VERMONT LABOR RELATIONS BOARD

JAMES FOUTS	)	
	)	
v.	)	
	)	DOCKET NO. 12-03
CHITTENDEN COUNTY	)	
TRANSPORTATION AUTHORITY	)	

MEMORANDUM AND ORDER

On January 25, 2012, James Fouts filed an unfair labor practice charge against the Chittenden Country Transportation Authority ("Employer"). Fouts alleges that the Employer committed an unfair labor practice pursuant to §1726(a)(5) of the Municipal Employee Relations Act ("MERA")[1] through violating Article III, Section H, of the collective bargaining agreement between the Employer and Teamsters Local 597. §1726(a)(5) provides that "it shall be an unfair labor practice for an employer . . . (t)o refuse to bargain collectively in good faith with the exclusive bargaining agent".

Fouts contends specifically that the Employer refused to bargain in good faith by refusing to abide by decisions of the Labor Management Committee established by Article III, Section H, of the collective bargaining agreement to: 1) cap the hiring of full-time drivers at 63, and 2) not schedule forty-five minute North Avenue runs. Fouts asserts that the Employer failed to negotiate in good faith by these actions because Article III, Section H, clearly states that mutually agreed-upon decisions of the Labor Management Committee are binding.

The Employer filed a response to the charge on February 13, 2012. The Employer requests that the charge be dismissed, contending among other things that the allegation of bad faith bargaining is not applicable because employees may file grievances under the

[1] 21 V.S.A. § 1721 *et seq.*

collective bargaining agreement if an alleged violation of the agreement occurs and the union representing employees is not a signatory to the charge.

The Board can either issue an unfair labor practice complaint and hold a hearing on the charge, or issue a Memorandum and Order declining to issue a complaint and dismissing the case. 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.[2]

The Labor Relations Board has issued two decisions addressing similar situations to this case. In a 1992 case, *Hurley v. Superintendent of Rutland Public Schools*[3], an employee of the Rutland Public Schools Maintenance Department filed an unfair labor practice charge alleging that the superintendent of schools committed an unfair labor practice in violation of 21 V.S.A. §1726(a)(5) because the superintendent went "outside of Articles 4-5 of the Contact between Local 1201, AFSCME and the Rutland School Board of Education" by reducing the hours of his position from 40 to 25 hours per week. In declining to issue an unfair labor practice complaint and dismissing the charge, the Board stated in pertinent part:

> §1727(a) 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 Contract, not through filing an unfair labor practice charge. To the extent that the charge alleges that the reduction in hours of the position should have been bargained with the union representing the employees, Local 1201, AFSCME, that is an allegation appropriately brought by the Union pursuant to §1726(a)(5), not an individual employee represented by the Union.[4]

---

[2] *Burke Board of School Directors v. Caledonia North Education Association*, 17 VLRB 187 (1994).
[3] 15 VLRB 422.
[4] Id. at 423.

The Board adhered to this rationale in a 2007 case, *Heath v. City of Burlington*[5]. There, an employee of the City of Burlington alleged that the City committed an unfair labor practice. The employee stated his claims against the Employer were a "grievance" concerning how the employer had implemented the "on-call" and "call-in" provisions of the collective bargaining agreement. In declining to issue an unfair labor practice complaint and dismissing the charge, the Board stated:

> Section 1727 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.[6]

We follow these precedents in this case, and exercise our discretion to not issue an unfair labor practice complaint. The proper avenue to address the allegation made in the charge by Fouts that the collective bargaining agreement has been violated is through filing a grievance under the collective bargaining agreement, not through filing an unfair labor practice charge. The contention made by Fouts that the Employer violated its duty to bargain in good faith with the exclusive bargaining representative is an allegation appropriately brought by the union representing employees, not an individual employee represented by the union.[7]

---

[5] 29 VLRB 299.
[6] 29 VLRB at 300.
[7] *Hurley*, 15 VLRB at 423. See also *Ashley v. Town of Colchester*, 23 VLRB 238, 239 (2000). *Davis v. Town of Williston*, 31 VLRB 436, 439-40 (2011).

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 James Fouts is dismissed.

Dated this 17th day of February, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

_____

Richard W. Park, Chairperson

/s/ James C. Kiehle

_____

James C. Kiehle

/s/ Gary F. Karnedy

_____

Gary F. Karnedy