

VERMONT LABOR RELATIONS BOARD

TOWN OF CASTLETON)	
)	
v.)	DOCKET NO. 12-36
)	
AFSCME COUNCIL 93, LOCAL 1201,)	
AFL-CIO)	

MEMORANDUM AND ORDER

On September 14, 2012, the Town of Castleton (“Employer”) filed an unfair labor practice charge against AFSCME Council 93, Local 1201, AFL-CIO (“Union”). Therein, the Employer alleges that the Union has refused to bargain in good faith in violation of 21 V.S.A. § 1726(b)(4) by refusing to bargain concerning the implementation of an obligation to service requirement for newly hired police officers whom are paid by the Employer to attend the Vermont Police Academy to be certified as police officers.

The Union filed a response to the charge on October 2, 2012. The Union contends that the Union has no obligation to negotiate concerning the implementation of an obligation to service requirement during the term of the current collective bargaining agreement between the parties, effective July 1, 2010 – June 30, 2013. The Employer filed a reply to the Union’s response on October 15, 2012.

The Labor Relations Board may either issue an unfair labor practice complaint and hold a hearing on the charge, or issue a Memorandum and Order declining to issue a complaint and dismissing the case.¹ 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.²

¹ 21 V.S.A. § 1727(a).

² Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

The Employer contends that it requested the Union to negotiate over the reimbursement costs for training pursuant to a decision issued by the Labor Relations Board in April, 2012, *AFSCME Council 93, Local 1201, AFL-CIO v. Town of Castleton*³, and that that the Union's refusal to bargain over the issue violates its duty to bargain in good faith.

Our decision whether to issue an unfair labor practice complaint in this matter is substantially aided by an examination of the earlier *Town of Castleton* decision. The Board determined that the Employer made a unilateral change in a mandatory subject of bargaining without negotiating with the Union by entering into an agreement with an individual, Eden Neary, before employing him as a full-time police officer which required him to reimburse the Employer for training costs at the Vermont Police Academy should he leave employment with the Town within three years of the training, and then enforcing the agreement when Neary subsequently left employment with the Town at a time he was a permanent police officer represented by the Union.⁴

Nonetheless, the Employer contended that the Union waived the right to bargain over the terms of hiring police officers at issue in the agreement the Employer entered into with Neary. The Employer asserted that the Union waived its rights through the management rights article and the so-called "zipper" clause in the collective bargaining agreement between the Employer and Union. The Board determined that the Employer had not demonstrated that the Union waived its right to negotiate through the management rights article or the zipper clause. The Board ultimately concluded that the

³ 32 VLRB 98.

⁴ Id. at 107 – 114.

Employer had committed an unfair labor practice, and among other things ordered the Employer to cease and desist from enforcing its agreement with Neary.⁵

The zipper clause at issue, which is contained in the current collective bargaining agreement between the Employer and Union effective July 1, 2010 to June 30, 2013, provides:

Section 110 – Complete Agreement

This Agreement constitutes the entire agreement of the Town and Union arrived at as a result of collective bargaining negotiations, except such amendments hereto as shall have been reduced to writing and signed by the parties. All matters not included in this Agreement shall be deemed to have been raised and disposed of as if covered herein and neither party shall be required to negotiate with respect to any such matter during the term of this Agreement.⁶

In holding that the Union did not waive its right to negotiate concerning training repayment obligations through this zipper clause, the Board stated:

. . . Although the Employer may rely on the zipper clause to avoid bargaining over new subjects during the term of the collective bargaining agreement, the Employer was not free to use the provision to justify a unilateral change in existing conditions of employment.

Prior to the Employer entering into the agreement with Neary in October 2009, the Employer and the Union had no discussions concerning such agreements. The agreement with Neary was the first such agreement the Employer entered into with one of its employees. The Union did not become aware of the agreement until January 2011 when Neary informed his Union representative that the Employer had informed him that he would be required to reimburse the Employer for payroll and benefit costs incurred while he was undergoing training at the Vermont Police Academy. Under these circumstances, the Union did not waive the right to negotiate concerning the condition of employment of repayment obligations associated with training costs.⁷

The contents of the zipper clause and the above excerpt from the Board decision provide the necessary information to rule on the unfair labor practice charge now before us. The zipper clause provides that “neither party shall be required to negotiate . . . during the term of this Agreement” with respect to “all matters not included in this Agreement”.

⁵ Id. at 114-120.

⁶ Id. at 99, Finding of Fact No. 2.

⁷ Id. at 116-117.

Since a provision on repayment obligations associated with training costs is not included in the collective bargaining agreement, neither party is required to negotiate during the term of the collective bargaining agreement with respect to such a matter.

Just as the Employer may rely on the zipper clause to avoid bargaining on new subjects during the term of the collective bargaining agreement, so too may the Union rely on this clause to avoid bargaining on the mandatory bargaining subject of repayment obligations associated with training costs. The parties are required to bargain concerning this mandatory subject upon request when negotiating terms of a successor collective bargaining agreement to the current agreement, but are not so obligated during the term of the current agreement.

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 the Town of Castleton in this matter is dismissed.

Dated this 20th day of December, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

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