

VERMONT LABOR RELATIONS BOARD

MICHAEL POWERS

v.

CITY OF WINOOSKI

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DOCKET NO. 05-51

ORDER

The issue in this case is whether the Labor Relations Board should issue an unfair labor practice complaint. On December 1, 2005, Michael Powers, a former police officer with the City of Winooski, filed an unfair labor practice charge against the City of Winooski ("Employer"). Powers contends that the Employer interfered with the exercise of his rights and discriminated against him based on protected activities; in violation of 21 V.S.A. Section 1726(a)(1), (2) and (3); in dismissing him. Board Executive Director Timothy Noonan met with the parties on September 7, 2006, in furtherance of the Board's investigation of the charge and in an attempt to settle the case. Noonan had two subsequent conference calls with the parties. Attorney James Dunn represented Powers. William O'Brien, City Attorney for the Employer, represented the Employer.

There is a question whether the Board has jurisdiction due to the undisputed fact that the unfair labor practice charge in this matter was filed by an individual who was a probationary employee at the time he was dismissed. Powers had worked as a police officer for the City of Winooski from 1998 to 2001. He resigned in 2001. He was rehired on June 22, 2004, as a police officer and was placed in a twelve-month probationary period. On June 3, 2005, the City Manager sent Powers a letter stating in pertinent part:

The City of Winooski Personnel Manual, section 3.03, states that all appointments shall be made for a probationary period of twelve (12) months. During the probationary period, the City Manager may remove an employee who is unable or

unwilling to perform the duties of the position satisfactorily or whose habits or dependability do not merit his/her continuance in the service.

This letter is to inform you that you will not complete your probation and your employment with the City of Winooski will terminate effective June 3, 2005.

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In determining whether to issue an unfair labor practice complaint, we are required to abide by the limits of our jurisdiction. The Board only has such jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). The Municipal Employee Relations Act (“MERA”), 21 V.S.A. Section 1721 et seq., excludes “individuals . . . employed on a probationary status” from the definition of “municipal employee” covered by the Act. 21 V.S.A. Section 1722(12)(C). Under the unfair labor practice provisions of MERA, unfair labor practices may only be committed against employee organizations, employers or “employees” within the meaning of the Act. 21 V.S.A. Section 1726. Gray, et al v. IBEW Local 300 and Town of Ludlow, 19 VLRB 143, 144 (1996). Only “an employee, employee organization or employer” have standing to file unfair labor practice charges under MERA. Id. Section 35.1, Board Rules of Practice.

Accordingly, as a probationary employee, the charging party in this case is not considered an employee within the meaning of MERA, and does not have standing to file an unfair labor practice charge under MERA. Gray, 19 VLRB at 144. Thus, the Board is without jurisdiction in this matter and this charge must be dismissed. Id.

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 Michael Powers in this matter is dismissed.

Dated this ____ day of December, 2006, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Richard W. Park

Joan B. Wilson

Leonard J. Berliner