VERMONT LABOR RELATIONS BOARD

TYRONE BENABE	)	
	)	
v.	)	DOCKET NO. 16-48
	)	
GREEN MOUNTAIN TRANSIT	)	

MEMORANDUM AND ORDER

On October 12, 2016, Tyrone Benabe filed an unfair labor practice charge against Green Mountain Transit ("Employer"). Benabe filed an amended unfair labor practice charge on October 24, 2016. Benabe alleges violations of 21 V.S.A. §1726(a)(1) and (5), which make it an unfair labor practice for an employer to interfere with, restrain, and coerce employees in the exercise of their rights, and to fail to bargain in good faith with the exclusive bargaining agent. He contends that the Employer violated these statutory provisions by improperly disciplining him on two occasions for his use of combined time off ("CTO") as provided for in the collective bargaining agreement between the Employer and Teamsters Local 597. He asserts that his CTO use was consistent with the provisions of the collective bargaining agreement and that he should not have been disciplined.

The Employer filed a response to the unfair labor practice charge on November 14, 2016. 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 set forth an actual controversy.

The Board has discretion whether to issue an unfair labor complaint and hold a hearing on a charge. 21 V.S.A. §1727(a). 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. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

Benabe 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 use of combined time off. 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*, 15 VLRB 422.; 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. Id. at 423.

The Board adhered to this rationale in a 2012 decision, *Fouts v. Chittenden County Transportation Authority*, 32 VLRB 27. 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. Id. at 29.

The Board followed these precedents in a 2014 decision, *Bergeron v. Chittenden County Transportation Authority*, 33 VLRB 42. The employee in that case claimed 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. In declining to issue an unfair labor practice complaint and dismissing the charge, the Board stated:

> 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. Id. at 45.

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. *Ashley v. Town of Colchester*, 23 VLRB 238 (2000). *Davis v. Town of Williston*, 31 VLRB 436 (2011). 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. *Heath v. City of Burlington*, 29 VLRB 299 (2007).

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 Benabe 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 Benabe 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.

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 Tyrone Benabe is dismissed.

Dated this 21st day of December, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

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Gary F. Karnedy, Chairperson

/s/ Richard W. Park

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Richard W. Park

/s/ James C. Kiehle

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James C. Kiehle