

VERMONT LABOR RELATIONS BOARD

STEPHEN HARRINGTON)	
)	
v.)	
)	
DEPARTMENT OF CORRECTIONS;)	DOCKET NO. 91-33
JOSEPH PATRISSI, COMMISSIONER OF)	
CORRECTIONS; PHILIP SCRIPTURE,)	
SUPERINTENDENT, CHITTENDEN)	
COMMUNITY CORRECTIONAL CENTER)	

MEMORANDUM AND ORDER

At issue is whether this matter should be dismissed as untimely filed. On April 25, 1991, Attorney Robert Andres filed, on behalf of Stephen Harrington ("Complainant"), an action against the Department of Corrections; Joseph Patrissi, Commissioner of Corrections; and Philip Scripture, Superintendent, Chittenden Community Correctional Center (collectively referred to as "Employer"). Therein, Grievant contested his March 29, 1990, dismissal from his position as a correctional officer at the Chittenden Community Correctional Center.

On April 30, 1991, the Employer filed an Answer and a Motion to Dismiss. The Employer contended that the petition was defective because it fails to identify any basis for the Labor Relations Board's jurisdiction in this matter. The Employer also contended that this matter should be dismissed as untimely filed.

Complainant filed an Answer to the State's Motion to Dismiss on May 16, 1991. Therein, Complainant maintained that he had standing to file his action with the Board, variously alleging that the Employer committed an unfair labor practice under the State Employees Labor Relations Act, 3 VSA §901 et seq. ("SELRA"), and that Complainant was filing a grievance pursuant to §926 and §1001 of SELRA. Complainant contended that his filing

with the Board was not untimely because the clock did not start running on the timeliness of this matter until September 28, 1990, which was the date Complainant received a definitive answer from the Employer that the decision to dismiss him would not be reconsidered. Complainant then contends in essence that his responsibility to file an action with the Labor Relations Board was tolled because he filed a complaint in Washington Superior Court in December, 1990, and that he timely filed his action with the Board once the Superior Court dismissed his complaint and told him that the appropriate body to hear his complaint was the Labor Relations Board.

We conclude that, whether this case is considered as a grievance or an unfair labor practice charge, this matter clearly is untimely filed. The Board has dismissed grievances as untimely filed if they did not meet the requirement of Article 18 of the Board Rules of Practice of being "filed within 30 days after receipt of notice of final decision of the employer." Grievance of Monti, 10 VLRB 246, 249-250 (1987). Grievance of Roy, 147 Vt. 403 (1986). Also, SELRA provides that no unfair labor practice shall be found based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces. 3 VSA §965(a). Therefore, the Board generally has declined to find an unfair labor practice where the charge was filed more than six months after the alleged unfair practice. Vermont State Employees' Association v. State of Vermont, Department of Public Safety, 6 VLRB 217 (1983).

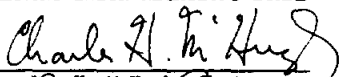
Here, the action filed by Complainant with the Board was nearly seven months after he received notice of final decision of the Employer that the Employer would not reconsider the decision to terminate his employment. Thus, whether the action filed by Complainant is a grievance or an unfair labor practice, it was filed after the applicable time periods and is untimely.

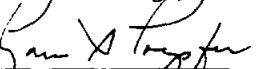
The fact that Complainant filed an action in Superior Court, after receiving notice of final Employer action and prior to filing with the Board, does not change the untimely nature of his filing with the Board. The Board has concluded that the filing of a grievance on a matter does not toll or relax the responsibility to file an unfair labor practice charge within six months of the occurrence of the alleged unfair labor practice. Champlain Valley Union High School Teachers' Association v. Champlain Valley Union High School Board of Directors, 4 VLRB 315 (1981). Similarly here, we conclude that filing an action in Superior Court does not toll or relax the responsibility to file an unfair labor practice charge or a grievance within applicable time periods.

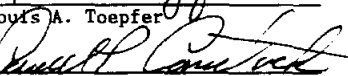
Now therefore, based on the foregoing reasons, it is hereby ORDERED that this matter is DISMISSED as untimely filed.

Dated this 13th day of June, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock