

VERMONT LABOR RELATIONS BOARD

TEAMSTERS LOCAL 597)	
)	
v.)	
)	DOCKET NO. 00-50
CHITTENDEN COUNTY)	
TRANSPORTATION AUTHORITY)	

MEMORANDUM AND ORDER

The issue is whether the Labor Relations Board should grant the Employer's request that we defer this unfair labor practice charge to the grievance and arbitration procedure set forth in the collective bargaining agreement between Teamsters Local 597 ("Union") and the Chittenden County Transportation Authority ("Employer"). On July 26, 2000, the Union filed an unfair labor practice charge alleging that the Employer violated 21 V.S.A. Sections 1726(a)(4) by discharging Keith Bouvier in retaliation for several grievances and complaints that he had filed against the Employer. Section 1726(a)(4) provides that "(i)t shall be an unfair labor practice for an employer . . . to discharge or otherwise discriminate against an employee because the employee has filed charges or complaints or given testimony under this chapter". As a remedy, the Union requested that the Board order the Employer to cease and desist from harassing Bouvier. The Union did not request that Bouvier be reinstated.

On August 14, 2000, the Employer filed a response to the charge. The Employer contends that this charge should either be dismissed entirely or deferred to the grievance and arbitration procedure provided by the parties' collective bargaining agreement. Included among the attachments to the Employer's response were: 1) a grievance filed by Bouvier in which he alleged that the Employer had violated provisions of the collective bargaining agreement by "termination of my employment without just cause"; 2) a letter

from Arbitrator David Bloodsworth to the Employer and Union indicating that the grievance has been scheduled for an arbitration hearing on September 18, 2000; and 3) the collective bargaining agreement between the Union and the Employer. Article I(C) of the agreement provides that "there shall be no discrimination against . . . employees because of lawful Union membership". Article VI(D) of the Contract provides that the "Employer shall not . . . discharge . . . an employee without just cause." Article VII(A) defines a grievance as "any dispute, controversy or complaint arising in the employment during the terms of this agreement. Article VII(B)(3) provides for "final and binding" arbitration of grievances. On September 6, 2000, the Union filed a response opposing the Employer's request to defer.

In previous cases, the Board has declined to rule on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and employees had an adequate redress for the alleged wrongs through the grievance procedure. Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9 VLRB 195 (1986). Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 518 (1991).

The Board begins its analysis by considering if the issue contained in the charge is subject to arbitration, irrespective of whether it might also be an unfair labor practice. *Id.* at 519. If the issue is subject to arbitration, the contract grievance procedure should be applied, barring an overriding statute or deferral policy. *Id.* In Champlain Water District,

the Court cited with approval the following statement by the Board in Burlington, 1 VLRB at 340:

If this Board hears as an unfair labor practice a complaint which is a grievance without first requiring the complainant to utilize the dispute resolution procedures agreed to in the collective bargaining agreement, the collective bargaining process would be undermined . . . (A)n exhaustion of contract remedies doctrine . . . insures the integrity of the collective bargaining process by requiring the parties to collective bargaining agreements to follow the procedures they have negotiated to resolve contract disputes. This policy also encourages the parties to negotiate grievance procedures to resolve contract disputes which is sound labor relations policy. Labor relations stability depends on the parties working together to resolve disputes which directly affect them.

Abstention cannot be equated with abdication of the Board's statutory duty to prevent and remedy unfair labor practices; instead the parties are directed to seek resolution of their disputes under the provisions of their own contract, thus fostering the collective relationship and the policy favoring voluntary arbitration and dispute settlement. Champlain Water District, 156 Vt. at 519-520. The exhaustion doctrine does not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation. Id. at 520.

In applying these standards to this case, we believe it is appropriate to defer to the grievance procedure and not rule on the unfair labor practice charge at this time. A grievance has been filed, and now awaits an arbitration hearing, concerning whether just cause existed for discharge pursuant to the terms of the collective bargaining agreement. The discharge of Bouvier also is at issue in the unfair labor practice charge. Evidence concerning alleged retaliation against Bouvier for complaints and grievances he has filed potentially may be offered in the arbitration case in support of Bouvier's position that just cause did not exist for his dismissal.

Since the alleged improper dismissal is remediable through the collective bargaining agreement's grievance procedure ending in binding arbitration, we conclude that it is appropriate to require the parties to exhaust the available remedies for dismissals provided in the grievance and arbitration procedure before proceeding with a statutory unfair labor practice complaint. Champlain Water, supra. This insures the integrity of the collective bargaining process by requiring the parties to collective bargaining agreements to follow the procedures they have negotiated to resolve contract disputes. Id. Burlington, supra.

Moreover, the remedy requested by the Union in the unfair labor practice charge - that the Employer be ordered to "cease and desist from harassing" Bouvier -- cannot be granted at this time since Bouvier is no longer employed by the Employer. The requested remedy cannot be granted absent a decision by the arbitrator to reinstate Bouvier.

Further, there is no overriding statute or deferral policy that leads us to not defer to the grievance procedure. In reaching this conclusion, we note that the Union is not alleging retaliation against Bouvier for filing previous unfair labor practice charges with the Board or giving testimony in proceedings before the Board. If such alleged retaliation were at issue, different considerations would apply since the duty to protect the Board's processes from abuse is a function of this Board that is not for delegation to the grievance procedure or arbitration. Filmation Associates, 227 N.L.R.B. 1721 (1977). Instead, the Union is claiming retaliation against Bouvier for complaints and grievances he has pursued separate from invoking the Board's jurisdiction.

Such deferral does not necessarily bar the Board's later consideration of the matter. The Board retains jurisdiction for the purpose of entertaining a motion that

grievance arbitration has failed to meet the following criteria necessary for the Board to defer to an arbitrator's award: 1) fair and regular arbitration proceedings; 2) agreement by all parties to be bound; 3) the decision is not repugnant to the purpose and policies of the Municipal Employee Relations Act; 4) the arbitrator clearly decided the unfair labor practice issue; and 5) the arbitrator decided issues within his or her competency.

Bennington, 9 VLRB at 195-196.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED:

a. The Labor Relations Board declines to rule on this unfair labor practice charge at this time and defers this matter to the grievance procedure; and

b. The Labor Relations Board retains jurisdiction in this matter for the purpose of entertaining a motion that grievance arbitration has failed to meet the applicable criteria set forth above, which motion shall be filed within 30 days of issuance of the final arbitration decision of the underlying issues in this matter.

Dated this 26th day of September, 2000, at Montpelier, Vermont.

VERMONT LABOR-RELATIONS BOARD

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Catherine L. Frank, Chairperson

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