

VERMONT LABOR RELATIONS BOARD

JEFF PERCY

v.

DEPARTMENT OF CORRECTIONS,
MARK SHELTON

DOCKET NO. 98-60

MEMORANDUM AND ORDER

At issue is whether we should issue an unfair labor practice complaint in this matter. On September 11, 1998, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge on behalf of Jeff Percy, a Correctional Officer at the Newport correctional facility. Therein, VSEA alleged that the Department of Corrections ("Employer") and Mark Shelton, an employee in the Employer's Court and Reparative Services Unit in Newport, violated §961(4) of the State Employees Labor Relations Act, 3 V.S.A. §901 *et seq* ("SELRA"), by their conduct. Specifically, the charge alleged that the Employer and Shelton discriminated and retaliated against Percy on the basis of his complaint activity when Percy was denied a promotion to a position in the Newport Court and Reparative Services Unit, and the Employer permitted Shelton to participate in the interview and promotional process. The Employer filed a response to the charge on October 7, 1998. VSEA filed affidavits in support of the charge on November 19, 1998.

The Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. 3 V.S.A. §965(a). 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 charging party

may have committed an unfair labor practice. Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

Upon review and investigation of this matter, we conclude that an insufficient basis exists to issue an unfair labor practice complaint. VSEA alleges that the Department and Shelton violated §961(4) of SELRA by discriminating and retaliating against Percy due to his complaint activity. However, there is no factual allegation in the charge providing support for a conclusion that Percy was discriminated and retaliated against for engaging in complaint activity as that activity is defined in SELRA.

§961(4) of SELRA makes it an unfair labor practice for an employer “to discharge or otherwise discriminate against an employee because he has filed charges or complaints or given testimony under this chapter”. “(T)his chapter” refers to SELRA. A “complaint” is defined in §902(15) of SELRA, “for purposes of this chapter”, as “an employee’s, or group of employees’, informal expression to the immediate supervisor of dissatisfaction with aspects of employment or working conditions under a collective bargaining agreement”. This essentially is the same definition of “complaint” contained in the VSEA-State collective bargaining contract, under which filing a complaint with the immediate supervisor is the first step of the grievance procedure. Under both SELRA and the contract, a complaint precedes the filing of a written grievance and is the first step of the grievance procedure.

The allegations in the charge are that Percy was discriminated and retaliated against due to a complaint which he filed with the Newport Police Department against Shelton regarding a threatening message which Shelton left on Percy’s home

answering machine, and a complaint which he made to the Employer concerning Shelton. The "complaint" which Percy made to the Employer specifically took the form of a letter which he sent to the Personnel Administrator for the Employer reporting various threats and actions towards him allegedly engaged in by Shelton primarily outside of work. Percy indicated that the threats and actions stemmed from Shelton's displeasure with Percy's relationship with the wife of Shelton from whom Shelton was separated. Percy requested that the Employer put an end to the harassment and threats from Shelton.

This type of "complaint" activity is not what is protected by §961(4) of SELRA. Percy was not involved in initiating a complaint with his immediate supervisor under the grievance procedure, expressing dissatisfaction with aspects of employment or working conditions under a collective bargaining agreement. Instead, he was involving in making complaints outside the grievance procedure to persons other than his immediate supervisor about threats and actions, primarily occurring off-duty, allegedly engaged in by another Department employee working at a different location than Percy. Thus, any "complaint" activity engaged in by Percy referenced in the unfair labor practice charge was not protected by §961(4).

NOW THEREFORE, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED that the unfair labor

practice charge filed by the Vermont State Employees' Association on behalf of Jeff Percy is DISMISSED.

Dated this 14th day of December, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Catherine L. Frank
Catherine L. Frank, Chairperson

/s/ Leslie G. Seaver
Leslie G. Seaver

/s/ Carroll P. Comstock
Carroll P. Comstock

/s/ Richard W. Park
Richard W. Park

/s/ John J. Zampieri
John J. Zampieri