

**VERMONT LABOR RELATIONS BOARD**

MOHAMMAD CHOUDHARY

**v.**

DOCKET NO. 91-56

STATE OF VERMONT (DEPARTMENT  
OF PUBLIC SERVICE AND DEPARTMENT  
OF PERSONNEL)

## ORDER

Upon review and consideration of the unfair labor practice charge filed in this matter, we hereby exercise our discretion to not issue an unfair labor practice complaint. We do so on four grounds, each of which standing by themselves are sufficient to warrant not issuing a complaint.

First, under the doctrine of res judicata, a judgment bars a subsequent hearing only if the parties, subject matter and causes of action are identical or substantially identical. Hill v Grandey, 132 Vt. 460, 463 (1974). For res judicata purposes, the cause of action is the same if the same evidence will support the action in both instances. Id. The parties, subject matter and causes of action are substantially identical in this unfair labor practice case to those in the grievances in Docket Nos. 90-34, 90-53, 91-26, 91-27, 91-29 and 91-30, which grievances have been decided by the Board. Grievances of Mohammad Choudhary, 15 VLRB 118 (1992). The same evidence will support the action in this unfair labor practice case as was the case with respect to the earlier grievances.

Second, a dual process of review is neither warranted nor desirable where the circumstances in question relate just to

Mr. Choudhary individually. Swett and VSCFF v. Vermont State Colleges, 3 VLRB 344 (1980).

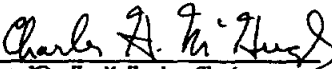
Third, 3 VSA §965(f), contained in the unfair labor practice provisions of the State Employees Labor Relations Act, 3 VSA §901 et seq., provides that "(n)o order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay, if such individual was suspended or discharged for cause, except through the grievance procedure." In his unfair labor practice charge, Mr. Choudhary requests as a remedy reinstatement to the position he held at the Department of Public Service and back pay. This is the same remedy requested by Mr. Choudhary in the afore-mentioned grievances filed by him, in which the Board concluded that just cause existed for all adverse actions, including discharge, taken against him. Thus, 3 VSA §965(f) clearly precludes the Board from ordering the remedy Mr. Choudhary seeks in the unfair labor practice charge. It would be a futile act to issue an unfair labor practice complaint given such circumstances.

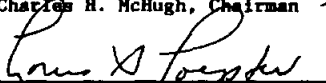
Fourth, the Board takes judicial notice of the entire record in the afore-mentioned grievances, consuming an unprecedented thirteen days of hearings, for purposes of the Board investigation as to whether to issue an unfair labor practice complaint. We conclude that, based on that record, there is an insufficient basis for us to conclude that the State may have committed an unfair labor practice. Thus, we exercise our discretion to not issue an unfair labor practice complaint.

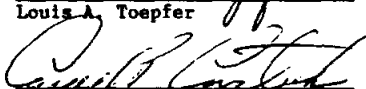
NOW THEREFORE, based on the foregoing reasons, the Vermont Labor Relations Board hereby declines to issue an unfair labor practice complaint in this matter.

Dated this 19<sup>th</sup> day of May, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
Louis A. Toepfer

  
Carroll P. Comstock