VERMONT LABOR RELATIONS BOARD

BRIAN SIMONI	)	
	)	
v.	)	DOCKET NO. 03-26
	)	
SOUTH ROYALTON HIGH	)	
SCHOOL BOARD	)	

MEMORANDUM AND ORDER

On May 20, 2003, Brian Simoni filed an unfair labor practice charge against the South Royalton High School Board ("Employer"). Therein, he alleged that the Employer violated 21 V.S.A. § 1726(a)(4) and (b)(10) by dismissing him for appealing a decision of the school district superintendent. Simoni indicates in his charge that the South Royalton High School principal informed him that his hours were going to be changed to less desirable ones and his contract as a custodian was not going to be renewed, and that the school district superintendent upheld this action. Simoni further alleges that he then appealed the superintendent's decision to the Employer and was dismissed by the Employer, effective May 8, 2003, because he filed an appeal with the Employer and says that the things held against him were protected by his free speech rights. Simoni requests as a remedy that he be granted back pay for the remainder of his contract from May 8, 2003 – June 30, 2003, as well as contracted benefits for that period. On May 23, 2003, the Employer filed a response to the unfair labor practice charge through attorney John Paul Faignant.

The Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. 21 V.S.A. §1727(a). 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).

We summarily dismiss Simoni's claim that the Employer violated 21 V.S.A. §1726(b)(10). This subsection states that "(i)t shall be an unfair labor practice for an employee organization or its agents . . . to penalize a person for exercising a right guaranteed by the constitution or laws of the United States or the state of Vermont". Simoni apparently cites §1726(b)(10) to support his contention that the Employer violated his free speech rights. This subsection has no applicability to this case since it addresses an unfair labor practice of "an employee organization or its agents", not an employer.

Simoni also contends that the Employer violated 21 V.S.A. §1726(a)(4). This subsection states 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". "(T)his chapter" refers to the Municipal Employee Relations Act. §1726(a)(4) typically applies to alleged retaliation against employees for involvement in processes of the Labor Relations Board under the Act and protects the Board's processes from abuse. Teamsters Local 597 v. Chittenden County Transportation Authority, 23 VLRB 240, 243 (2000) (it is the Board's function under this subsection to protect the Board's processes from abuse). *See also* Fairprene Indus. Prods. Co., 292 N.L.R.B. 797 (1989), *enforced* 880 F.2d 1318 (2d Cir. 1989) (discharge motivated by unfair labor practice charge); Filmation Associates, 227 N.L.R.B. 1721 (1977) (the duty to preserve the Board's processes from abuse pursuant to

this subsection is a function of the Board and may not be delegated to the parties or an arbitrator).

We conclude that the reach of §1726(a)(4) does not extend to the facts of this case. Simoni was not involved in pursuing a charge or complaint under the Municipal Employee Relations Act. Instead, he was involved in an internal process in his workplace seeking to lessen the seriousness of a sanction to be imposed on him by his employer. The charge as presented does not warrant the Board issuing an unfair labor practice complaint pursuant to §1726(a)(4).

Moreover, Simoni's allegation that he was dismissed by his employing school board in the midst of filing an "appeal" of a superintendent's decision is contrary to the statutory provisions setting forth the powers of school boards. 16 V.S.A. §563(12) provides:

> The school board of a school district . . . shall employ such persons as may be required to carry out the work of a school district and dismiss any employee when necessary. The school board shall consider the recommendation of the superintendent before employing or dismissing any person.

This statute makes it clear that any decisions involving the retention of employees are those of school boards, and the role of superintendents is limited to making recommendations in this regard. In such a case, a school board is not acting as an appellate body deciding whether to uphold an action taken by the superintendent. Instead, a school board considers the recommendation of the superintendent in deciding whether to take the action of dismissing an employee. Any appeal rights employees like Simoni may possess under this statutory scheme apply only after the school board takes the action on whether to dismiss an employee. Such rights cannot properly be invoked based on a non-final and non-binding recommendation of a superintendent. Thus, any

contention by Simoni that he was dismissed for exercising his appeal rights cannot be sustained.

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 Brian Simoni in this matter is dismissed.

Dated this ____ day of August, 2003, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____
Richard W. Park, Chairperson

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Carroll P. Comstock

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John J. Zampieri

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Edward R. Zuccaro