

VERMONT LABOR RELATIONS BOARD

NORMAN LOCKE)	
)	
v.)	DOCKET NO. 07-11
)	
STATE OF VERMONT)	
AGENCY OF TRANSPORTATION)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint in this matter. On June 21, 2007, Norman Locke filed a second amended unfair labor practice charge in this matter through attorney Paul Perkins. Therein, he contends that the State of Vermont Agency of Transportation (“Employer”) violated Section 961(1) and (6) of the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.*, through discharging him. These sections provide in pertinent part:

It shall be an unfair labor practice for an employer:
(1) to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by section 903 of this title, or by any other law, rule or regulation.
...
(6) to discriminate against an employee on account of . . . disability . . .

Locke contends that the Employer violated Section 961(1) by discharging him for filing a claim for workers’ compensation, a right guaranteed him by 21 V.S.A. Section 618. He asserts that the Employer violated Section 961(6) by failing to accommodate, and firing him on account of, his disability. Locke requests in the unfair labor practice charge that he be reinstated with back pay, and receive attorney fees and costs.

Along with the pending unfair labor practice charge, Locke filed a second amended grievance with the Board on June 21, 2007, concerning his dismissal (VLRB Docket No. 07-10). Locke 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 by dismissing him. Article 5 prohibits

discrimination against employees for various reasons, including disability and any other factor for which discrimination is prohibited by law. Locke asserts that Article 5 was violated because: 1) the Employer failed to accommodate his disability, 2) his dismissal constituted discrimination based on his disability, and 3) he was dismissed because he filed a claim for workers compensation benefits. 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. Locke contends in his grievance that Article 14 was violated because, among other things, just cause did not exist for his dismissal. Locke requests in the grievance that he be reinstated with back pay.

The Employer filed a response to the second amended unfair labor practice charge on July 31, 2007. The Employer requests that the Board not issue an unfair labor practice complaint and dismiss the charge. The Employer contends, among other things, that the Board should defer this matter to the grievance process because the allegations made by Locke in his unfair labor practice charge also have been alleged in his grievance.

When an unfair labor practice charge and a grievance are filed under the State Employees Act challenging the same underlying action, the question presented is whether the Board should issue an unfair labor practice complaint or, instead, hear the grievance and decline to issue an unfair labor practice complaint. That is the question here.

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, Locke requests as a remedy that he be reinstated to his position with back pay. Given the circumstances here of Locke having protection under the grievance procedure to be dismissed only for just cause, 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. Burgess v. State of Vermont Department of Buildings and General Services, 25 VLRB 281, 282-83 (2002).

Also, each of the allegations made by Locke in his unfair labor practice charge can be pursued by him 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 . . . disability . . . or any other factor for which discrimination is prohibited by law”.

These prohibited forms of discrimination encompass each of the allegations of discrimination made by Locke in his unfair labor practice charge. Discrimination based on disability referenced by Locke in the unfair labor practice charge is specifically listed in Article 5. Locke’s allegation in the charge that he was discharged because he filed a claim for workers’ compensation benefit 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.

Burgess, supra. 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 Locke in his unfair labor practice charge can be pursued by him 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 2nd day of October, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Richard W. Park

John J. Zampieri

Leonard J. Berliner

James J. Dunn

James J. Kiehle