

VERMONT LABOR RELATIONS BOARD

DEBORAH DAVIS

v.

TOWN OF WILLISTON

)
)
)
)
)

DOCKET NO. 11-67

MEMORANDUM AND ORDER

On December 21, 2011, Deborah Davis, Senior Dispatcher with the Town of Williston Police Department, filed an unfair labor practice charge against the Town of Williston (“Employer”). Davis alleges that the Employer committed an unfair labor practice pursuant to §1726(a)(1) and (a)(7) of the Municipal Employee Relations Act (“MERA”).¹ §1726(a)(1) provides that “it shall be an unfair labor practice for an employer . . . (t)o interfere with, restrain or coerce employees in the exercise of their rights guaranteed by this chapter or by any other law, rule or regulation.” §1726(a)(7) provides in pertinent part that “it shall be an unfair labor practice for an employer . . . to discriminate against an employee on account of . . . sex . . .”

Specifically, Davis makes the following statement of facts concerning the alleged violations:

The Town of Williston has demoted me for no just cause from Dispatch Supervisor to Senior Dispatcher, which is against their own Personnel Policies. I have filed grievances and an Unfair Labor Practice on this. On October 25, 2011 during a meeting with the Town & Labor Board, I was told by the Town they were only trying to “protect” me by not keeping me as a Supervisor as they could potentially petition for me to be out of the next Union so it would be in my best interest to accept being Senior Dispatcher. Even though I had been a supervisor for the last two years and I was part of the Union, I was intimidated by this. After the meeting, I mentioned to an employee at the department that the Town was talking about petitioning for the supervisors to not be in the next Union. That same night (October 25, 2011) members of the Williston Police Department met to discuss a new Union. During that meeting I again mentioned what the Town

¹ 21 V.S.A. § 1721 *et seq.*

had told me. I was told that one of the employees had called Roy Nelson² in CT that same day after hearing what I had said. The employees were told by Mr. Nelson and by Acting Chief Doug Hoyt not to worry because the Town had no intention of petitioning for the Supervisors (I was the only female supervisor) to be out of the Union. This made it clear to me that Chief Hoyt and Town Manager McGuire were only threatening me with removal from the Union to get me to comply to being demoted to Senior Dispatcher and also to drop my ULP, when they were assuring the other (male) supervisors that they had no real intentions of petitioning for their removal from the Union.

Davis requests as a remedy: “I want the discrimination, harassment, threats and hostile work environment to stop and to be put back in my position as Dispatch Supervisor and be treated as a Supervisor.” The Employer filed a response to the unfair labor practice charge on January 12, 2012. The Employer contended that the charge is simply an attempt to re-litigate an unfair labor practice charge that already has been considered and dismissed by the Labor Relations Board, and requested that it be dismissed.

The Labor Relations Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. 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.³ In determining whether to issue an unfair labor practice complaint, we view the pertinent factual background in the light most favorable to Davis.

There is a significant issue with respect to the timeliness of the charge to the extent that Davis is alleging that she was demoted from Dispatch Supervisor to Senior Dispatcher without just cause, and requesting as a remedy “to be put back in my position

² Nelson was on a leave of absence at the time from his position as Town of Williston Police Chief.

³ *Burke Board of School Directors v. Caledonia North Education Association*, 17 VLRB 187 (1994).

as a Dispatch Supervisor and be treated as a Supervisor.” The Municipal Employee Relations Act provides that “(n)o (unfair labor practice) complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board”.⁴ The Labor Relations Board generally has declined to issue unfair labor practice complaints in cases where the charge was filed more than six months after the alleged unfair practice.⁵

The alleged demotion complained of in the charge occurred in 2010, well before six months prior to Davis filing the unfair labor practice charge on December 21, 2011, which is now before the Board. Davis filed an earlier unfair labor practice charge on January 31, 2011, concerning the alleged demotion (VLRB Docket No. 11-11). The Labor Relations Board issued a Memorandum and Order on December 7, 2011, declining to issue an unfair labor practice complaint and ordering the dismissal of the charge.⁶ Thus, this charge is untimely to the extent that it contests the demotion of Davis and requests that the demotion be rescinded.

There is a second significant issue with respect to the ripeness of the remaining allegations Davis makes in the charge. She alleges in the charge that Acting Police Chief Douglas Hoyt and Town Manager Richard McGuire interfered with her rights and discriminated against her based on her gender at an October 25, 2011, meeting on the unfair labor practice charge in VLRB Docket No. 11-11 by “threatening me with removal from the Union to get me to comply to being demoted to Senior Dispatcher and also to drop my ULP, when they were assuring the other (male) supervisors that they had no real intentions of petitioning for their removal from the Union.”

⁴ 21 V.S.A. §1727(a).

⁵ *AFT Local 3333, VFT, AFL-CIO v. U32 High School Board of Directors, et al*, 6 VLRB 115, 117 (1983).

⁶ 31 VLRB 436.

The context in which the October 25, 2011, meeting occurred needs to be examined in considering these allegations. The meeting was held to explore informally attempting to resolve the unfair labor practice charge in VLRB Docket No. 11-11 filed by Davis. The participants at the meeting were Davis, Hoyt, McGuire, Town Attorney Joseph McNeil and Labor Relations Board Executive Director Timothy Noonan. At the time of the meeting, no union represented employees of the Town of Williston Police Department. The employees had voted to no longer be represented by Teamsters Local 597 in an August 30, 2011, election conducted by the Labor Relations Board (VLRB Docket No. 11-28).

Also, there was no pending election petition before the Labor Relations Board seeking to represent the police department employees. Any such petition would have been untimely since the Municipal Employee Relations Act provides as follows with respect to conducting of elections in which employees vote on whether they wish to be represented by a union: “No election may be conducted under this section in a bargaining unit or a subdivision within which in the preceding 12 months a valid election has been held.”⁷ Since any election on union representation would not occur for at least ten months after the October 25 meeting, the issue of whether Davis or other police department employees would be excluded as supervisory employees from the proposed bargaining unit to be represented by a union was premature and hypothetical.

The central focus of inquiry in a disparate treatment case is whether the employer is treating “some people less favorably than others because of their . . . sex.”⁸ Since any action which the Employer may take concerning the supervisory status of Davis and other

⁷ 21 V.S.A. §1724(h).

⁸ *Grievance of Butler*, 17 VLRB 247, 311 (1994).

police department employees is hypothetical, Davis cannot demonstrate that she is being treated less favorably than male employees in this regard. Thus, the allegations of Davis in this regard are not ripe for adjudication by the Board.

Davis also makes general allegations of harassment, threats and hostile environment. However, she has not set forth sufficient factual allegations in this respect warranting exercise of our discretion to issue an unfair labor practice complaint.

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 Deborah Davis is dismissed.

Dated this ____ day of February, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

Gary F. Karnedy