

VERMONT LABOR RELATIONS BOARD

CHAD M.A. BURGESS	)	
	)	
v.	)	
	)	DOCKET NO. 02-40
STATE OF VERMONT, DEPARTMENT	)	
OF BUILDINGS AND GENERAL	)	
SERVICES	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint in this matter. On July 30, 2002, Chad M.A. Burgess filed an unfair labor practice charge with the Labor Relations Board. Therein, he contends that the State of Vermont, Department of Buildings and General Services ("Employer"), violated 3 V.S.A. Section 961(3), (4) and (6) through discharging him on June 18, 2002. These sections provide:

It shall be an unfair labor practice for an employer:

...

(3) By discrimination in regard to hire and tenure of employment or any term and condition of employment to encourage or discourage membership in any employee organization.

(4) To discharge or otherwise discriminate against an employee because the employee has filed charges or complaints or given testimony under this chapter.

...

(6) To discriminate against an employee on account of race, color, creed, religion, age, disability, sex, sexual orientation or national origin.

The allegation made by Burgess that he was discharged or otherwise discriminated against because he filed charges or complaints, or gave testimony, under the State Employees Act is an apparent reference at least in part to the fact that he filed a grievance and an unfair labor practice charge with the Labor Relations Board in 2001 prior to his dismissal. The grievance and charge were dismissed by the Board due to the failure of Burgess to proceed with them (VLRB Docket Nos. 01-34 and 01-35).

Along with the pending unfair labor practice charge, Burgess filed a grievance with the Board on July 9, 2002, and an amended grievance on July 30, 2002, concerning his dismissal (VLRB Docket No. 02-38). Burgess alleges in the grievance that the Employer violated Articles 5 and 14 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association. Article 5 prohibits discrimination against employees for various reasons. Article 14 contains provisions relating to disciplinary action or corrective action taken against employees, including providing that no employee may be dismissed without just cause.

The Employer filed a response to the unfair labor practice charge on August 20, 2002. The Employer requested that the Board not issue an unfair labor practice complaint and dismiss the charge. The Employer contends that Burgess failed to make factual allegations supporting issuance of an unfair labor practice complaint and, alternatively, that the Board should defer this matter to the grievance process because the forms of discrimination alleged by Burgess in his unfair labor practice charge also have been alleged in his grievance.

We exercise our discretion to not issue an unfair labor practice complaint in this matter. The unfair labor practice provisions of the State Employees Labor Relations Act provide in 3 V.S.A. Section 965(f) that “(n)o order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay, if such individual was suspended or discharged for cause, except through the grievance procedure.” In both the unfair labor practice charge and the grievance, Burgess requests as a remedy that he be reinstated to his position with full back pay. Given the circumstances here of Burgess having just cause protection

under the grievance procedure against dismissal, the Board is unwilling to grant the same relief by issuing an unfair labor practice complaint when Section 965(f) provides that such remedy can only be ordered by the Board through the grievance procedure.

Also, each of the allegations made by Burgess in his unfair labor practice charge can be pursued by Burgess through the grievance pending before the Board. In the grievance, he alleges that Article 5 of the collective bargaining agreement was violated. Article 5 provides in pertinent part that “neither party, shall discriminate against, intimidate, nor harass any employee because of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, membership or non-membership in the VSEA, filing a complaint or grievance, or any other factor for which discrimination is prohibited by law”.

This list of prohibited forms of discrimination is inclusive enough to encompass each of the allegations of discrimination made by Burgess in his unfair labor practice charge. The different forms of discrimination referenced by Burgess in the unfair labor practice charge are specifically listed in Article 5 for the most part. The one exception is Burgess’ allegation in the charge that he was discharged or otherwise discriminated against because he filed charges or gave testimony under the State Employees Labor Relations Act. This allegation is covered under Article 5’s general prohibition of discrimination because of “any other factor for which discrimination is prohibited by law”.

In several cases in which both a grievance and an unfair labor practice charge have been filed contesting actions taken by an employer, the Board has concluded that a dual process of review is not warranted where issues raised in the charge are also raised

in the grievance, and has deferred the matter to the Board's grievance proceedings. VSEA v. State of Vermont, Office of the Secretary of State, 25 VLRB 274 (2002). VSEA, Barney, et al v. Department of Public Safety, 21 VLRB 230 (1998). Choudhary v. State of Vermont (Department of Public Service and Department of Personnel), 15 VLRB 185 (1992). Swett and Vermont State Colleges Faculty Federation, Local 3180, VFT, AFT, AFL-CIO v. Vermont State Colleges, 3 VLRB 344 (1980). Here, where issues raised in the charge are also raised in the grievance, we also conclude that a dual process of review is not warranted and exercise our discretion to not issue an unfair labor practice complaint.

In sum, given the provisions of 3 V.S.A. Section 965(f), and given that each of the allegations made by Burgess in his unfair labor practice charge can be pursued by Burgess through the grievance pending before the Board, we decline to issue an unfair labor practice complaint in this matter. Based on the foregoing reasons, it is ordered that this unfair labor practice charge is dismissed.

Dated this \_\_\_\_ day of November, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Chairperson

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Carroll P. Comstock

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John J. Zampieri

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Edward R. Zuccaro

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Joan B. Wilson