Interference with Employee Rights

The unfair labor practice sections of the State Employees Labor Relations Act and the Municipal Employee Relations Act make it an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by the applicable labor relations act "or by any other law, rule or regulation."[1] The State Labor Relations Act makes it an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by the Act.[2]

In one case filed under the State Employees Act, the Vermont State Employees' Association contended that the Governor interfered with employee rights by announcing his intention to lay off a large number of employees during the current fiscal year before legislative review and approval of the budget for the next fiscal year. The Board concluded that VSEA failed to indicate any employee right guaranteed by any law, rule or regulation which may have been violated by the Governor. The Board cited the VSEA-State collective bargaining agreement which recognized the right of the State to lay off employees in certain situations, disputes concerning which could be processed through the grievance procedure. The Board also discussed the ability of the legislature to review, and either affirm or change, layoffs through the budget appropriations process.[3]

Also, in interpreting provisions of the State Employees Act, including the unfair labor provision prohibiting interfering with employee rights,[4] the Board has recognized that probationary employees have some protection under the Act's unfair

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[1] 3 V.S.A. §961(1); 21 V.S.A. §1726(a)(1).
[2] 21 V.S.A. §1621(a)(1).
[3] Vermont State Employees' Association v. State of Vermont, 14 VLRB 141 (1991).
[4] 3 V.S.A. §§902(4) and (5), 961.

labor practice provisions. The Board has held that protection extends to the following situations:

- discharge or other discrimination against a probationary employee for giving testimony under SELRA.[5]

- employer violation of rights granted a probationary employee under personnel rules with respect to the validity of the extension of a probationary period.[6]

- discharge of probationary employee for "whistleblowing" activities encompassed within the employee's free speech rights.[7]

- employer discrimination against a probationary employee due to the employee engaging in union activities and other concerted activities.[8]

- employer discharge of a probationary employee for filing a worker's compensation claim.[9]

- employer discrimination against a probationary employee for filing a federal housing discrimination complaint.[10]

In interpreting the Municipal Act's provisions, the Board determined that it was an unfair labor practice for an employer to interfere with a municipal employee's right to appeal a grievance under a "law, rule or regulation" by refusing to grant him a hearing on a grievance.[11] The Board made it clear that the Legislature did not intend that the Board "sit as a super-grievance board with jurisdiction to resolve . . . the substantive merits of grievances of municipal employees", but that the Board does have jurisdiction through its unfair labor practice jurisdiction to ensure

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[5] Grievance of Peplowski, 6 VLRB 16, 26-28 (1983).
[6] Id.
[7] Grievance of Barrows, 8 VLRB 82, 84 (1985).
[8] VSEA and Carbone v. State of Vermont, 16 VLRB 282, 301-03 (1993).
[9] Mailhiot v. Brandon Training School, 9 VLRB 67, 68 (1984).
[10] VSEA and Carbone, 16 VLRB at 303-04.
[11] Hanson v. Town of Springfield, 2 VLRB 146, 151-52(1979)

employees' rights to appeal grievances under any established grievance procedure are protected.[12]

The Board concluded in another municipal case that a municipal employer had interfered with an employee's rights to use the contractual grievance procedure. The circumstances were that the employee was excluded from coverage of the collective bargaining contract by agreement of the employer and union, at the insistence of the employer, even though the VLRB had placed the employee in the bargaining unit represented by the union and the Board had taken no action to remove the position from the bargaining unit.

The Board determined that the exclusion of the employee from coverage of the contract was illegal because the composition of the bargaining unit was changed in direct violation of a Board order.[13] The Board indicated that the acquiescence of the union to the exclusion of the employee from coverage of the contract did not absolve the employer of misconduct since the position was excluded by insistence of the employer, not the union.[14] As a remedy, the Board ordered the employer to recognize the employee as covered by the contract and grant him the right to contest his discharge through the contract's grievance procedure.[15]

The Board determined that a school board interfered with the rights of a school nurse to be represented by the teachers association as part of the teacher bargaining unit. In so concluding, the Board held that the nurse was a "teacher" within the Labor Relations for Teachers Act and, thus, was a member of the teacher bargaining unit represented by the association.[16]

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[12] Id. at 151-54.
[13] AFSCME Local 490 v. Town of Bennington, 6 VLRB 88 (1983).
[14] Id. at 99.
[15] Id. at 100.
[16] Southwestern Vermont Education Association, Vermont-NEA v. Shaftsbury Town Board of School Directors, 10 VLRB 124, 133-136 (1987).

The VLRB concluded that a school board interfered with the rights of employees and unions to file unfair labor practice charges by unilaterally withdrawing from the mediation process during contract negotiations because a union had filed an unfair labor practice charge against the school board. The Board stated:

> It would be inconsistent with the purpose of (the Municipal Employee Relations Act) to provide orderly and peaceful procedures to resolve disputes over legitimate rights . . . to permit one party to unilaterally frustrate an effort to settle a contract negotiations dispute due to the other party exercising a legitimate right to allege an unfair labor practice. In fact, engaging in mediation may assist the parties in resolving the problems which led to the filing of the unfair labor practice charge.[17]

In another school case, the Board determined that a school board interfered with rights of teachers to pursue an unfair labor practice charge before the Board by threatening to cancel the health insurance of teachers. The school board made such threat because the teachers failed to pay what the school board characterized as an arrearage for a health insurance contribution which the school board unilaterally imposed, which imposition was contested in an unfair labor practice charge filed with the Board by teachers association. The Board stated:

> In a case alleging that an employer action was motivated by interfering with employees in the exercise of their rights, a key factor is whether there was a climate of coercion. . . A climate of coercion is one in which the employer's conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights. . . The critical inquiry is not whether the coercion succeeded or failed, but whether the employer's conduct reasonably tended to interfere with or restrain an employee's exercise of protected rights. . .
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> We conclude that the School Board action did result in a climate of coercion. The threat to cancel the important benefit of health insurance coverage, if the claimed arrearage in premium contributions was not paid

[17] Richford Town Teachers Association v. Richford Town Board of School Directors, 13 VLRB 154, 165 (1990).

promptly, reasonably would tend to cause employees to be intimidated and question whether they wished to pursue their statutorily protected right to contest the School Board's unilateral imposition. In fact, some teachers here were intimidated, and they considered withdrawing authorization to Association representatives to contest the School Board's unilateral imposition of terms and conditions of employment by filing an unfair labor practice charge with the Labor Relations Board.[18]

[18] Caledonia North Education Association v. Burke Board of School. Directors, 18 VLRB 45, 68-69 (1995).