

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 98-57
KIMBERLY WOOLAVER)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should grant the motion of the State of Vermont to dismiss this matter. On August 28, 1998, Attorney David Putter filed a grievance on behalf of Kimberly Woolaver ("Grievant"), alleging that the State Department of State's Attorneys and Sheriffs violated the State Parental and Family Leave Act, 21 V.S.A. §470 *et seq.*, in discriminating against Grievant due to her pregnancy and gender.

On September 18, 1998, Assistant Attorney General David Herlihy filed a motion to dismiss on behalf of the State Department of State's Attorneys and Sheriffs ("Employer"). Therein, the Employer contended that the Labor Relations Board lacked jurisdiction to decide this matter because Grievant was in an exempt position excluded from the state classified service, and the Board has no jurisdiction over a grievance brought by an exempt employee. Attorney Putter filed a letter in response to the Employer's motion on October 22. Therein, he indicated that Grievant was an exempt employee, and that he was not able to offer citation to a statute which granted the Board jurisdiction over Grievant's claim.

We conclude that we do not have jurisdiction over this matter under our authority to resolve employee grievances pursuant to the State Employees Labor Relations Act, 3 V.S.A. §901 *et seq.* ("SELRA"). The Board only has such jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563,

570 (1977). 3 V.S.A. §926 provides: "(t)he Board shall hear and make final determination on the grievances of all employees who are eligible to appeal grievances to the Board . . . (t)he right to institute grievances extends to individual employees, groups of employees and collective bargaining units." SELRA defines "employee" in pertinent part as "any individual employed on a permanent or limited status basis by the State of Vermont . . . but excluding an individual . . . exempt or excluded from the State classified service". 3 V.S.A. §902(5)(A).

Thus, an employee exempt from the classified service is not considered an "employee" under SELRA eligible to appeal grievances to the Board. Grievant conceded, in responding to the Employer's motion to dismiss, that she is an exempt employee. Accordingly, she is not eligible to appeal grievances to the Board.

Moreover, even if Grievant was eligible to appeal grievances to the Board, we do not have jurisdiction over the Parental and Family Leave Act claims of Grievant. Statutory provisions are not encompassed within the statutory definition of "grievance" unless they are incorporated into a collective bargaining agreement, rule or regulation. Boynton v. Snelling, 147 Vt. 564 (1987). In re McMahon, 136 Vt. 512 (1978). Grievance of VSCSF and Laflin, 16 VLRB 276 (1993). Grievant has made no representation that any provisions of the Parental and Family Leave Act are incorporated into any collective bargaining agreement, rule or regulation applicable to Grievant.

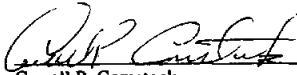
NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED
that the Employer's Motion to Dismiss is granted and the Grievance of Kimberly
Woolaver is DISMISSED.

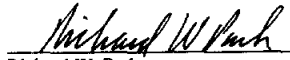
Dated this 6th day of November, 1998, at Montpelier, Vermont.

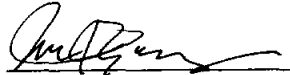
VERMONT LABOR RELATIONS BOARD

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

/s/ Leslie G. Seaver
Leslie G. Seaver


Carroll P. Comstock


Richard W. Park


John J. Zampieri