

VERMONT LABOR RELATIONS BOARD

WILLIAM DUCZEMINSKI

v.

VERMONT STATE EMPLOYEES'
ASSOCIATION

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DOCKET NO. 15-34

MEMORANDUM AND ORDER

On August 31, 2015, former Castleton State College employee William Duczeminski filed an unfair labor practice charge against the Vermont State Employees' Association ("VSEA"). Duczeminski alleges that the VSEA has committed an unfair labor practice in violation of §962(1) of the State Employees Labor Relations Act, 3 V.S.A. § 901 *et seq.*, because a VSEA representative failed to fairly represent him during a meeting in which the Castleton State College President asked him to retire early. §962(1) provides that it shall be an unfair labor practice for an employee organization "to restrain or coerce employees in the exercise of the rights guaranteed to them by law, rule, or regulation."

VSEA contended in a response to the charge which it filed on September 8, 2015, that the Labor Relations Board should decline to issue an unfair labor practice complaint and dismiss the charge. Duczeminski filed a reply to VSEA's response on September 28, 2015. Board Executive Director Timothy Noonan had a conference call with the parties on October 12, 2015, in furtherance of the Board's investigation of the charge. Duczeminski and his wife Patty, and VSEA Attorney Justin St. James, participated in the call. The Labor Relations Board needs to decide whether to issue an unfair labor practice complaint against VSEA.

Pertinent Factual Background

The following pertinent factual background for the purpose of deciding whether to issue an unfair labor practice complaint is based on factual allegations made in the charge filed by Duczeminski, the reply Duczeminski filed to VSEA's response, and information obtained during the Labor Relations Board's investigation of the charge.

Duczeminski was employed as a Coordinator of Public Safety Officers at Castleton State College. He was in the bargaining unit of college employees represented by VSEA. He worked under the Director of Public Safety. On March 4, 2015, Billie Langlois, Castleton State College Chair of the VSEA bargaining unit, informed Duczeminski that David Wolk, President of Castleton State College, wished to meet with him and Langlois on the following day. Langlois informed Duczeminski that this would be a friendly conversation and did not involve disciplinary action.

President Wolk, Duczeminski and Langlois met on March 5, 2015 in President Wolk's office. President Wolk began the meeting by stating words to the effect of "Bill, you're not happy here". He then informed Duczeminski that he was going to offer him early retirement with four months' pay and full benefits. Duczeminski informed President Wolk that he had just bought a new truck and was hoping to work at least five more years. President Wolk then said word to the effect of "this isn't going to end well" or "this isn't going to go well". Duczeminski then got up, shook the President's hand, and said he would get back to him. During this meeting, Langlois did not speak. Duczeminski did not know why he was being offered early retirement, and there was no discussion on the reason for the offer during the meeting.

Subsequently on March 5, Duczeminski, Langlois, President Wolk, and College Director of Human Resources Janet Hazelton had a conversation in which Duczeminski and the College reached a verbal agreement. The agreement provided that Duczeminski would retire early, and would receive pay for four months, basic retirement benefits, medical and dental benefits, and payment for 517 hours of accrued sick leave.

On the following day, March 6, Duczeminski went into his office to retrieve his belongings. The Director of Public Safety was in the office. Duczeminski and the Director got into a shouting match. The incident resulted that day in Duczeminski being charged with disorderly conduct.

Duczeminski retained a private lawyer approximately a week after the March 6 incident to represent him with respect to the charge of disorderly conduct. David Van Deusen, VSEA Senior Union Representative, became involved to represent Duczeminski with respect to his employment. In connection with this representation, Van Deusen sent an email to Duczeminski dated March 18, 2015, providing in pertinent part:

I spoke with HR. It is apparent that the College is no longer willing to pay all of your leave time, and much of what they agreed to before. After we spoke for a while, it appeared to me that there may still be room for me to convince them to still allow you full retirement now (one year early). Otherwise, I expect they will move forward with a disciplinary process. That all said, I do not have the incident reports and all the information I will need before I can give you a fair assessment of what can happen by going through the discipline process. Regardless, what I now need you to provide me direction on is if you are still interested in taking the early retirement.

Also, have you received advice from the civil attorney? If so, what is their assessment of possible civil action?

Van Deusen sent Duczeminski another email on March 19, 2015. It provided in pertinent part:

So I have requested the incident reports from HR. They said they will provide them to me within the next few days. I want to read them and the police reports. . . I will be able to judge the situation better once I have read both. . .

. . . My expectation in this case would be that if you do not accept the early retirement (with no additional benefits such as were previously on the table), Management will move forward with the disciplinary process. . . even if they do not have enough grounds for a termination, I will expect them to move towards a heavy suspension. . . we will then have our right to appeal the discipline through the Grievance Procedure. But again, I do not know enough yet to give you a fair assessment of our likelihood of victory. All of that aside, if we do win an appeal . . . you are still working there. At this point, is that something you want to do?
Please provide me what you can, and let me know what direction you want to move in.
. . .

Duczeminski and the private lawyer he had retained met with President Wolk and other college representatives on March 21. Van Deusen was not present at this meeting. President Wolk offered Duczeminski early retirement, four months' pay, health and dental benefits, and basic retirement benefits, but did not offer him payment for 517 hours of sick leave which he had accrued. President Wolk informed Duczeminski that he had until March 24 to decide whether he would accept the offer.

An email exchange occurred among Duczeminski, his wife Patty, and Van Deusen on March 23, 2015. Duczeminski's wife informed Van Deusen that Duczeminski's attorney had advised him to not discuss his case with Van Deusen. Van Deusen requested that Duczeminski inform him if Van Deusen or his lawyer was representing him with respect to the employment matter. Duczeminski's wife responded: "Until the criminal charges are resolved the only communication between the college and/or its representatives will be through our lawyer". Van Deusen responded: "Thank you. I will inform Management of this fact, and that any communications should go through your lawyer and not myself. Until and unless something changes I will not understand myself as representing you (Bill)".

At some point subsequent to these March 23 email exchanges, Duczeminski declined the College's offer made at the March 21 meeting. Subsequently, the College dismissed Duczeminski from employment. Duczeminski did not file a grievance over his dismissal.

Discussion

The Labor Relations Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on a charge. 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 charged party may have committed an unfair labor practice. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994). In determining whether to issue an unfair labor practice complaint, we view the pertinent factual background in the light most favorable to the charging party, in this case Duczeminski. Davidson v. Vermont State Employees' Association, 33 VLRB 60, 67 (2014).

Duczeminski alleges in this case that VSEA has failed to fairly represent him. He asserts that his VSEA representative failed to give him the fair and reasonable support to which he was entitled as a dues paying member during a March 5, 2015, meeting in which the Castleton State College President asked him to retire early. Duczeminski contends that poor communication between himself, the VSEA and the College led to escalated incidents later that afternoon and the following day which could have, and should have, been avoided completely.

In determining whether VSEA may have committed an unfair labor practice, we consider whether VSEA violated its duty of fair representation. Although the State Employees Labor Relations Act does not contain an explicit duty of fair representation, a union's status as exclusive bargaining representative is the source of such a duty. Vaca v. Sipes, 386 U.S. 171,

177 (1967). Alexander v. VSEA, 32 VLRB 31, 38 (2012). Ilges v. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO, 11 VLRB 235, 239 (1988).

A union has a duty to fairly and equitably represent all employees in the bargaining unit and a breach of that duty would be an unfair labor practice. Wilson v. Williamstown Staff Association, 14 VLRB 197, 200 (1991). A union's duty of fair representation means that it must serve the interests of all employees without hostility or discrimination, exercise its discretion in good faith, and avoid arbitrary conduct. Id. Alexander, 32 VLRB at 39. Ilges, 11 VLRB at 239. This duty extends to both the negotiations for a contract and the enforcement of the contract provisions. Id.

In applying these standards here, we conclude that Duczeminski has not set forth sufficient factual allegations demonstrating that the VSEA may have failed in its duty to fairly represent him. There is nothing to indicate VSEA acted with any hostility, discrimination or lack of good faith towards Duczeminski.

Also, Duczeminski has not demonstrated that VSEA may have engaged in arbitrary conduct. Arbitrary conduct exists if the conduct is unprincipled or capricious. Grievance of United Academics, AAUP/AFT and Branch, 28 VLRB 325, 342 (2006). Grievance of D'Aleo, 4 VLRB 192, 193 (1981); *Affirmed*, 141 Vt. 534 (1982). "Capricious" is an action characterized by or subject to whim. Appeal of Degreenia and Lewis, 11 VLRB 227, 229 (1988). Duczeminski does not set forth factual allegations demonstrating that his VSEA representative, Billie Langlois, may have been acting on a whim or in an unprincipled manner when representing him at the March 5 meeting when the Castleton State College President asked him to retire early. There are no factual allegations by Duczeminski indicating that Langlois placed any undue

pressure on him to accept the President's offer or otherwise engaged in any unprincipled or capricious action at the meeting.

Duczeminski entered into a verbal agreement with the College on March 5 shortly after this meeting providing that he would retire early, and would receive pay for four months, basic retirement benefits, medical and dental benefits, and payment for 517 hours of accrued sick leave. VSEA representative Langlois was present when this verbal agreement was reached, and there are no factual allegations by Duczeminski that she placed any undue pressure on him or otherwise engaged in any unprincipled or capricious action at this time.

This verbal agreement never became effective, but this was not due to any failure of VSEA in representing Duczeminski. Instead, an incident Duczeminski was involved in on March 6, which resulted in a disorderly conduct charge being brought against him, led to the College withdrawing from the verbal agreement it reached with Duczeminski. David Van Deusen, VSEA Senior Union Representative, then became involved to represent Duczeminski with respect to his employment, but Duczeminski ultimately chose to be represented by a private lawyer rather than VSEA. VSEA was no longer involved in representing Duczeminski when he subsequently declined a retirement offer from the College, was dismissed, and then did not file a grievance over the dismissal.

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 William Duczeminski is dismissed.

Dated this 29th day of October, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.

/s/ Robert Greemore

Robert Greemore