VERMONT LABOR RELATIONS BOARD

In re:	)	
	)	DOCKET NO. 83-69
STEWART MEACHAM	)	

MEMORANDUM AND ORDER

On December 1, 1983, Attorney Alan S. Rome, on behalf of Stewart Meacham ("Grievant"), filed a grievance pursuant to 3 VSA §926 or, in the alternative, an unfair labor practice charge pursuant to 21 VSA §1621, regarding the dismissal of Grievant from his position as coordinator of the Client Assistance Project for the Vermont Center for Independent Living. On December 16, 1983, the Vermont Center for Independent Living ("VCIL") moved that this matter be dismissed for lack of jurisdiction and on January 17, 1984, filed a memorandum in support of the Motion to Dismiss. On February 21, 1984, Grievant filed a responsive Memorandum of Law.

We consider first whether Grievant has standing to file a grievance under the State Employees' Labor Relation Act ("SELRA"). Grievant contends he is a State employee under SELRA and is covered by the provisions of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association. VCIL maintains that it is not an "employer" as defined in SELRA, that VCIL is an independent contractor which contracts for services with the State of Vermont. Grievant maintains VCIL is a State employer under the clear mandate of Federal law because 29 USCS §732(b)(6) provides the Client Assistance Project of VCIL "shall be funded, administered, and operated directly by and with the concurrence of the State agency designated".

A review of the pleadings and applicable law convinces us Grievant is not covered by the provisions of SELRA. SELRA defines "employer" as "the State of Vermont, excluding the legislative and judicial branches, represented by the governor or his duly-authorized representative(s), and Vermont State Colleges, represented by the chancellor or his duly-authorized representative(s)". 3 VSA §902(7). An "employee" under SELRA means an "individual employed... by the State of Vermont, or Vermont State Colleges", and excludes individuals "employed by any other person who is not an employer" as defined above. 3 VSA §902(4). 3 VSA §902(5)(E). In his grievance, Grievant admits that VCIL is a "corporation". Further, in his responsive memorandum to VCIL's Motion to Dismiss, Grievant raised no objection to VCIL's assertion that VCIL contracts for services with the State of Vermont, and that the contract between VCIL and the State provides: "The parties agree that the Contractor (VCIL), and any agents and employees of the contractor, shall act in an independent capacity and not as officers or employees of the State". Clearly, then, VCIL is an independent contractor and does not fall within SELRA's definition of employer and Grievant is not an "employee" under SELRA. Given the clearly independent nature of VCIL, the provision of Federal law cited by Grievant, 29 USC §732(b)(6), is not sufficient for us to conclude Grievant is an employee under SELRA eligible to appeal grievances to the Board.

We turn now to consider whether we should issue an unfair labor practice complaint. Grievant charges that if the Board decides Grievant is not eligible to grieve his dismissal to the Board under

SELRA, then VCIL is an employer under the State Labor Relations Act (SLRA), and Grievant, because of his summary-like dismissal, was denied his rights, pursuant to 21 VSA § 1621(a)(1) and (3), as he was discriminated against in regard to hire and tenure of employment and in contravention of rights under 21 VSA §1503.

21 VSA §1621(a)(1) provides:

> It shall be an unfair labor practice for an employer... to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section 1503 of this title.

§1503 provides, in pertinent part:

> Employees shall have the right to... engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection...

Grievant contends that if allowed to give evidence in this matter, he would show that he had rights as an individual with a "handicapping" condition due to his diabetic condition and resultant progressive blindness, and that if he was dismissed without his employer having made attempts to make "reasonable accommodations", then he would have been denied his §1503 rights to "mutual aid or protection".

Grievant has made insufficient allegations to support the issuance of a complaint under the rights guaranteed in §1503. §1503 requires a showing that an employee was discriminated against for engaging in "concerted activities for the purpose of... mutual aid or protection". "Concerted activities" means action engaged in by a group of employees and not just one individual employee. Grievant has made no allegation that he was dismissed for any concerted activities, but instead that §1503 protects him as an individual because of his handicapping condition. §1503 offers him no protection for his allegations.

Grievant has also alleged discrimination under §1621(a)(3) of SLRA which makes it an unfair labor practice for an employer "by discrimination in regard to hire and tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" Grievant has made no factual allegations that encouragement or discourageme of membership in an employee organization was involved in the dismissal of him, and thus we will not issue an unfair labor practice complaint on those grounds.

Now, therefore, based on the foregoing reasons, it is hereby ORDERED:

1. The Vermont Center for Independent Living's Motion to Dismiss the grievance of Stewart Meacham is GRANTED; and the Grievance is DISMISSED.

2. The Labor Relations Board declines to issue an unfair labor practice complaint pursuant to 21 VSA §1622(a) and the unfair labor practice charge filed on behalf of Stewart Meacham is DISMISSED.

Dated this 27th day of April, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

William G. Kemsley, Sr.

James S. Gilson