

VERMONT LABOR RELATIONS BOARD

JOSE LOPEZ	)	
	)	
v.	)	DOCKET NO. 01-66
	)	
CHITTENDEN COUNTY	)	
TRANSPORTATION AUTHORITY	)	

ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On September 26, 2001, Jose Lopez filed an unfair labor practice charge against the Chittenden County Transportation Authority (“Employer”) concerning a five-day suspension that had been imposed on him. Lopez alleged that the Employer violated 21 V.S.A. Section 1726(a)(4), which provides that “(i)t shall be an unfair labor practice for an employer . . . to discharge or otherwise discriminate against an employee because the employee has filed charges or complaints or given testimony under this chapter”.

The charge as filed was unclear as to how Lopez was supporting an allegation that Section 1726(a)(4) was violated, and the Labor Relations Board Executive Director informed Lopez that he needed to amend his charge to clarify the nature of his allegation. On October 25, 2001, Lopez amended his charge. Therein, he alleged that the five-day suspension constituted discrimination against him for filing charges and complaints against the employer, including a civil suit in superior court and a 1997 unfair labor practice charge. See Lopez v. Chittenden County Transportation Authority, 21 VLRB 154.

On November 15, 2001, the Employer filed a response to the charge and a motion to dismiss. The Employer requested that the Board defer to the grievance procedure of

the collective bargaining contract between the Employer and Teamsters Local 597 covering employees of the Employer, and dismiss the charge both for failure to exhaust the grievance procedure and because the charge is moot. The Employer indicated that Lopez had filed a grievance over his five-day suspension pursuant to the contract, which contains a three-step grievance procedure with arbitration as the final step. At the second step of the grievance procedure, the Employer indicated that the suspension was withdrawn, Lopez received full back pay for the suspension, and instead a written warning was placed in his personnel file. The Employer contends that the grievance was resolved since there was no request to proceed to arbitration after the conclusion of the second step. As a result, the Employer contends that Lopez' unfair labor practice claim should be dismissed for failure to exhaust the grievance procedure and as moot.

On December 12, 2001, Lopez filed a response to the motion to dismiss and an amendment of his charge. The amendment that Lopez filed was identical to his original charge except that he retitled the charge. In response to the motion to dismiss, Lopez stated:

The grievance referred to was filed in response to an unwarranted discipline against myself. That issue was resolved by the return of my pay and removal from my file of the suspension letter. I am unaware of any subsequent letter or any written warning since none was provided to myself, the shop steward, or the union business agent. The complaint I raise is a totally different matter, one of retaliation against me for my past activity. There is no contract provision which allows me to address this matter in the contract currently in force. That being the case I have no remedy through the arbitration process for my specific complaint. My remedy therefore is necessarily through the Vermont Labor Relations Board and that process, since the violation alleged is part of the municipal act.

On December 19, 2001, the Employer filed a supplemental memorandum in support of its motion to dismiss. The Employer contends that Lopez has not set forth a claim that is cognizable by the Board or by any other body. Even if Lopez did raise such

a claim, the Employer contends that the claim would be governed by the grievance provisions of the collective bargaining contract.

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. Section 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 charging party may have committed an unfair labor practice. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

This case is similar to the circumstances existing in Bird v. Chittenden County Transportation Authority, 21 VLRB 215 (1998). There, the employee filed an unfair labor practice charge, alleging that the employer retaliated against him for being out on workers' compensation, and created a hostile work environment for him, by first dismissing him and then reducing the dismissal to a three-day suspension. In response, the employer contended that the charge should be dismissed. The employer relied on the fact that the employer and the union had reached an agreement, through the grievance procedure provided for in the collective bargaining contract, to reduce the employee's dismissal to a three-day suspension. In ruling on the charge, the Board stated:

We conclude that the circumstances do not warrant issuance of an unfair labor practice complaint. Bird initially contested his dismissal by filing a grievance under the collective bargaining agreement. The integrity of the collective bargaining process is ensured by requiring parties to collective bargaining agreements to follow the grievance procedures they have negotiated to resolve disputes. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 519 (1991); *citing Burlington Education Association v. Burlington Board of School Commissioners*, 1 VLRB 335 (1978).

The Employer proceeded consistent with this policy fostering the collective relationship by reaching an accommodation with the Union to reduce the disciplinary action against Bird. We are not inclined to hamper such efforts,

and believe it would be an unwise use of our discretion to issue an unfair labor practice complaint against the Employer. Efforts by Bird for redress were better directed at seeking to obtain a more desirable resolution through the grievance procedure than in pursuing an unfair labor practice charge against the Employer.

Similarly here, Lopez initially contested his suspension by filing a grievance under the collective bargaining agreement. The Employer proceeded consistent with the policy encouraging resort to the grievance procedure under a collective bargaining agreement to resolve disputes by rescinding the suspension imposed on Lopez. We are not inclined to hamper such efforts, and believe it would be an unwise use of our discretion to issue an unfair labor practice complaint against the Employer.

This is particularly so under the circumstances of this case where Lopez himself has acknowledged that his grievance over his suspension was resolved when his suspension was rescinded and he received back-pay for the period of suspension. A conclusion that the grievance was resolved is further supported by the fact that there was no request to proceed to arbitration.

Although Lopez contends that the unfair labor practice charge he has filed is of a different matter – one of retaliation against him for his past activity – the alleged retaliatory action he cites in support of his unfair labor practice charge is the five-day suspension. Since the five-day suspension has been resolved through the grievance procedure, we conclude that the circumstances do not warrant issuance of an unfair labor practice complaint. The charge by Lopez is moot given that pending disciplinary issues underlying the charge have been resolved, and there no longer exists an actual controversy between the parties. VSEA and Danforth v. Department of Public Safety, 20 VLRB 112 (1997).

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 Jose Lopez 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