

VERMONT LABOR RELATIONS BOARD

MICHAEL WALKER)	
)	
v.)	DOCKET NO. 98-28
)	
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 April 16, 1998, Michael Walker filed an unfair labor practice charge against the Chittenden County Transportation Authority ("Employer"). Therein, Walker alleged that the Employer violated 21 V.S.A. §1726(a)(1) and (4). Specifically, Walker alleged that the Employer created a hostile work environment for him and terminated him without just cause by basing his dismissal on insubordinate language which Walker allegedly included in a grievance. As a remedy, Walker requested a \$50,000 cash settlement, reinstatement with full back pay and benefits, and the resignation of Deborah Linehan, the Employer's General Manager.

On May 6, 1998, the Employer filed a response to the charge. The Employer contended that the dispute should be deferred to the grievance and arbitration procedure set forth in the collective bargaining agreement between the Employer and Teamsters Local 597 because Walker had filed a grievance pursuant to the grievance/arbitration procedure of the agreement contending just cause did not exist for his dismissal, and the parties were awaiting the arbitrator's decision on the grievance.

Prior to the Board deciding whether to defer the dispute over the dismissal of Walker to the grievance/arbitration procedure, the grievance arbitrator issued a decision on Walker's dismissal. On June 10, 1998, Arbitrator George McNerny concluded that

just cause did not exist for Walker's dismissal, and ordered that Walker be reinstated with full back pay, together with all benefits and rights of seniority.

On June 26, 1998, the Employer notified the Labor Relations Board that Walker had been reinstated as a result of the arbitrator's award and, accordingly, contended that the unfair labor practice charge should be dismissed. On July 1, 1998, Walker informed the Board by letter that he wished to see the unfair labor practice charge pursued.

We decline to issue an unfair labor practice complaint. In deciding that just cause did not exist for Walker's dismissal, the arbitrator concluded in pertinent part that the charge of insubordination was inappropriate given that Walker was engaged in the protected activity of filing grievances. In so deciding, the arbitrator decided the issue underlying the unfair labor practice charge.

Further, in ordering Walker reinstated with full back pay and benefits, the arbitrator already has granted Walker the most the Board would order as a remedy in the unfair labor practice case. In exercising our powers to remedy unfair labor practices, Board orders are remedial "make whole" orders, and are not punitive. VSCFF v. VSC, 17 VLRB 1, 17 (1994). Cavendish Town Elementary School Teachers' Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16 VLRB 378, 391 (1993). In ordering affirmative action, the task of the Board is to restore the economic status quo, and recreate the conditions and relationships, that would have existed but for the employer's wrongful act. VSCFF v. VSC, 17 VLRB at 17. Burlington Education Association v. Burlington School District, 16 VLRB 398, 410-11 (1993).

In a case such as this where an employee claims improper discharge due to grievance activity, an appropriate "make whole" order should the Board conclude that an improper discharge occurred would be reinstatement with full back pay and benefits - the same remedy granted by the arbitrator. Walker's additional requested remedies in

the unfair labor practice case of a \$50,000 cash settlement, and the resignation of the Employer's General Manager, go well beyond a "make whole" order and exceed the appropriate exercise of our authority.

Under these circumstances, we conclude that the unfair labor practice charge is moot. The issue underlying the unfair labor practice charge has been decided by the arbitrator, and the arbitrator has granted Walker as a remedy the most the Board would order as a remedy in the unfair labor practice case. Thus, there would be no practical effect if we were to proceed with the unfair labor practice charge.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the unfair labor practice charge filed by Michael Walker against the Chittenden County Transportation Authority is DISMISSED.

Dated this 18th day of September, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Catherine L. Frank
Catherine L. Frank, Chairperson

/s/ Leslie G. Seaver
Leslie G. Seaver

/s/ Carroll P. Comstock
Carroll P. Comstock

/s/ Richard W. Park
Richard W. Park

/s/ John J. Zampieri
John J. Zampieri