

VERMONT LABOR RELATIONS BOARD

MICHAEL HEATH

)

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v.

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DOCKET NO. 07-12

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CITY OF BURLINGTON

)

MEMORANDUM AND ORDER

On April 16, 2007, Michael Heath, an employee of the City of Burlington, filed an unfair labor practice charge against the City of Burlington (“Employer”). On May 11, 2007, Heath filed an amended charge. In the charge as amended, Heath alleges that the Employer committed an unfair labor practice pursuant to Section 1726(a)(6) of the Municipal Employees Act, 21 V.S.A. 1721 *et seq.* (MERA”), through the Employer’s implementation of the “on call” and “call-in” provisions of the collective bargaining agreement between the Employer and Local 1343, AFSCME (“Union”), the union representing employees in a bargaining unit which includes Heath. Section 1726(a)(6) provides that “it shall be an unfair labor practice for an employer . . . to refuse to appropriate sufficient funds to implement a written collective bargaining agreement”.

In his amended charge, Heath expresses dissatisfaction with both the Employer and the Union. However, he has only filed a charge against the Employer. Although Heath has presented this matter to the Labor Relations Board on the Board’s unfair labor practice charge form, Heath states that his claims against the Employer are a “grievance” concerning how the Employer has implemented the “on call” and “call-in” provisions of the collective bargaining agreement between the Employer and the Union. He has cited us to grievance decisions of the Board and the Vermont Supreme Court arising from the Board’s grievance jurisdiction under the State Employees Labor Relations Act. He also

contends that Section 1726(a)(6) of MERA was violated by the Employer failing to appropriate sufficient funds to fulfill the collective bargaining agreement.

The Employer filed a response to the charge on June 8, 2007. The Employer contends that Heath has presented no factual basis to support his claim that the Employer refused to appropriate sufficient funds to implement a collective bargaining agreement. The Employer further asserts that it should not be required to defend itself in an unfair labor practice proceeding against a claim by an employee that falls squarely within the grievance provision of the collective bargaining agreement. Heath filed a reply to the Employer's response on June 13, 2007.

Section 1727 of MERA provides the Board with discretion whether to issue an unfair labor practice complaint. We exercise our discretion not to issue an unfair labor practice complaint in this matter. To the extent that the charge alleges that the collective bargaining agreement has been violated, the proper avenue to address that issue is through filing a grievance under the collective bargaining agreement, not through filing an unfair labor practice charge. Hurley v. Superintendent of Public Schools, 15 VLRB 422, 423 (1992).

Heath's allegation that the Employer's implementation of the "on call" and "call-in" provisions of the collective bargaining agreement violated Section 1726(a)(6) also is without merit. There is no indication in the materials filed in this matter that any basis exists for a conclusion that the Employer's implementation of the "on call" and "call-in" provisions constitutes failure to appropriate sufficient funds to implement the collective bargaining agreement. Id. Moreover, this is an allegation more appropriately brought by

the union representing employees, not an individual employee represented by the union.

Id.

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 Michael Heath is dismissed.

Dated this 2nd day of October, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

John J. Zampieri

Leonard J. Berliner

James J. Kiehle