

VERMONT LABOR RELATIONS BOARD

IN RE: UNFAIR LABOR PRACTICE CHARGE)  
BROUGHT BY WILLIAM HANSON )

v. )

TOWN OF SPRINGFIELD )

DOCKET NO. 79-16R

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On March 2, 1979 an unfair labor practice charge was filed by William E. Hanson alleging the Town of Springfield had violated 21 V.S.A. §1726(a)(1). On March 9, 1979 the Board issued a complaint adopting the allegations contained in the charge and notifying the parties that a hearing would be held in the matter on April 5, 1979. On March 21, 1979 the Town of Springfield filed an answer to the complaint and a motion to dismiss the complaint.

On representations of the parties the hearing was continued until May 3, 1979 on which date a hearing was held in Montpelier, Vermont. Present for the Board were Chairman Kimberly B. Cheney, Member William G. Kemsley, Sr., and Member Robert H. Brown. William Hanson was represented by John C. Candon, Esquire, and the Town of Springfield was represented by John Parker, Attorney for the Town of Springfield.

FINDINGS OF FACT

1. The Complainant, William E. Hanson, is a patrolman for the Town of Springfield and is a municipal employee as defined by 21 V.S.A. §1722(12).
2. His employer, the Town of Springfield, is a municipal employer as defined by 21 V.S.A. §1722(13).
3. At all times material hereto the Complainant, Mr. Hanson, was at the highest possible pay grade within the personnel system of the Town of

Springfield which was available for a patrolman. Mr. Hanson has been a patrolman since his employment sometime in 1972.

4. The function of training officer, senior officer in command or investigator may be assigned to patrolmen by the Chief of Police. Assignment of these functions does not involve an increase in the salary paid to the patrolman but does increase his status within the Police Department.

5. In July of 1978, Peter J. Herdt became the Chief of Police in Springfield.

6. On or about August 21, 1978 Patrolman Hanson advised Police Chief Herdt of his desire to be appointed as an investigator.

7. On or about September 1, 1978 a two-count citizens complaint was received against Patrolman Hanson charging failure to properly perform his duties.

8. At sometime prior to October 16, 1978, Police Chief Herdt appointed Officer William Hanson as field training officer for Probationary Officer Anderson.

9. On or about October 16, 1978 Patrolman Hanson and Police Chief Herdt had a verbal disagreement concerning the Police Chief's policy of forbidding probationary officers to carry service revolvers.

10. On or about October 16, 1978 Police Chief Herdt relieved Officer William Hanson of the appointment as field training officer for Probationary Officer Anderson.

11. On or about October 24, 1978 the two-count citizens complaint was resolved with the finding that both charges were "not sustained". Police Chief Herdt attached an addendum to the findings evincing: "displeasure in your (Hanson's) arrogant, demeaning attitude which increased throughout the investigation". (Complainant's A)

12. On or about October 25, 1978 Patrolman Hanson addressed a four-page statement to Police Chief Herdt pointing out clarifications necessary as to the addendum to the citizens complaint findings, and evincing protest at being relieved of the status of field training officer.

13. At sometime prior to November 9, 1978 Officer Hanson was transferred to the second watch and was, with the transfer, the police officer with the most seniority on that watch. Common practice within the Police Department had been to have the officer with the most seniority be the senior officer in command.

14. On or about November 9, 1978 Police Chief Herdt advised the sergeant of second watch that Officer William Hanson was not to be senior officer in command. (Complainant's C)

15. The procedure for appealing grievances of employees in the Town of Springfield is set forth in the Personnel Rules and Regulations for the Town of Springfield in Section II B. The procedure involves four levels of appeal: The first level is to the immediate supervisor, the second level is to the department head, the third level is to the personnel director, and the final level is to the Personnel Advisory Board. (Employer's 2)

16. On or about November 10, 1978 Patrolman Hanson inquired of Kathleen Jenks, the Personnel Director for the Town of Springfield, the proper appeals procedure to be utilized in appealing the Police Chief's decision to not appoint Patrolman Hanson as senior officer in command - second watch.

17. The Personnel Director informed Patrolman Hanson that the Personnel Advisory Board had not met as a board for some time and that she felt that some of the board members' terms of office had lapsed. It was Patrolman Hanson's understanding from his conversation with the Personnel Director

that the Personnel Advisory Board had been dissolved or was not functioning, and that she, as Personnel Director, was the last step in the appeal procedure for grievances.

18. Patrolman Hanson appealed Police Chief Herdt's decision concerning his status as senior officer in command to his supervisor, Lieutenant Miles. His appeal was denied.

19. Patrolman Hanson then appealed Police Chief Herdt's decision concerning his status as senior officer in command to Police Chief Herdt. His appeal was denied. Both his appeal to his supervisor and his subsequent appeal to the Police Chief were timely under the Personnel Rules and Regulations of the Town of Springfield.

20. Shortly thereafter, the Personnel Director advised Patrolman Hanson that his appeal to her could wait until the vacations of both herself and Patrolman Hanson were over.

21. In December of 1978 Police Chief Herdt appointed Patrolman Bruce Pratt to the status of investigator.

22. On December 15, 1978 Patrolman Hanson appealed the Chief's decision relieving him of command status as senior officer to the Personnel Director. (Employer's 6)

23. On December 21, 1978 the Personnel Director denied Patrolman Hanson's appeal. In her letter of denial the Personnel Director did not advise Patrolman Hanson of any subsequent levels of appeal. (Employer's 7)

24. On December 7, 1978 Kathleen Williams, a dispatcher for the Police Department for the Town of Springfield, appealed her dismissal from the Police Department to the Personnel Advisory Board. (Employer's 8)

25. The hearing was held on the grievance of Kathleen Williams by the Personnel Advisory Board on February 7, 1979. Patrolman Hanson was called as a witness at the hearing.

26. Prior to February 7, 1979 the Personnel Advisory Board had never been convened to hear a grievance since its creation in 1973 by the Town of Springfield Merit System Ordinance. (Employer's 1)

#### OPINION

The Complainant's unfair labor practice charge is based on his allegations that the Police Chief's actions in relieving him of his status as senior commanding officer and failing to appoint him to the position of investigator, was a direct and proximate result of Complainant's exercise of free speech. Complainant argues that this Board has jurisdiction over the charge because, in his view, the denial of a municipal employee's constitutional rights by an employer is cognizable as an unfair labor practice under 21 V.S.A. §1726(a)(1) which states:

" (a) it shall be an unfair labor practice for an employer:

(1) 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."

The Employer has moved this Board to dismiss the complaint on the grounds that the facts alleged in the complaint constitute a grievance, not an unfair labor practice charge and that this Board does not have jurisdiction to entertain individual grievances of municipal employees, particularly where grievance procedures exist under municipal personnel regulations or ordinances.

In this case the Town of Springfield, the Complainant's employer had adopted personnel regulations for municipal employees which provided for a four level grievance procedure. Complainant appealed the decisions of the Police Chief with regard to his being relieved of commanding officer status through the first three levels of this procedure and at all three levels his grievance was denied. He did not appeal the grievance to the final level of the grievance procedure which was to the Personnel Advisory Board.

As to the issue of whether Complainant was denied his constitutional right to free speech, we concur with the Employer that the substance of Complainant's allegations against his employer constitutes a grievance, not an unfair labor practice. The legislative purpose and policy of the Municipal Labor Relations Act is:

"To prescribe the legitimate rights of both municipal employees and municipal employers in their relations with each other; to provide orderly and peaceful procedures for preventing the interference by either with legitimate rights of the other." 21 V.S.A. §1721

In effectuating these purposes we view the legislative intent in enacting the unfair labor practice statutes as providing this Board with jurisdiction over the procedures by which employers and employees agree to resolve the merits of their disputes either through the collective bargaining process or through other legislative processes. We would not, however, 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. While we are given the jurisdiction to resolve grievances for the State employees under 3 V.S.A. §926 of the State Employees Labor Relations Act, the Legislature did not enact a

similar statute in the Municipal Labor Relations Act and thus clearly did not intend this Board to assume jurisdiction over the substantive merits of grievances of municipal employees.

However, while §1726(a)(1) does not give this Board jurisdiction to decide the substantive issues of grievances, it does give this Board jurisdiction over unfair labor practices which occur as a result of an employer's interference with an employee's right to appeal a grievance under "a law, rule or regulation ". While not raised as part of the original charge in this case, the issue of whether the Complainant was properly advised of his right to appeal his grievance to the Personnel Advisory Board under the Personnel Regulations of the Town of Springfield was raised both at the hearing and in Complainant's Supplement to Memorandum in Support of Charge of Officer William E. Hanson.

Under Section 11.3 of our Rules of Practice (which encompasses the principles of V.R.C.P. 15) all pleadings are to be liberally construed. In view of the fact that the issue of notice to the Complainant of his appeal rights was raised at the hearing and testified to by the Employer's own witness, we hereby amend our complaint in this case to include all facts relevant to this issue which were testified to at the hearing.

In reviewing these facts, it is unclear from the evidence the exact content of the conversation which took place in November between Complainant and the Personnel Director for the Town of Springfield with regard to the Complainant's ability to appeal his grievance to the Personnel Advisory Board. Since the Personnel Advisory Board had never met since its creation in 1973, the Personnel Director was apparently somewhat confused as to its status and as to the procedures Complainant should follow if he wished to appeal to the Board. She made no attempt to clear up this confusion at any

time after that conversation. Nor did she inform the Complainant of his right to appeal to the Board or the procedures that he should follow when she notified him in December that his appeal to her had been denied.

In its defense the Employer argues that the Complainant should have known that his conclusions concerning the existence of the Board were erroneous because another employee in the Police Department appealed her dismissal to the Board approximately one week prior to the denial of Complainant's grievance by the Personnel Director. The other employee's grievance was subsequently heard by the Board in February and the Complainant testified at the hearing.

While these facts are not in dispute, we do not believe that it can necessarily be inferred from them that Complainant knew in December that his doubts concerning the availability or existence of the Board were unfounded. According to the Complainant's testimony, he had no knowledge in December that the other employee had appealed her dismissal to the Board and no evidence was presented to refute his claim.

The right of employees to appeal grievances in accordance with procedures adopted in a municipal ordinance which we believe to be an "other law, rule or regulation" mentioned in 21 V.S.A. §1726(a)(1), is an important right in employer-employee relations. In our opinion this right can only be protected if the employer is scrupulously accurate about informing employees as to their appellate rights and as to the procedures to be used in availing themselves of these rights. Due to the Personnel Director's own doubts concerning the status of the Board and the fact that the Board had never heard a grievance, coupled with her failure to communicate accurately the rights involved, Complainant believed or had reason to believe that an



appeal to the Personnel Advisory Board would be fruitless. We, therefore, find we have jurisdiction of this matter, as amended, and that the Employer in this case has committed an unfair labor practice.

In view of the fact that there are no vested rights intervening which would foreclose the Complainant from exercising his right to appeal to the Personnel Advisory Board at this time and in view of the confusion concerning the status of the Board for which the Employer was largely responsible, we conclude that Complainant's grievance should be remanded to the now properly constituted Personnel Advisory Board for final determination.

ORDER

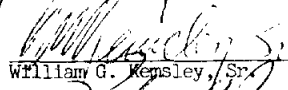
In view of our authority to prevent unfair labor practices under 21 V.S.A. §1727(d), it is hereby ORDERED that the employer, the Town of Springfield shall:

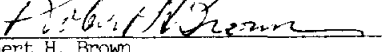
1. Cease and desist from refusing to grant complainant a hearing on his grievance before the Personnel Advisory Board for the Town of Springfield.
2. For failure to grant a hearing by August 31, 1979, the Town of Springfield shall pay to complainant Ten Dollars (\$10.00) for each day after August 31, 1979 that a hearing is not held.

Dated this 31 day of June, 1979 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kensley, Sr.

  
Robert H. Brown