

VERMONT LABOR RELATIONS BOARD

NEW ENGLAND POLICE)	
BENEVOLENT ASSOCIATION)	
)	DOCKET NO. 20-30
v.)	
)	
TOWN OF THETFORD)	

MEMORANDUM AND ORDER

The Labor Relations Board needs to decide whether to issue an unfair labor practice complaint in this matter. The New England Police Benevolent Association (“Association”) filed an unfair labor practice charge on June 16, 2020, alleging that the Town of Thetford (“Employer” or “Town”) committed unfair labor practices in violation of 21 V.S.A. §1726(a)(1), (3), (4), (5) and (6) by: 1) reducing the work hours of police members of the bargaining unit represented by the Association without bargaining with the Association, and 2) prohibiting the Association from attending an executive session of the Town Selectboard at which it was determined that the work hours of the bargaining unit members were going to be reduced. The Association requested the following remedy in the charge:

That the Town be ordered to return to the status quo, fulfilling the hours and terms negotiated in the collective bargaining agreement. The Town be ordered to provide complete and full wages and benefits, retroactively, including interest.

The Employer filed a response to the charge on July 9, 2020. The Employer asserted that there had been no changes in staffing, alteration of hours of employment, compensation, or any other conditions of employment of employees in the bargaining unit. The Town stated that, although the Town Manager and Selectboard had discussions about the appropriate level of staffing in the Police Department, there was no decision made to reduce employee hours. The Employer contends that, as a result, there is no actual controversy over which the Labor Relations Board has jurisdiction. Further, the Employer requests that the Board reject the

Association's claim concerning the Association being prohibited from attending the Selectboard executive session because the Association never requested permission from the Selectboard or the Town Manager to attend the executive session.

Labor Relations Board Executive Director Timothy Noonan met with the parties on August 14, 2020, in furtherance of the Board's investigation of the charge. Noonan asked the Association to respond to the Employer's position that there is not an actual controversy because the Employer has not actually made any changes to terms and conditions of employment. The Association responded that it requested to engage in effects bargaining based on the proposal to cut police hours, and that the Employer refused to bargain on this issue. Noonan asked the Association whether police hours actually had been reduced. The Association indicated there had been no reduction in hours to date. The Employer reiterated at the meeting that the Employer had taken no action, and no decision had been made, to reduce employee hours.

Noonan also asked the Association questions concerning the Association supporting the charge in part on the basis that the Association was excluded from an executive session of the Selectboard. Noonan asked the Association what legal basis it had to be included in the executive session. The Association did not present any legal basis. Noonan further asked the Association what evidence it had that the Association requested being included in the executive session. The Association said that Association President Stuart Rogers told the Police Chief he would like to attend the executive session.

The Labor Relations Board has discretion whether to issue an unfair labor complaint and hold a hearing on a charge. 21 V.S.A. §1727(a). In exercising its 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. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

We first address the Association's contention that the Employer committed an unfair labor practice by prohibiting the Association from attending an executive session of the Town Selectboard at which the issue of reducing work hours of bargaining unit members was discussed. We decline to issue an unfair labor practice complaint on this issue. Even assuming for the sake of argument that the Employer prohibited the Association from attending the executive session, the Association has presented neither sufficient factual allegations nor a legal basis to support being included in the executive session.

We next address the Association claim that the Employer committed an unfair labor practice by reducing the work hours of police members of the bargaining unit represented by the Association without bargaining with the Association. The Employer contends that the Board does not have jurisdiction over this issue due to the absence of an actual controversy because the Employer has not actually made any changes to terms and conditions of employment.

The Board, as a public administrative body, has such adjudicatory jurisdiction as it conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563 (1977). In requesting that the Board find that the Employer has committed an unfair labor practice on this issue even though the Employer has made no actual changes at this point to terms and conditions of employment, the Association is requesting the Board to issue a declaratory judgment.

The Board has indicated that it does not have the authority to issue declaratory judgments given that the Board only has such adjudicatory jurisdiction as is conferred on it by statute, and the Board has not been given statutory authority to issue declaratory judgments. Hinesburg School District and Board of School Directors v. Vermont-NEA, et al, 9 VLRB 1, 3-4 (1986).

The Board stated that “it cannot be in a position to decide a question before the fact”, and indicated that a case may only be filed with the Board in response to the taking of an action. Id. In issuing an unfair labor practice complaint, we would be in the position of deciding the question whether a reduction in employee hours constitutes an unfair labor practice before the fact of a reduction of hours has occurred. This we decline to do. This issue may ripen in the future to one that would warrant deciding the question. However, at this juncture the issue is premature.

In sum, we conclude that the Association has not set forth sufficient factual allegations for the Board to conclude that the Employer may have committed an unfair labor practice with respect to this unfair labor practice charge. Thus, we exercise our discretion to not issue an unfair labor practice complaint.

Based on the foregoing reasons, it is ordered that the Vermont Labor Relations Board declines to issue an unfair labor practice complaint on the unfair labor practice charge filed by the New England Police Benevolent Association, and this matter is dismissed.

Dated this 20th day of November 2020, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen D. Saudek

Karen D. Saudek