented by the Union and covered by the collective bargaining agreement between the Union and Town. However, this does not mean any requirement existed for

the Town to act in this way. If we were to hold otherwise, we would improperly limit the appointment powers vested in the Town by the Vermont General Assembly.

In sum, the specific provisions of 24 V.S.A. Section 442 result in an exception to the general rule that the transfer of bargaining unit work to non-bargaining unit employees constitutes a mandatory subject of bargaining, and that an employer violates its duty to bargain in good faith pursuant to 21 V.S.A. Section 1725(a) by transferring work out of the bargaining unit without negotiating with the union. This is a limited exception created by a unique statutory provision, and should not be construed to apply more broadly than the special circumstances of this case.

Based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is ordered that the unfair labor practice charge filed in this matter is dismissed.

Dated this ____ day of September, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Chairperson

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Carroll P. Comstock

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John J. Zampieri

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Joan B. Wilson