VERMONT LABOR RELATIONS BOARD

MATTHEW PETLOCK	)	
	)	
v.	)	
	)	DOCKET NO. 17-07
CAPTAIN MARK CARIGNAN	)	
AND BRATTLEBORO POLICE	)	
DEPARTMENT	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board in this matter is whether to issue an unfair labor practice complaint. On February 16, 2017, Attorney Susan Edwards filed an unfair labor charge on behalf of Matthew Petlock, a dismissed police officer of the Brattleboro Police Department, against Captain Mark Carignan and the Brattleboro Police Department.

Petlock contends that Carignan violated the provision of the Municipal Employee Relations Act which makes it an unfair labor practice "for an employer . . . to interfere with, restrain or coerce employees in the exercise of their rights guaranteed . . . by any other law, rule or regulation". 21 V.S.A. § 1726(a)(1). Petlock alleges this provision was violated due to defamatory statements made by Carignan about Petlock to a number of law enforcement agencies. Petlock contends that Carignan made these defamatory statements indicating that he had lied to Carignan during an internal investigation conducted by Carignan on whether disciplinary action should be taken against Petlock due to allegations made against him. Petlock asserts that the defamatory statements led to him being unable to secure employment with any of the agencies to which Carignan imparted his libelous/slanderous communications.

Petlock requests that the Board issue an unfair labor practice complaint, conduct a hearing, and, at the conclusion of the hearing: 1) order Carignan and the Police Department to cease and desist from publishing further defamatory statements about him; 2) order Carignan

and the Police Department to retract the defamatory statements; and 3) order the payment of financial damages to him in compensation for the damage to his future employment prospects that have been directly impacted by the defamatory actions.

The Town of Brattleboro ("Employer") filed a response to the unfair labor practice charge on March 8, 2017. Petlock filed supplementary information in support of the charge on April 3, 2017. The Employer filed a supplemental response to the charge on April 10, 2017.

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

The Board, as a public administrative body, has such adjudicatory jurisdiction as it conferred on it by statute. In re Brooks, 135 Vt. 563, 570 (1977). In requesting that the Board conclude that Carignan and the Employer engaged in the tort of defamation, Petlock is seeking to apply Section 1726(a)(1) to the subject matter of civil lawsuits. *See e.g.*, Furno v. Pignona, 147 Vt. 538 (1986); Herrera v. Union No. 39 School District, 181 Vt. 198 (2006), 186 Vt. 1 (2009).

The Board has held that the Section 1726(a)(1) provision making it an unfair labor practice "for an employer to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by this chapter or by any other law, rule, or regulation" was not so broad as to encompass adjudicating a constitutional claim made by a municipal employee in a grievance. Hanson v. Town of Springfield, 2 VLRB 146 (1979). The Board reasoned: "We would not . . want to presume that the legislature in enacting the municipal unfair labor practice statutes intended this Board to sit as a super-grievance board with jurisdiction to resolve the merits of

disputes between employers and employees even when these disputes have a constitutional flavor." 2 VLRB at 151.

Similarly, we cannot presume that the legislature in enacting the municipal unfair labor practice provisions intended a public administrative agency such as the Board to adjudicate the tort claim of defamation which is the subject matter of civil lawsuits within the province of the courts. We conclude that such an extension of Section 1726(a)(1) goes beyond the adjudicatory jurisdiction conferred on the Board by the Municipal Employee Relations Act, and that it would be an inappropriate exercise of our discretion to issue an unfair labor practice complaint in this matter.

The inappropriate invoking of our unfair labor practice jurisdiction by Petlock is illustrated by the remedy he requests of the payment to him of financial damages in compensation for the damage to his future employment prospects that have been directly impacted by the alleged defamatory actions. If the Board concludes that an unfair labor practice has been committed, the Board is authorized to require a party committing an unfair labor practice "to cease and desist from the unfair labor practice, and to take such affirmative action" as the Board shall order or as is consistent with the policies of the statute. 21 V.S.A. 1727(d). In exercising its broad powers to remedy unfair labor practices, Board orders are remedial "make whole" orders, and are not punitive. VSCFF v. VSC, 17 VLRB 1, 17 (1994). Cavendish Town Elementary School Teachers' Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16 VLRB 378, 391 (1993). In ordering affirmative action, the task of the Board is to restore the economic status quo, and recreate the conditions and relationships, that would have existed but for the employer's wrongful act. VSCFF v. VSC, 17 VLRB at 17. Burlington Education Association v. Burlington School District, 16 VLRB 398, 410-11 (1993).

In requesting that we award financial damages in compensation for damage to his future employment prospects, Petlock is seeking a remedy well beyond a "make whole" order of restoring the economic status quo and recreating conditions and relationships that would have existed but for Employer's alleged wrongful act. Instead, he is requesting an award of damages that may be applicable in a civil tort lawsuit, *See e.g.*, Furno v. Pignona, supra; but is beyond the scope of the administrative adjudication of an unfair labor practice case.

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 Matthew Petlock is dismissed.

Dated this 13th day of June, 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Acting Chairperson

/s/ Alan Willard

Alan Willard

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.