

**VERMONT LABOR RELATIONS BOARD**

VERMONT STATE	)	
EMPLOYEES' ASSOCIATION,	)	
NORMA BARNEY, BRENDA	)	
CHAMBERLIN and DETECTIVE	)	
SERGEANT GLORIA DANFORTH	)	
	)	DOCKET NO. 98-38
v.	)	
	)	
DEPARTMENT OF PUBLIC	)	
SAFETY, LIEUTENANT GLENN	)	
CUTTING	)	

**MEMORANDUM AND ORDER**

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On May 27, 1998, and as amended on September 11, 1998, the Vermont State Employees' Association ("VSEA"), Norma Barney, Brenda Chamberlin and Detective Sergeant Gloria Danforth filed an unfair labor practice charge against the Department of Public Safety and Lieutenant Glenn Cutting. The charge alleged that the Department and Cutting committed an unfair labor practice by: 1) interfering with the rights of Barney, Chamberlin and Danforth to be VSEA members and active in the VSEA; 2) discriminating against, and retaliating against, Barney, Chamberlin and Danforth due to their complaint and grievance activity, their VSEA membership and activities, and an unfair labor practice charge which had been filed by VSEA and Barney in VLRB Docket No. 98-24; and 3) discriminating against and creating a hostile work environment for Barney, Chamberlin and Danforth on the basis of their gender. The charge further alleged that the Department and Cutting interfered with the administration of VSEA by their actions.

The factual allegations made in the unfair labor practice charge also are made in a grievance filed with the Board by Barney, Chamberlin and Danforth on September 28, 1998 (VLRB Docket No. 98-65). Further, the grievance also makes the allegations made in the unfair labor practice charge of interference with the rights of employees to

engage in VSEA activities, and allegations of discrimination and retaliation due to gender, complaint and grievance activity, VSEA membership and activity, and the unfair labor practice charge which had been filed by VSEA and Barney in VLRB Docket No. 98-24. These allegations were brought in the grievance pursuant to Article 5 of the VSEA-State Contracts. We conclude that each of the allegations comes within the scope of the protection of Article 5, which provides in pertinent part:

... neither party shall discriminate against, intimidate, nor harass any employee because of ... sex ... membership or non-membership in the VSEA, filing a complaint or grievance, or any other factor for which discrimination is prohibited by law ...

The grievance makes the additional allegation that the employees were discriminated against, and retaliated against, for whistleblowing activities in violation of the VSEA-State contract. The grievance does not explicitly make the allegation set forth in the unfair labor practice charge that the Department and Cutting interfered with the administration of VSEA. However, such allegation is fairly considered as encompassed within the grievance claims that the employees were interfered with in exercising their rights to engage in VSEA activities, and were discriminated against due to their complaint and grievance activity, VSEA membership and activities, and the unfair labor practice charge which had been filed by VSEA and Barney in VLRB Docket No. 98-24. Further, the remedies requested in the unfair labor practice charge and the grievance are identical.

Given that the issues raised in the unfair labor practice charge should be considered by the Board in the pending grievance in Docket No. 98-65, and given that the requested remedies are identical in the charge and grievance, we conclude that a dual process of review is not warranted. Swett and Vermont State Colleges Faculty Federation, Local 3180, VFT, AFT, AFL-CIO v. Vermont State Colleges, 3 VLRB 344 (1980). Under the circumstances, we exercise our discretion pursuant to 3 V.S.A.

§965(a) to not issue an unfair labor practice complaint. Instead, we defer the issues raised in the unfair labor practice charge to the grievance proceeding pending before the Board.

Such deferral does not necessarily bar our later consideration of the unfair labor practice charge. The Board retains jurisdiction for the purpose of entertaining a motion that the grievance proceeding before the Board has not decided the issues set forth in the unfair labor practice charge.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED:

1. The Labor Relations Board declines to issue an unfair labor practice complaint at this time and defers this matter to the grievance proceeding pending before the Board in VLRB Docket No. 98-65; and
2. The Labor Relations Board retains jurisdiction in this matter for the purpose of entertaining a motion that the grievance proceeding before the Board has not decided the issues set forth in the unfair labor practice charge, which motion shall be filed within 15 days of the final order of the Board with respect to the grievance in Docket No. 98-65.

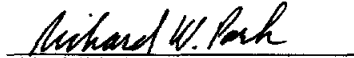
Dated this 19th day of November, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Catherine L. Frank, Chairperson

  
Leslie G. Seaver

  
Carrol P. Cornstock

  
Richard W. Park