

VERMONT LABOR RELATIONS BOARD

NATHAN BERGERON	)	
	)	
v.	)	DOCKET NO. 14-13
	)	
CHITTENDEN COUNTY	)	
TRANSPORTATION AUTHORITY	)	

MEMORANDUM AND ORDER

On January 31, 2014, Nathan Bergeron filed an unfair labor practice charge against the Chittenden County Transportation Authority ("Employer"). Bergeron alleges that the Employer has interfered with, restrained, and coerced its employees in the exercise of their rights, and has failed to bargain in good faith with the exclusive bargaining agent, in violation of 21 V.S.A. §1726(a)(1) and (5).

Bergeron contends in a statement of facts supporting his unfair labor practice charge that the Employer violated the collective bargaining agreement between the Employer and Teamsters Local 597 ("Union") in the processing of a grievance filed by the Union on behalf of an employee contesting disciplinary action imposed on the employee. Specifically, Bergeron contends that the Employer violated provisions of the collective bargaining agreement by: 1) denying the grievance before any direct negotiation could occur between the parties; 2) denying the disciplined employee the right to attend a meeting between the union and the employer, and 3) not meeting with the Union shop steward at Step I of the grievance procedure to attempt to settle the grievance. Bergeron further contends in the statement of facts that the Employer committed an unfair labor practice by denying a subsequent grievance filed by him asserting that the Employer violated the collective bargaining agreement by denying the first grievance without following all due process.

Although Bergeron is a Union shop steward who was involved in the processing of these grievances, he made clear in response to a letter from the Labor Relations Board Executive Director that he is filing this unfair labor practice charge as an employee and not as a representative of the Union.

The Employer filed a response to the unfair labor practice charge on March 5, 2014. The Employer contends that the Board should decline to issue an unfair labor practice complaint in this matter but instead defer to the grievance procedure because this involves an interpretation of the collective bargaining agreement. The Employer also asserts that the charge does not adequately set forth an actual controversy. Bergeron filed a reply to the Employer's response on March 28, 2014.

The Board has discretion whether to issue an unfair labor complaint and hold a hearing on a charge.<sup>1</sup> In exercising its 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.<sup>2</sup>

Bergeron is claiming as an individual employee that the employer violated the duty to bargain in good faith with the exclusive bargaining representative of employees, and interfered with employee rights, by not following the collective bargaining agreement provisions on processing grievances. The Labor Relations Board has issued several decisions addressing similar situations to this case.

In a 1992 case, *Hurley v. Superintendent of Rutland Public Schools*<sup>3</sup>, an employee of the Rutland Public Schools Maintenance Department filed an unfair labor practice

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<sup>1</sup> 21 V.S.A. §1727(a).

<sup>2</sup> Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

<sup>3</sup> 15 VLRB 422.

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 Contract 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.<sup>4</sup>

The Board adhered to this rationale in a 2012 decision, *Fouts v. Chittenden County Transportation Authority*<sup>5</sup>. There, an employee alleged that the employer refused to bargain in good faith with the exclusive bargaining representative by not abiding by a decision of a labor management committee in violation of a provision of the collective bargaining agreement. In declining to issue an unfair labor practice complaint and dismissing the charge, the Board stated:

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.<sup>6</sup>

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<sup>4</sup> *Id.* at 423.

<sup>5</sup> 32 VLRB 27.

<sup>6</sup> *Id.* at 29.

The Board has issued other decisions consistent with these precedents. In two other cases involving unfair labor practice charges brought by individual employees against municipal employers alleging that the employer failed to bargain in good faith with the exclusive bargaining agent, the Board has dismissed the charges. The Board reasoned that such allegations are appropriately brought by the union representing employees, not an individual employee represented by the union.<sup>7</sup> In a case involving an unfair labor practice charge brought by an employee against a municipal employer alleging violations of the collective bargaining agreement, the Board has held in dismissing the charge that 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.<sup>8</sup>

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 allegations made in the charge by Bergeron that the collective bargaining agreement has been violated is through pursuing a grievance under the collective bargaining agreement, not through filing an unfair labor practice charge. The contention made by Bergeron 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 filing a charge as an employee and not as a representative of the union.

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<sup>7</sup> *Ashley v. Town of Colchester*, 23 VLRB 238 (2000). *Davis v. Town of Williston*, 31 VLRB 436 (2011).

<sup>8</sup> *Heath v. City of Burlington*, 29 VLRB 299 (2007).

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 Nathan Bergeron is dismissed.

Dated this 24th day of April, 2014, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard