VERMONT LABOR RELATIONS BOARD

DEBORAH DAVIS	)	
	)	
v.	)	DOCKET NO. 11-11
	)	
TOWN OF WILLISTON	)	

MEMORANDUM AND ORDER

On January 31, 2011, Deborah Davis, Senior Dispatcher with the Town of Williston Police Department, filed an unfair labor practice charge against the Town of Williston ("Employer"). She alleges that the police chief refused to bargain in good faith in violation of 21 V.S.A. §1726(a)(5) by demoting her and changing the rank structure and authority in the police department without bargaining with the union representing police department employees, Teamsters Local No. 597 ("Union"). Davis requested as a remedy that she be returned to her former position as Dispatch Supervisor. The Employer filed a response to the charge on February 16, 2011.

Labor Relations Board Executive Director Timothy Noonan met with the parties on September 26, 2011, to investigate the charge and to attempt informal resolution of it. Noonan had another meeting with the parties on October 25 in an attempt to informally resolve the case. The parties have not informally resolved this matter. Thus, the Board needs to decide whether to issue an unfair labor practice complaint against the Employer. Board Chairperson Richard Park has not participated in this decision.

Factual Background

The following pertinent factual background for the purpose of deciding whether to issue an unfair labor practice complaint is based on written materials provided by

Davis and the Employer and information provided during the September 26 investigatory meeting.

Davis has performed full-time dispatching services in the Williston Police Department for over ten years. At all times relevant, the police department also has employed one other full-time dispatcher and two part-time dispatchers. In December 2006, Town Police Chief James Dimmick informed the dispatchers other than Davis in an e-mail that "Senior Dispatcher Debby Davis" would "take more of an oversight role in dispatch" and would assist him in ensuring paperwork was completed in a timely fashion, cases were filed and forwarded in a consistent manner, training needs of dispatchers were met, and coverage needs were met. Chief Dimmick also assigned Davis to work with him to hire additional dispatchers.

The Williston Police Department full-time dispatchers and police officers, except the police chief, were represented by the Union from 1997 to September 2011. The Union and Employer negotiated a collective bargaining agreement effective July 1, 2008 to June 30, 2011. Section 501, Wages and Benefits, of the agreement provided: "An additional 2% shall be added to the compensation of Dispatcher Deb Davis effective as of July 1, 2008 which shall continue to be paid so long as she exercises supervisory responsibilities with regard to police department dispatchers." Davis has been paid this additional 2% compensation from July 1, 2008, to the present.

In May 2006, then Williston Police Chief Douglas Hoyt changed the chain of command of the Police Department. Previously, Davis reported directly to the Police Chief. Chief Hoyt changed this to Davis and the other dispatchers reporting to the patrol sergeant as the supervisor of the shift. As a result, Davis lost some of the oversight

responsibilities she had over the other dispatchers. The Union filed a grievance on May 26, 2010, on behalf of Davis, asserting that the discipline and discharge section of the collective bargaining agreement had been violated by taking away Davis's supervisory responsibilities and giving them to a sergeant.

The Union also filed an unfair labor practice charge (VLRB Docket No. 10-23) on June 10, 2010, with the Labor Relations Board, alleging: "The Town has not bargained mandatory subject of bargaining with the Union. The Town has taken supervisory responsibilities away from our dispatchers, and given the responsibilities to the Police Sergeant without bargaining this change in working condition."

On June 29, 2010, Davis and the Town entered into a Memorandum of Understanding, providing in pertinent part: "E. The grievance filed on May 26, 2010, will be dismissed without prejudice. F. The Chief of Police and Deborah Davis will collaborate on a comprehensive job description of her position." Also, on June 29, 2010, the Union filed a letter with the Labor Relations Board providing: "The Town of Williston and Teamsters Local 597 have reached an agreement and settled Case #10-23. Based upon our agreement Teamsters Local 597 is withdrawing the case." The Board issued an order on July 9, 2010, dismissing Docket No. 10-23 based on the withdrawal of the charge.

Davis and the Chief of Police were unable to reach agreement on a job description for her position. The Union filed a grievance on October 27, 2010, on behalf of Davis, asserting that the discipline and discharge section of the collective bargaining agreement had been violated by taking away Davis's supervisory responsibilities and giving them to a sergeant. Davis and new Chief of Police Roy Nelson agreed to place the grievance on

hold until December 31, 2010, to seek to reach an agreement on a job description of Davis's position.

No agreement was reached by December 31, 2010, and the processing of the grievance resumed. Also, Davis filed the unfair labor practice charge on January 31, 2011, which is now before the Labor Relations Board for consideration.

Town Manager Richard McGuire denied the grievance on February 16, 2001. The Union filed a request for grievance arbitration in late February. The Union withdrew the grievance from arbitration in May 2011.

The Williston police officers and dispatchers voted in an August 30, 2011, election conducted by the Labor Relations Board to no longer be represented by the Union. The Board issued an order on September 15, 2011, decertifying the Union as representative of the employees.

Discussion

The Labor Relations Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. In exercising this discretion, the Board will not issue a complaint unless the charging party sets forth sufficient factual allegations for the Board to conclude that the charged party may have committed an unfair labor practice.[1] In determining whether to issue an unfair labor practice complaint, we view the pertinent factual background in the light most favorable to Davis.

The provision of the Municipal Employee Relations Act cited by Davis in support of her unfair labor practice charge states that "(i)t shall be an unfair labor practice for an employer . . . to refuse to bargain collectively in good faith with the exclusive bargaining

[1] Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

agent." 21 V.S.A. Section 1726(a)(5). An allegation that a municipal employer should have negotiated an alleged improper unilateral change with the union representing municipal employees is appropriately brought by the union representing employees pursuant to Section 1726(a)(5), not an individual employee represented by the union.[2]

Here, it was only the Union, as exclusive bargaining agent of employees, that could bargain with the Town with respect to wages, hours and conditions of employment for all employees in the bargaining unit.[3] We are not inclined to issue an unfair labor practice complaint against the Employer for allegedly violating its good faith bargaining obligations where the employees' exclusive bargaining agent is not a party to the charge alleging such violations.[4]

The fact that the Union was decertified as representative of the employees after Davis filed the unfair labor practice charge does not change our conclusion. The alleged action complained of in the charge – the demotion of Davis and the changed rank structure/authority in the police department – occurred during the period the Union was still representing Davis and other employees of the Employer. It was up to the Union to contest an alleged failure of the Employer to abide by its good faith bargaining obligations during this period, not an individual employee represented by the Union.

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[2] Stuart Ashley v. Town of Colchester. 23 VLRB 238 (2000). George Hurley v. Dr. Richard Brothers, Superintendent of Rutland Public Schools, 15 VLRB 422, 423 (1992).
[3] Ashley v. Town of Colchester, 23 VLRB at 239. 21 V.S.A. §1722(3),(4),(8); 1725(a).
[4] Ashley v. Town of Colchester, 23 VLRB at 239.

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 by Deborah Davis is dismissed.

Dated this 7th day of December, 2011, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

Gary F. Karnedy

/s/ Louis P. Lacroix

Louis P. Lacroix

/s/ Linda P. McIntire

Linda P. McIntire

/s/ Alan Willard

Alan Willard