

VERMONT LABOR RELATIONS BOARD

JOSE LOPEZ

v.

CHITTENDEN COUNTY
TRANSPORTATION AUTHORITY

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DOCKET NO. 97-64

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On November 25, 1997, Jose Lopez filed an unfair labor practice charge against the Chittenden County Transportation Authority ("Employer" or "CCTA"). Therein, Lopez alleged that the Employer violated 21 V.S.A. Section 1726(a)(1) and (2) in that it interfered with the administration of the union representing CCTA employees, Teamsters Local No. 597 ("Union"), and created a hostile work environment for him. Specifically, Lopez alleged that the Employer meddled in a Union election for a new shop steward and that the Employer's General Manager created a hostile work environment for him by blaming him by innuendo as the cause for her decision to cancel a pay raise. On January 5, 1998, Lopez amended his unfair labor practice charge and alleged that the Employer also interfered with the administration of the Union because CCTA employees planned, announced and supervised a Union vote for a pay raise.

On December 16, 1997, and January 14, 1998, the Employer filed responses to the charge and the amended charge. Therein, the Employer contends that the Union election for shop steward was properly conducted under Union supervision without interference by the Employer, and that the wage increase objected to by Lopez was negotiated by the Union on behalf of employees in the bargaining unit. The Employer further contends that the Employer's General Manager did not create a hostile working environment for Lopez. The Employer also contends that Lopez should have

pursued his allegations through the grievance procedure set forth in the collective bargaining agreement between the Union and the Employer.

The pertinent factual background for the purpose of deciding whether to issue an unfair labor practice complaint is based upon information provided by Lopez and the Employer in documents attached to their respective charges and responses, as well as letters with attachments filed by Lopez on December 22 and 26, 1997. Such background factual information is as follows:

a) On November 12 and 13, 1997, the Union conducted an election for a new shop steward at CCTA. Jim Walters prevailed in the election. Union Secretary/Treasurer and Business Agent Ron Rabideau stated in a December 15, 1997, letter to the Employer's general manager, Deborah Linehan: "I was the individual who wrote the balloting instructions enclosed with the ballot sent to each member. I am responsible for the conduct of the Stewards election at your location . . ."

b) Lopez is a bus driver for the Employer represented by the Union.

c) On November 12, 1997, the Employer's Operations Manager, Chris Greenman, submitted a proposal to Union Business Agent Duane Messier to raise entry level wages for drivers, and all drivers making less than \$9.20 per hour, to \$9.20 per hour. In a memorandum to Messier setting forth the proposal, Greenman provided the following reason for the proposed increase: "You are aware that CCTA has been experiencing difficulty attracting and retaining new drivers. We are convinced that our wage scale has a lot to do with the problem."

d) On November 14, 1997, Greenman submitted a revised proposal to Messier and newly elected Shop Steward Walters. Greenman proposed that entry level drivers, and all drivers receiving less than \$9.00 per hour, receive an increase to \$9.00 per hour. He also proposed that anyone currently receiving \$9.31 per hour receive an increase to \$9.70 per hour. Greenman stated

that "we are prepared to implement this wage increase on the first Sunday following a majority vote by the union members". Walters and Messier authorized a vote among Union drivers.

e) A notice to Union drivers on the Employer's letterhead was posted in the workplace; the notice provided in pertinent part:

CCTA Management has been authorized by your Shop Steward and Business Agent to offer drivers currently being paid \$9.31 per hour an increase to \$9.70 per hour. Drivers currently being paid \$7.77 and \$8.50 per hour and any future hires would be paid \$9.00 per hour.

This proposal by Management must be approved by a simple majority of drivers in a secret ballot which will be held in the CCTA Break Room on Monday and Tuesday, November 17 and 18, 1997.

A "YES" vote indicates you are in favor of this pay increase proposal. A "NO" vote indicates you are not in favor of this pay increase proposal.

Please write either "YES" or "NO" on a blank piece of paper. Put the piece of paper in [an] envelope and seal the envelope. The put the sealed envelope inside another envelope, seal it and write your name on the outside of it. Place the vote into the ballot box.

f) A substantial majority of Union drivers voted in favor of the wage proposal.

g) Lopez was scheduled to receive a raise in January 1998. Such pay raise would increase his wages to \$9.31 per hour.

h) Lopez consulted with an attorney, William Congleton, regarding this proposed pay change approved by the Union drivers. Congleton reviewed the collective bargaining agreement, determined that the new wage rate was illegal and on November 20, 1997, wrote a letter to Greenman which stated in pertinent part:

Please be advised that I represent Jose A. Lopez who has consulted me about the proposed pay change to the current union contract . . .

(T)he proposed new pay scale is illegal . . .

While obviously Mr. Lopez does not object to the drivers receiving more money, this

attempt at modification [of the wage scale] results in an increase for entry level drivers of around 16% and either a nominal or zero increase for him. It is my opinion that if Mr. Lopez went to court and enforced the provision of the current contract regarding modifications thereto that by injunctive relief he could prevent the wage modification. However, he is not inclined to do that as it would only hurt the lesser paid drivers and that is not his purpose. However, he would insist that any modification should at least be an equitable increase across the board.

I believe that this proposal was voted on as of November 18 and will go into effect on the next pay day. Therefore, this is to put you on notice that Mr. Lopez is making a claim for an equal increase in his pay . . . If his future paychecks do not indicate a compliance with this request then he will institute litigation which will challenge the overall modifications of the current contract, the inequity of the newly proposed pay scale and a claim for back wages . . .

i) After receiving Congleton's letter, Linchan posted a memorandum to all drivers dated

November 21, 1997, which stated in pertinent part:

I have received a letter from a CCTA bus driver's attorney stating that the new pay scale which the majority of drivers voted to accept is illegal. The letter puts CCTA on notice that the driver will sue CCTA if the pay increase that was approved is implemented.

As you know, the increase was to take effect on Sunday, November 22. I am sorry, but due to this legal challenge the new wage scale cannot be implemented as planned. I will meet with CCTA's attorney to determine what action we should take in response to this challenge. It is my hope that we will eventually be able to go ahead with the wage increase.

I realize this is disappointing news and I will do my best to move forward with the new wages.

j) Union Secretary/Treasurer Rabideau contacted attorney Hugh Beins. Beins reviewed Congleton's letter and sent a letter to Rabideau by FAX on November 24, 1997. Beins stated in such letter that attorney Congleton was mistaken, and that it would be an unfair labor practice charge for the Employer not to put the raises into effect. He also stated that he "would urge the Company to put the [wage increases] into effect immediately".

k) The Union provided a copy of Beins' letter to the Employer. The Employer notified the drivers that the wage increase would become effective November 23, 1997.

l) Lopez has not filed an unfair labor practice charge against the Union. In a letter filed with the Labor Relations Board on December 26, 1997, Lopez stated he was "not dissatisfied with my union."

m) The Union has not filed an unfair labor practice charge against the Employer alleging improper interference with the Union steward election on November 12 and 13, 1997.

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

In exercising our discretion whether to issue an unfair labor practice complaint, we address Lopez' charges in turn. Lopez first alleges that the Employer interfered in the administration of the Union's affairs by meddling in the election of the shop steward. Union Secretary/Treasurer Rabideau stated that he wrote the balloting instructions for the shop steward election, and that he was responsible for conducting the election. There is no evidence before us contrary to Rabideau's statement. Also, the Union has filed no charge alleging that the Employer interfered in this election. Further, Lopez has indicated that he is not dissatisfied with the Union. Under these circumstances indicating Union independence in conducting the election, no dissatisfaction expressed by the Union concerning the Employer's actions, and no charge by Lopez that the Union somehow improperly corroborated with the Employer in the election, we conclude that an insufficient basis exists to issue a complaint against the Employer on this issue.

Lopez next alleges that the Employer interfered in Union drivers' vote for a pay raise by planning, announcing and supervising the vote. The evidence indicates that the Union leadership

authorized the conducting of a secret ballot vote among Union drivers on the pay raise. Given this mutually agreed upon method by the Union and Employer to ascertain employees' wishes on the pay raise, and absent any claim by Lopez of dissatisfaction with the Union in this regard, once again we conclude that an insufficient basis exists to issue a complaint against the Employer on this issue.

Finally, Lopez alleges that the Employer's General Manager, Deborah Linehan, created a hostile work environment for him by publishing a memorandum on November 21, 1997, blaming him, "if not by name then by innuendo", for canceling the above-referenced pay raise. We conclude that Linehan's actions do not demonstrate an unfair labor practice. A substantial majority of drivers had approved the raise, creating an expectation of immediate wage increases among the affected Union drivers. Linehan put the immediate implementation of the wage increase on hold after she received the letter from Lopez' attorney so that she could seek legal advice. Given this decision, it was reasonable for Linehan to explain to Union drivers her reasons for canceling their anticipated wage increase. Her memorandum, accurately stating that a "bus driver's attorney" was prepared to sue the Employer if the proposed pay scale was implemented, was not coercive. If some drivers knew that the "bus driver" was Lopez and were hostile towards him because of the cancellation of their anticipated raises, such reaction was predictable under the circumstances but is not sufficient to demonstrate coercive behavior on Linehan's part. The primary purpose of the communication was to inform, and it did so accurately.

It is apparent that Lopez was personally dissatisfied with the outcome of both of the union shop steward election and the pay raise vote. Such dissatisfaction is not uncommon in a setting where employment conditions are established democratically by majority employee vote. It does not follow, however, that such dissatisfaction results from an employer unfair labor practice, and Lopez has presented an insufficient basis for the issuance of an unfair labor practice complaint against the

Employer.

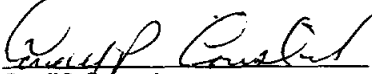
NOW THEREFORE, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED that the unfair labor practice charge filed by Jose Lopez is DISMISSED.

Dated this 9th day of July, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Leslie G. Seaver



Carroll P. Cornstock



Richard W. Park