

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 16-41
ATLANTIC PLYWOOD CORPORATION)	

MEMORANDUM AND ORDER

On July 18, 2016, Atlantic Plywood Corporation (“APC”) filed an appeal regarding the right of its employee, Randy Gray, to a legislative leave of absence pursuant to 21 V.S.A. §496 if he is elected to the Vermont Senate on the basis that granting the leave will create unreasonable hardship on the business. On July 26, 2016, the Labor Relations Board issued a Notice of Hearing on the appeal, scheduling the hearing for August 4. Gary Karnedy, Chairperson of the Board, is serving as arbitrator in this case pursuant to 21 V.S.A. §496.

On July 28, 2016, Randy Gray filed a letter with the Labor Relations Board indicating that he “never requested a leave of absence” from APC “if elected to the State Senate”, and that he saw “no point in continuing with the hearing scheduled for August 4th”. APC Vice President Wayne Moriarty indicated in response in a July 29 letter, which he termed a “conditional withdrawal of the appeal”:

We respectfully withdraw our appeal based on the above statements from Mr. Gray with the understanding that we will not be required to entertain any request for a leave of absence under state’s Legislative Leave statute from this point through the next legislative session to start in January 2017.

As long as we are all in agreement that Atlantic Plywood Corporation will not be required to grant Mr. Gray a leave of absence to serve in the legislature after the upcoming elections then please withdraw our appeal. If we would be required to entertain a request for a leave of absence after the elections have concluded then we would rather settle this matter now.

21 V.S.A. §496 provides in pertinent part:

- (a) Any person who, in order to serve as a member of the general assembly, must leave a full-time position in the employ of any employer, shall be entitled to a

temporary or partial leave of absence for the purpose of allowing such employee to perform any official duty in connection with his or her elected office. . .

- (b) An employee who intends to seek election to the general assembly and to invoke, if elected, his or her right to a leave of absence pursuant to subsection (a) of this section, shall notify his or her employer of those intentions in writing within 10 days after filing the primary election nominating petition required by section 2353 of Title 17 or of taking any other action required by chapter 49 of Title 17, to place his or her name on a primary or general election ballot. An employee who fails to give notice to his or her employer as required by this section shall be deemed to have waived his or her right to a leave of absence under subsection (a) of this section.
- (c) An employer who contends that granting the leave of absence required by subsection (a) of this section will cause unreasonable hardship for his or her business may appeal for relief by letter to the chairman of the state labor relations board . . . The right to such appeal shall be waived unless it is filed within 14 days of receipt of the notice required by subsection (b) of this section. . .
- (d) The chair of the state labor relations board, or any member of the board designated by the chairman, shall serve as an arbitrator in any case appealed pursuant to subsection (c) of this section. . .

A necessary prerequisite for an actionable appeal under 21 V.S.A. §496 is that the involved employee has notified the employer in writing of the intention to invoke, if elected, the right to a legislative leave of absence. This prerequisite has not been met in this case. Gray never requested a leave of absence from APC if elected to the Vermont State Senate. Jurisdiction is conferred on the Labor Relations Board where an actual controversy between the parties exists. In re Friel, 141 Vt. 505, 506 (1982). There is no actual controversy here given the absence of a request for a leave of absence, and the appeal is hereby dismissed.

In its July 29 letter, APC further seeks a premature determination of whether it will be required at some future date to grant Gray a leave of absence to serve in the legislature after the election. APC is effectively requesting a declaratory judgment, since it is asking the Board to declare the rights of the parties and rule on a question of law based on anticipated future events, prior to the fact. The Board has indicated that it does not have the authority to issue declaratory

judgments given that the Board only has such adjudicatory jurisdiction as is conferred on it by statute, and the Board has not been given statutory authority to provide declaratory judgments. Hinesburg School District and Board of School Directors v. Vermont-NEA, 9 VLRB 1, 3-4 (1986). The Board “cannot be in a position to decide a question before the fact.” Id. at 3-4. A case may only be filed with the Board in response to the taking of an action, Id. at 4. The Board declines to decide the question of whether unreasonable hardship would result to APC if a legislative leave of absence was granted, absent Gray notifying the employer in writing pursuant to 21 V.S.A. §496(b) of the intention to invoke, if elected, the right to a legislative leave of absence.

Based on the foregoing reasons, it is ordered that the August 4 hearing is canceled and the Appeal of Atlantic Plywood Corporation in this matter is dismissed.

Dated this 3rd day of August, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson and Arbitrator