VERMONT LABOR RELATIONS BOARD

ROBERT BRITTNER	)	
	)	
v.	)	
	)	DOCKET NO. 01-65
GEORGE LOVELL, AFSCME	)	
COUNCIL 93, LOCAL 3797	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On September 18, 2001, Town of Norwich police officer Robert Brittner filed an unfair labor practice charge against George Lovell, AFSCME Council 93, Local 3797 ("Union"), alleging a violation of 21 V.S.A. Section 1726(b)(1) and (3). Section 1726(b)(1) makes it an unfair labor practice for an employee organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed to them by law, rule or regulation. Section 1726(b)(3) makes it an unfair labor practice for an employee organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of this title or to fail or refuse to represent all employees in the bargaining unit without regard to membership in such organization." The Union filed a response to the charge on October 12, 2001. Brittner filed a response to the Union's response on November 7, 2001.

The Board has discretion whether to issue an unfair labor practice 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).

Brittner makes four different allegations. We will discuss each of them in turn. Brittner first alleges that Union representative George Lovell failed to represent him on charges of conduct unbecoming an officer, negligence of duty and misuse of time. Brittner contends that, as a result of Lovell's lack of representation, he was forced to hire a private attorney and he received a 5-day suspension based on the charges against him.

There is a threshold question whether Brittner raises this allegation in a timely manner. The Municipal Employee Relations Act provides that "(n)o complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board." 21 V.S.A. §1727(a). At minimum, there must be an alleged violation of unfair labor practice provisions within six months of when the unfair labor practice charge was filed to support the issuance of an unfair labor practice complaint. Miller v. University of Vermont, 23 VLRB 205, 208 (2000).

The alleged actions of Lovell forming the basis for Brittner's allegation occurred in late December of 2000. The unfair labor practice charge here was filed on September 18, 2001, nearly nine months after Lovell's alleged actions. This was well outside the timeframe for Brittner to contend that Lovell's actions with respect to representing him on charges brought against him constituted an unfair labor practice. Thus, we decline to issue an unfair labor practice complaint on this issue.

Brittner next alleges that Lovell committed an unfair labor practice by failing to take action to expand the bargaining unit of town police department employees to add the town custodian. Brittner contends that the custodian desired to be represented by the Union, and Lovell has repeatedly refused to take action to add the custodian to the bargaining unit.

We are not aware of any precedents, or any provision of the Municipal Employee Relations Act, that would result in a conclusion that a union committed an unfair labor practice by not seeking to expand a bargaining unit of employees it represents. A decision by a union whether to petition to expand a bargaining unit is a matter of internal union affairs. Among other things, a union has to consider whether the addition to the bargaining unit would result in an appropriate bargaining unit. We are not inclined to become involved in this internal union matter through issuance of an unfair labor practice complaint.

Brittner next alleges that Lovell did not attempt to the best of his ability to negotiate a beneficial collective bargaining contract for bargaining unit employees, and that Lovell "coerced and beguiled the unit to accept an injurious contract". The employees in the bargaining unit voted 2 – 1 to ratify the contract negotiated by the Union, with Brittner casting the dissenting vote.

In addressing this allegation, we recognize that, in cases where an employee contends that a union failed in its duty fairly represent employees in negotiating the terms of a collective bargaining agreement, the complete satisfaction of all who are represented is hardly to be expected in the give and take of the negotiations process. Lary v. Upper Valley Teachers' Association, 3 VLRB 416, 420-421 (1980). Legacy v. Southwestern Vermont Education Association, Educational Personnel Unit, Vermont-NEA, NEA, 17 VLRB 181, 185-86 (1994). Differences inevitably arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees, the mere existence of which does not make them invalid. Id. Also, for the Board to issue an unfair labor practice complaint on Brittner's claim that Lovell "coerced

and beguiled" employees in the bargaining unit to accept a contract, Brittner would have to set forth sufficient factual allegations to support his claim. Burke Board of School Directors v. Caledonia North Education Association, supra.

In neither his unfair labor practice charge, nor in his response to the Union's response to the charge, did Brittner set forth factual allegations indicating that Lovell may have coerced employees to accept the contract. It is apparent that Brittner is dissatisfied with the collective bargaining agreement. Such dissatisfaction is not uncommon in a setting where employment conditions are established democratically by majority employee vote. Lopez v. Chittenden County Transportation Authority, 21 VLRB 154, 159 (1998). It does not follow, however, that such dissatisfaction results from an employer or union unfair labor practice, and Brittner has presented an insufficient basis for the issuance of an unfair labor practice complaint on this allegation against the Union. Id. at 159-60.

The final allegation by Brittner is that Lovell committed an unfair labor practice by failing to seek to submit a negotiations dispute to binding arbitration after he had convinced employees in the bargaining unit to collect sufficient signatures to allow a vote for binding arbitration. The Union contends that, although it is true that Lovell initially recommended that interest arbitration be pursued, he changed his mind after the employer withdrew certain proposals and he recommended that the Union accept the employer's final offer.

In a situation such as this, involving internal union strategy in collective bargaining negotiations and whether a union fairly represented employees in that process, a union will be found to have breached its duty of fair representation only if its actions

can be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary. Air Line Pilots v. O'Neil, 499 U.S. 65, 78 (1991). Thus, to support issuance of an unfair labor practice complaint, Brittner would have to set forth sufficient factual allegations to indicate that Lovell may have acted in an irrational or arbitrary manner.

We conclude that he has not made such a showing. The fact that Lovell initially recommended that interest arbitration be pursued, and then changed his mind after the employer changed its bargaining position, does not indicate that Lovell may have acted irrationally or arbitrarily. Absent more, it simply indicates that Lovell changed strategy in light of changed circumstances. Thus, we decline to issue an unfair labor practice complaint on this final allegation of Brittner.

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 Robert Brittner is dismissed.

Dated this 20th day of December, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Catherine L. Frank, Chairperson

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Carroll P. Comstock

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Richard W. Park

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John J. Zampieri

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Edward R. Zuccaro