VERMONT LABOR RELATIONS BOARD

ROGER RASMUSSEN	)	
	)	
v.	)	DOCKET NO. 97-71
	)	
CHITTENDEN COUNTY TRANSPORTATION AUTHORITY	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On December 26, 1997, Roger Rasmussen filed an unfair labor practice charge against the Chittenden County Transportation Authority ("Employer"). Therein, Rasmussen alleged that the Employer violated 21 V.S.A. Section 1726(a)(1) by attempting to coerce him for exercising his lawful rights. Specifically, Rasmussen alleged that the Employer retaliated against him by inspecting his fare collection procedures after he complained about the Employer's practices to a newspaper and to the Vermont Agency of Transportation. The Employer suspended Rasmussen for three days in December, 1997; the stated reason given by the Employer for the suspension was violation of the Employer's fare collection procedures.

On January 21, 1998, the Employer filed a response to the charge. The Employer contended that this dispute should be deferred to the grievance and arbitration procedure set forth in the collective bargaining agreement between the Employer and Teamsters Local No. 597 because a grievance has been filed pursuant to the grievance/arbitration procedure of the agreement over the three day suspension, contending just cause did not exist for the suspension, and the parties were in the process of selecting an arbitrator to decide the grievance.

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 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 be issued. 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 applying these standards to this case, we believe it is appropriate to defer the dispute over the three day suspension imposed on Rasmussen to the grievance procedure set forth in the collective bargaining agreement and not rule on the unfair labor practice charge at this time. Article VI(D) of the agreement provides that the "employer shall not . . suspend an employee without just cause." Article VII(A) defines a grievance in pertinent part as a "dispute, controversy or complaint arising out of the application of any of the terms and provisions of this agreement".

Rasmussen has filed a grievance pursuant to the grievance/arbitration procedure of the agreement over the three day suspension, contending just cause did not exist for the suspension, and the parties have submitted this issue to an arbitrator to decide. It is evident that the dispute over the three day suspension involves the interpretation of the collective bargaining agreement providing that the employer shall not suspend an employee without just cause. Rasmussen has an adequate redress for the alleged wrongs through the grievance procedure since he has recourse to binding

arbitration to resolve the underlying dispute, and an arbitration proceeding is pending. Further, there is no overriding statute or deferral policy which leads us to not defer to the grievance procedure.

Such deferral does not necessarily bar our later consideration of the 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 defer 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 the Municipal Employee Relations Act; 4) the arbitrator clearly decided the unfair labor practice issue; and 5) the arbitrator decided issues within his or her competency. AFSCME Local 490, Bennington Department of Public Works and Police Units v. Town of Bennington, 9 VLRB 195, 196 (1986).

NOW THEREFORE, 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 9th day of July, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Richard W. Park