VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 89-53
JOANNE BALDWIN	)	

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On July 27, 1989, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Joanne Baldwin ("Grievant") with the Vermont Labor Relations Board, alleging that the State of Vermont, Department of General Services ("Employer") violated the collective bargaining agreement between the State and VSEA for the Non-Management Unit, effective for the period July 1, 1988 to June 30, 1990 ("Contract") and the Rules and Regulations for Personnel Administration by: (a) maintaining incorrectly that Grievant resigned her position of employment, or (b) if Grievant did resign, that such resignation was a constructive discharge without just cause.

Hearings were held before Board members Charles McHugh, Chairman; William Kemsley, Sr.; and Catherine Frank on November 9 and December 7, 1989. Michael Seibert, Assistant Attorney General, represented the Employer. Michael Zimmerman, VSEA Staff Attorney, represented Grievant.

Grievant filed Requested Findings of Fact and Memorandum of Law on December 19, 1989. The Employer filed a Memorandum of Law on December 20, 1989.

FINDINGS OF FACT

1. The Contract provides in pertinent part:

ARTICLE 39

OFF PAYROLL AND ADMINISTRATIVE LEAVES OF ABSENCE

k. Off Payroll

...(2) A classified employee who does not report for work or who is absent from duty during any portion of a workday and who does not have authorization for such absence shall be considered "absent without leave." Any such absence shall be without pay, and, in addition, may be grounds for disciplinary action. However, an absence which is not authorized in advance may be covered by a retroactive granting of leave if the circumstances warrant.

...

m. An employee who fails to return from a leave of absence, paid or unpaid, for five consecutive workdays after a leave is terminated, or an employee who is absent from work for five consecutive workdays without calling in shall be considered a voluntary quit, except in the case of an employee returning from military leave. This section does not prevent discipline for absenteeism (Grievant's Exhibit 3).

2. At all times relevant herein, the Rules and Regulations for Personnel Administration provided in pertinent part:

...

2.038 SEPARATION is the termination of an employee from employment by the State through resignation, removal, dismissal, retirement, or layoff.

2.0381 DISMISSAL is the involuntary separation of an employee other than by layoff, retirement, or removal.

2.0383 REMOVAL is the separation of an employee from a position for failure to report to duty.

2.0384 RESIGNATION is a separation of an employee from the State service by his own voluntary act.

...

12.02 RESIGNATION: An employee who resigns shall give at least two weeks notice and reasons for such action in writing to the appointing authority. A resignation once submitted shall not be withdrawn by the employee without the consent of the appointing authority (Grievant's Exhibit 2).

3. At all times relevant, the State Department of Personnel has not interpreted Section 12.02 of the Rules and Regulations for Personnel Administration to require that an employee has to submit a resignation in writing for it to be effective, and resignations have been accepted by the State which were not in writing.

4. At all times relevant herein, Grievant was a permanent-status classified employee of the State, and was entitled to all rights afforded such employees by the Contract. Additionally, Grievant's relationship with the State was governed by the Rules and Regulations for Personnel Administration.

5. Grievant was employed by the Division of Public Records, Department of General Services, as a classified employee from 1980 until her employment terminated effective July 7, 1989. She worked in the Division's Montpelier office. The Division also has an office in Waterbury. At all times relevant, Grievant's job title was Stock Clerk B, pay grade 10. Grievant's immediate supervisor was Clayton Marshia, Records Center Clerk, who was under the direction of John Yacavoni, Director of Public Records. Yacavoni reported directly to Patricia Thomas, Commissioner of the General Services Department (Grievant's Exhibit 1).

6. Grievant's duties as Stock Clerk B included receiving, storing and accessing records designated for filing in the Public Records Division. The storage rooms in which the records were kept occupied two floors at Grievant's workplace. On the first floor, behind Grievant's desk, was located one long storage room of records. Four additional rooms of records were located on the floor above. Prior to the incidents which are the subject of this grievance,

Grievant had access to all of these general storage areas (Grievant's Exhibit 1).

7. In annual performance evaluations received by Grievant covering the period since 1980, Grievant consistently received overall evaluations of "3" ("consistently meets job requirements"). In the annual evaluations, Grievant was criticized at times for excessive "visiting" and "socializing" during working hours (Grievant's Exhibit 6).

8. In 1983, Grievant was suspended for three days for refusing to move a typewriter table. At other times during her employment, Grievant received positive recommendations and commendations from her supervisors (Grievant's Exhibits 4,5).

9. During Grievant's employment with the Division of Public Records, there were occurrences in the Division of using resignations as a tool to resolve matters of employee dissatisfaction. The general procedure was that an employee would purportedly "resign," the director of public records would refuse to accept the resignation, the lines of communication would thereby be opened, and the dispute or dissatisfaction would be resolved.

10. Prior to Grievant's alleged resignation which is the subject of this grievance, six resignations had been submitted by Division employees, and were refused by Yacavoni. Each of the six resignations were in writing. One was submitted by Grievant in 1987. Two were submitted by Tina Clapfin, a co-worker. Three were submitted by Pam Craig, another co-worker. In each case, the "resignee" continued in her employment at the division.

11. During the Spring of 1989, Yacavoni decided that thereafter any resignations submitted would be accepted and would be irrevocable. Yacavoni did not communicate his decision to the employees.

12. From March 1 to April 12, 1989, following the retirement of Leonard Roberts, then Records Center Clerk, Grievant served as Acting Records Center Clerk of the Division (Grievant's Exhibit 7).

13. After Roberts' retirement, Grievant applied for the position of Records Center Clerk on a permanent basis, and requested a waiver of the written examination requirement. Grievant's request was refused By Yacavoni. Grievant took the exam, but did not pass. Subsequently, Clayton Marshia was hired to fill the position.

14. On April 12, 1989, Yacavoni was called by a reporter from the Times Argus who informed Yacavoni that an informant had told him that a Division of Public Records employee was selling juvenile records to a private investigator.

15. Immediately thereafter, Yacavoni called a meeting which included Grievant and 5 co-workers. Yacavoni told the employees present at the meeting of his conversation with the reporter, and stated that any employee responsible for this could be dismissed, and also could be subject to criminal charges.

16. Grievant approached Yacavoni after the meeting and informed him that on two occasions she had given her brother-in-law, a private investigator, some non-classified public information consisting of criminal case charges and docket numbers. Grievant said that she received the information from the court, and not from files stored in the Public Records Division. Yacavoni asked that Grievant put her disclosure in writing to him, which Grievant subsequently did by letter of April 12, 1989 (Grievant's Exhibit 8).

17. On April 13, 1989, an employee of the Division informed Yacavoni of being aware that Grievant's brother-in-law had given Grievant money for information which Grievant had provided to him. That day, Grievant was called to a meeting with Yacavoni and Linda Gomo, Microfilm Supervisor. Yacavoni handed Grievant a letter from Commissioner Thomas. Therein, Grievant was notified that she was placed on temporary leave with pay pending an investigation into allegations of improper handling of court records. Grievant was also directed to turn over all keys in her possession that accessed public record areas. Grievant surrendered her keys and left the premises (Grievant's Exhibit 9).

18. While Grievant was on temporary leave, the Attorney General's Office conducted an investigation of the allegations leading to Grievant's placement on temporary leave. During the time of the investigation, Yacavoni called Grievant at home and asked that she come in and unlock her desk so that Marshia could use it. Grievant went into the office and unlocked her desk. While there, Grievant was at all times accompanied by Yacavoni. Subsequently, Yacavoni and Gomo searched the desk for any materials which may have aided the investigation. During the investigation, Commissioner Thomas ordered Yacavoni to tighten security measures. The Court Administrator also expressed a concern to Yacavoni that security measures needed to be improved with respect to court records that were kept at the Division.

19. Also during the time of the investigation, Pam Craig, a friend and co-employee, reported to Grievant that Gomo had told her that Grievant was guilty of improperly taking money from her

brother-in-law in exchange for information she had provided to him and that she had brought shame and humiliation to the Public Records Division.

20. On May 13, 1989, Grievant was notified by Commissioner Thomas that the investigation was concluded and "revealed no evidence of wrongdoing or improper conduct on [Grievant's] part." Thomas informed Grievant that the temporary leave was rescinded and instructed her to return to work on May 15, 1989 (Grievant's Exhibit 12).

21. During the investigation, investigators had recommended that the locks to the Division's doors in Montpelier be changed while the investigation was ongoing. The locks were changed. Locks on doors to the public areas that had been changed during the investigation were not changed back by the time Grievant returned to work on May 15. Grievant's key would not open these doors and Grievant had to rely on others for admittance to her general employment area. A few days after Grievant's return, the locks were changed back.

22. When Grievant returned to work, some of her co-workers were not friendly to her. Grievant became very upset on her first day back because of this reception. Craig spoke to Yacavoni and Gomo about Grievant being upset. Gomo responded that the microphotography employees under her supervision resented Grievant for causing a bad reflection on them, and reiterated her belief that Grievant had violated the Department's rules. Grievant was defensive upon her return to work, and at times displayed a negative attitude. Shortly after returning to work, Grievant told Marshia that she only intended to stay long enough to "clear her name" and then resign.

23. When Grievant first returned to work on May 15, the only restrictions placed on her that had not previously existed were that she could not go into the locked storage vault and could not handle juvenile records. Grievant was not overly upset by these restrictions. On May 31, 1989, the Division of Public Records implemented a "change in operating procedures and internal controls" which imposed new restrictions limiting employees' access to various records. These restrictions included:

- - A requirement that both the Records Center Clerk and another supervisor must sign approvals for any confidential/restricted material requests, and that requests must be filled only by the Records Center Clerk, Court Microphotographer, or a supervisor;

- - A requirement that all employees must sign a "Confidential/ Restricted Records Sign Off Sheet" when viewing or receiving their own department's records;

- - A restriction that only three personnel positions, not including Grievant's, could access microfilm records of a restricted or confidential nature;

- - A restriction that no employees would be allowed in any of the public records storage areas except during regular working hours without specific approval of the Director, Administrative Assistant, or Central Services Supervisor.

- - A restriction that no relatives or friends would be allowed into the Public Records or Central Services Division after normal working hours, and would be allowed during working hours only for specific purposes and a limited time;

- - A restriction that no confidential information would be given out over the telephone unless prior written approval is on file in the office; and

- - A restriction that only the Record Center Clerk would have a key to the Montpelier record storage vaults (Grievant's Exhibit 13).

24. Under these new restrictions, Grievant was not allowed to handle confidential records, as she had previously done. Grievant's counterpart in Waterbury was subject to the same restrictions as

Grievant, although the Waterbury office did not follow these regulations for a period, without Yacavoni's knowledge. Also, six microphotographers employed by the Division had their access to records limited to some degree by the restrictions. Following implementation of the restrictions, there were complaints from many employees regarding how cumbersome the changes were and how the changes adversely impacted on their work.

25. In addition to these restrictions, Grievant was subject to other restrictions. Although under the new regulations Grievant was allowed access to the second floor courtroom records, her key to the room was not returned to her. Grievant was treated differently by different supervisors when accessing this area. Under Marshia's supervision, Grievant was allowed in the room alone after having the door unlocked for her. Under Gomo's supervision, another employee would be instructed to stand guard while Grievant searched the records. Grievant was also informed that she would no longer be allowed to handle juvenile records under any circumstances. Also, Grievant no longer was allowed to open incoming mail.

26. Grievant believed that the changes in procedure, the additional restrictions imposed, and the treatment by co-workers and supervisors were directed at her and reflected a continuing belief that she was guilty of the initial allegations of wrongdoing.

27. Subsequently, Grievant learned that the Waterbury division was not following the new access regulations despite the fact that the rules were intended to apply to both Montpelier and Waterbury.

28. On June 8, subsequent to Grievant filing a grievance with respect to "limitations and restrictions placed on performance of. . .

regularly assigned duties," Grievant and Gail Rushford, VSEA Field Representative, met with Yacavoni and a personnel officer to discuss Grievant's problems following her return to work. In addition to discussing how the restrictions made it difficult for her to perform her job, Grievant also told Yacavoni of the problems she was having with co-workers and supervisors, as well as her discovery that Waterbury was not following the new restrictions. Yacavoni explained that the Public Records Division was under pressure from the court administrator's office for stricter regulations, and promised that he would direct Gomo and others to stop making comments about Grievant. Yacavoni indicated that he would look into Grievant's complaints about the restrictions. Yacavoni also indicated that he was unaware the Waterbury office was not following the new restrictions (Grievant's Exhibit 14).

29. Shortly after the June 8 meeting, Yacavoni informed Gomo that Grievant had been cleared of all charges and that she should stop acting to the contrary. Yacavoni also directed the Waterbury office to comply with the restrictions issued on May 31.

30. During her period of employment, Grievant was in the habit of eating lunch at her desk with her husband. Grievant's husband would come into the office area approximately 15 minutes before Grievant's lunch period began, and spend the time washing up and often times speaking loudly to Grievant and others in the office. At times Grievant's husband was disruptive to office routine. Grievant and her husband would then eat together for Grievant's 1/2 hour lunch period. The office was open to the public during this time. Marshia, after talking to Yacavoni about Grievant's husband being disruptive, had

told Grievant a few times in the past that her husband was disruptive, and asked that such behavior cease. On or about June 12, 1989, an incident occurred where Grievant's husband was very loud and used vulgar language to the extent that Grievant apologized to co-workers concerning her husband's behavior. At this point, Grievant had never been told that she was not permitted to eat lunch with her husband at her desk.

31. On Thursday, June 22, 1989, at a staff meeting which was attended by Grievant, Yacavoni told employees that some of the restrictions on access to records had been eased; that only strictly confidential records would have restrictions. Grievant believed that the changes represented an improvement but that more changes were needed. Yacavoni also told employees that visitors would no longer be allowed in the Montpelier office. Grievant asked if this meant that her husband could no longer have lunch with her in the office. Yacavoni told Grievant that she would not be allowed to eat lunch at her desk with her husband any longer. Grievant was the only employee who ate in this manner, and she believed the new rule was directed at her.

32. Following the meeting, Grievant became upset with this additional restriction and her inability to continue eating lunch with her husband. In the elevator, returning to her work location with Marshia, Grievant said that she might not be back to work after lunch. Marshia asked, "Does that mean you're quitting?" or words to that effect. Grievant did not respond. Grievant then began some photocopying, became more upset, and stopped. She took the remaining work to Marshia, gave him her key, and visibly upset said, "See you

around." Grievant then left work. Shortly after Grievant left, Marshia reported what had happened to Yacavoni. Grievant would not have left work on June 22 if Yacavoni had not told her that her husband could no longer have lunch with her in the office. Grievant did not return to work that day or the next.

33. Neither Yacavoni, Marshia nor anyone else from the Division attempted to contact Grievant either on June 22, following her surrender of her keys, or on the following day. Yacavoni believed that Grievant was "just blowing off steam" and that she would return to work. Grievant did not call into work after she left on June 22 or on June 23.

34. On Monday, June 26, Grievant went into the office and proceeded to clean out her desk. Marshia said to Grievant that he and Yacavoni thought she was "just blowing off steam" and that she would be back to work. Grievant replied "well, you were wrong." Marshia told Grievant he had to call Yacavoni. After reaching Yacavoni on the telephone, Marshia told Grievant that Yacavoni would talk to Grievant if Grievant would talk to Yacavoni. Grievant declined to talk to Yacavoni. Pursuant to Yacavoni's instructions, Marshia asked Grievant if she would put her resignation in writing. Grievant replied that the last time she put something in writing it caused her a great deal of trouble, and declined to put a resignation in writing. Marshia then asked Grievant, pursuant to Yacavoni's instructions, if she would work out her two weeks notice. Grievant agreed to do so. Grievant was not visibly upset that day.

35. On Tuesday, June 27, Grievant returned to work. Marshia gave Grievant a letter from Yacavoni dated the previous day, which provides in pertinent part as follows:

> On June 23 (sic), 1989 your actions to your supervisor of turning in your keys at 11:30 AM and saying "I will see you aruond" (sic) and your further action of not reporting to work on June 23, 1989, and June 26, 1989 of cleaning out your desk is interpreted as a resignation. It is my understanding through your supervisor that you are presently willing to work from June 26, 1989 through July 7, 1989 to fulfill a two-week notice prior to leaving the employ of Public Records, at which time, your resignation will become effective on July 7, 1989. This resignation is irrevocable (Grievant's Exhibit 15).

36. After receiving the letter, Grievant told Marshia, "I'm going to fight this." Grievant was upset by the letter and asked Marshia if she could leave work early. Marshia allowed Grievant to leave one hour early. Before leaving work, Grievant made no attempt to talk to Yacavoni.

37. Grievant left work and went to see her private attorney, Scott Cameron. Grievant and Cameron discussed her options, one of which was a "deal" with the State whereby Grievant would take a six month leave of absence during which time she would seek work in another department. If at the end of six months Grievant had not found work, she would resign. Grievant gave Cameron permission to explore this option with the State.

38. Subsequently Cameron and Thomas Ball, State Director of Employee Relations, discussed the potential "deal" and a draft agreement was prepared. Part of the proposed agreement was that Grievant would not be required to return to work. Subsequently, Ball discussed the potential agreement with Yacavoni, who also discussed it with Marshia. Marshia had the impression that an agreement had been approved by both parties (Grievant's Exhibit 16).

39. On Wednesday, June 28, Grievant reported to work, intending to work through the day. Marshia told Grievant that he was surprised

to see her, that he understood that she had accepted an agreement, and that she was not expected to work. Grievant then left work, and tried to reach Cameron, her attorney.

40. Grievant did not reach Cameron until Friday, June 30. Grievant did not return to work in the interim, and she considered whether to accept the proposed agreement.

41. On Friday evening, June 30, Cameron met with Grievant and told her that he had not accepted the proposed agreement on her behalf, and that she was under no obligation to accept the proposed agreement. Cameron advised Grievant to return to work and fight for her job if she wanted it.

42. Grievant returned to work on Monday, July 3. She informed Marshia that week, after his return to work following a short absence, that she was not giving up her job and intended to continue coming to work. Marshia told Grievant, upon Yacavoni's instructions, that if she reported to work after Friday, July 7, she would be volunteering her time and would not be paid. When Grievant persisted in stating her intentions to continue working, Marshia told her, without Yacavoni's knowledge, that after July 7 she would be removed from the premises by security if she came to work. Grievant did not report to work after July 7. During the period Grievant worked between June 26 and July 7, Grievant's husband continued to come into the office.

43. On Wednesday, July 5, Rushford wrote to Yacavoni on behalf of Grievant, stating that Grievant had not resigned her position and that Grievant's actions surrounding the alleged resignation were the result of job related stress (Grievant's Exhibit 17).

44. Rushford received no response to the letter, and called Yacavoni on July 7. Yacavoni told Rushford the Employer's position was that Grievant had resigned by her actions.

45. On Friday, July 14, Rushford again wrote to Yacavoni, stating that Grievant did not report to work after July 7 because of notice to her that she would be forcibly removed from the premises if she did so, and that she had not resigned her position (Grievant's Exhibit 18).

46. Subsequently, after meeting with Yacavoni, Commissioner Thomas responded to Rushford's letter of July 14. Thomas confirmed the Employer's position that Grievant had resigned by her actions, and that the Employer would not consent to the withdrawal of Grievant's resignation. However, Thomas noted that the Department would not construe Grievant's absence from work after July 7 as a second resignation (Grievant's Exhibit 19).

OPINION

Grievant contends that her grievance should be granted and that she should be reinstated based on two alternative theories: 1) she did not resign from her position; or 2) even if she did resign, that resignation in reality was a constructive discharge. We will discuss each issue in turn.

Resignation

Grievant contends that she did not resign because 1) she did not submit a written resignation, and 2) her action was not voluntary. Grievant's position is based on the following provisions of the Rules and Regulations for Personnel Administration:

> Section 2.0384 RESIGNATION is a separation of an employee from the State service by his own voluntary act.

> Section 12.02 RESIGNATION: An employee who resigns shall give at least two weeks notice and reasons for such action in writing to the appointing authority. A resignation once submitted shall not be withdrawn by the employee without the consent of the appointing authority.

At the outset, we note that the Rules and Regulations for Personnel Administration are an established past practite which are implicitly embedded in the Contract unless explicitly altered by contract provisions and, as such, attain the status of contractual rights and duties. Grievance of Cronin, 6 VLRB 37, 67-70 (1983). The provisions of the Personnel Rules at issue herein have not been altered by the Contract. Thus, they have attained the status of contractual rights and duties. Accordingly, the provisions of the Personnel Rules will be interpreted as being part of the Contract. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacy, 138 Vt. 68, 71 (1980). We will not read terms into a contract, unless they arise by necessary implication. Id. The practical construction placed upon an instrument by the parties is controlling in determining the meaning of the instrument. Grievance of Cronan, et al, ___ Vt. ___ (1989).

Grievant contends that Section 12.02 of the Personnel Rules is clear in its requirement that resignations be in writing, and that since Grievant never submitted a resignation in writing, then Grievant did not resign. It is true that Section 12.02 does require an employee to put a resignation in writing. However, this is a requirement imposed on an employee unilaterally by the employer for its benefit. It does not preclude an employer from accepting a resignation based on an employee's verbal representations and other actions, if that employee fails to resign in writing.

To accept Grievant's construction of Section 12.02 of the Personnel Rules would be to read terms into the provision which do not arise by necessary implication and to ignore the compelling realities of the workplace. An employer is required to take actions once it accepts an employee's resignation. The employer must either replace the departing employee or reorganize the workforce to eliminate the position the employee held. Grievant of Baron, 8 VLRB 57, 63 (1985). The employer cannot realistically wait until an employee has left his or her job to begin these efforts. Id.

If Grievant's position was accepted, an employer would be unable to take the actions necessary to account for an employee leaving, even though the employee had indicated an intent to resign but had failed to place the resignation in writing, until the employee actually stops working and then does not work for five consecutive work days pursuant to Article 39, Section m, of the Contract. Article 39, Section m, provides that "an employee who is absent from work for five consecutive workdays without calling in shall be considered a voluntary quit". This means that an employer would have to wait a minimum of three weeks after knowing the employee was leaving work (i.e. a two week period where the employee was working out a two-week notice, and then an additional five consecutive workdays) to initiate actions to replace the departing employee. We do not interpret Section 12.02 of the Personnel Rules to require such a result. Given the compelling realities of the workplace, the practical construction placed upon Section 12.02 by the Department of Personnel to accept resignations which are not in writing does not violate the Personnel Rules or the Contract. To rule otherwise would be to allow an

employee to benefit unfairly to the detriment of the employer by failing to fulfill the requirement to place a resignation in writing.

Nonetheless, aside from the question of submitting the resignation in writing, Grievant submits that the evidence does not demonstrate that Grievant had the intention of relinquishing her job and, thus, she did not resign.

We concur that Grievant's actions on June 22 do not demonstrate conclusively that she was resigning. When she turned in her keys that day to her supervisor, stating "see you around" and then leaving work, Grievant was visibly upset concerning an earlier meeting that day where the Public Records Division Director informed Grievant that her husband could no longer eat lunch with her at her desk. Her immediate supervisor and the Division Director were left with the impression that Grievant was "just blowing off steam" and would return to work. Under these circumstances, we cannot conclude conclusively that Grievant resigned that day.

However, her actions on June 26 clearly indicate that she was resigning. On that day, which was three and one-half days after she last had been at work (Thursday afternoon until Monday morning), Grievant came into her office and cleaned out her desk. When her immediate supervisor indicated that he and the Division Director thought she "was just blowing off steam" and would return to work, Grievant replied, "well, you were wrong". When Grievant refused to put the resignation in writing that day upon being asked by the supervisor if she would do so, Grievant did not indicate that she refused to do so because she was not resigning, but replied that the last time she had put something in writing it had caused her a great

deal of trouble. When her supervisor asked her if she would work out her two weeks' notice, which notice is required under section 12.02 of the Personnel Rules when an employee resigns, Grievant agreed to do so. These actions of Grievant, which occurred when Grievant was not visibly upset, were those of an employee indicating an intent to resign.

We note that we are troubled by the circumstances that had developed in the Public Records Division of employees using purported resignations as a tool to resolve matters of employee dissatisfaction, and the Division Director acquiescing in this by refusing to accept the resignation. The Division Director was wrong in encouraging this questionable personnel practice.

Nonetheless, when the Division Director asked Grievant (through Grievant's immediate supervisor) whether she would put her resignation in writing and work out a two weeks' notice, it indicated clearly to Grievant that the previous arrangement was not being followed and that the Division Director was accepting the resignation. Although Grievant had the opportunity to communicate to the Division Director at that point if she was not intending to resign and just wanted to resolve issues of dissatisfaction, Grievant did nothing to indicate that she was not intending to actually resign and made no effort to talk to the Division Director. Thus, the questionable personnel practice does not affect our conclusion that Grievant indicated on June 26 her intent to resign.

Constructive Discharge

Grievant contends that she was constructively discharged because the Employer instituted a number of measures designed to force Grievant from her position because the Employer continued to harbor a

belief in Grievant's guilt concerning selling confidential juvenile records to her brother-in-law.

Only by converting Grievant's resignation into a discharge can this controversy come before the Board. In re Grievance of Bushey, 142 Vt. 290, 291 (1982). Further, only by the proving, in addition, that this conceptual discharge is without just cause can the Board require remedial action. Id. Constructive discharge refers to a resignation that was improperly procured or induced to the point that, conceptually, the resigned employee should be taken to have been discharged. Id.

In constructive discharge cases, the general rule is that if the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer has encompassed a constructive discharge and is as liable for any illegal conduct involved therein as if it had formally discharged the aggrieved employee. Grievance of Bushey, 4 VLRB 285, 298 (1981). The establishment of intolerable working conditions must be intended by the employer to get the employee to resign. Id, at 299. In re Grievance of Bushey, supra, at 298.

Grievant cites various measures instituted by the Employer purposefully directed to cause Grievant to resign. First, Grievant contends that the "improved" security measures taken concerning records were aimed at Grievant. While it is apparent that the restrictions limiting employees' access to records had a greater impact on Grievant than any other employee, Grievant was not the only employee affected by the restrictions. Grievant's counterpart in

Waterbury and microphotographers employed by the Division had their access to records limited to some degree by the restrictions. The actions of the Division Director do not indicate the restrictions were intended to cause Grievant to resign. It is evident that the Division Director was under pressure from his superior, the Commissioner of the General Services Department, and the Court Administrator to improve security. The fact that the restrictions impacted Grievant more than anyone else appear to be more the result of the nature of her job than aimed at her to cause her to resign. Also, at least partly as a result of Grievant's complaints concerning the restrictions, the Division Director eased the restrictions before Grievant's resignation. If he really intended to force Grievant to resign by imposing these restrictions, we doubt that he would have eased them prior to her resignation.

Grievant also cites the rule announced by the Division Director on June 22 that visitors would no longer be allowed in the office as a further measure designed to cause Grievant to resign. Again, even though this rule impacted more on Grievant than any other employee since she was the only employee who ate lunch at her desk with a visitor (i.e. her husband) present, we believe this was not designed to cause Grievant's resignation. Grievant's husband had been disruptive to office routine on past occasions when he ate lunch with Grievant at her desk, and as recently as 10 days earlier had been very loud and used vulgar language to the extent that Grievant apologized to co-workers concerning her husband's behavior. The rule barring visitors was a reasonable business decision, particularly in an office which the general public frequented.

Grievant questions why she was the first employee affected by the Division Director's new and unannounced policy that resignations, once submitted, were irrevocable. As previously discussed, we are troubled by the past practice in the Division of employees using purported resignations as a tool to resolve matters of dissatisfaction, and the Division Director acquiescing in this by refusing to accept the resignations. However, the fact that the Division Director accepted Grievant's resignation herein does not lead us to conclude that he was purposefully taking actions directed at obtaining her resignation. We have found credible the Division Director's representations that he had decided prior to Grievant's resignation that any resignations submitted thereafter would be accepted and would be irrevocable. Also, it does not follow that the acceptance of a resignation under these circumstances indicates that the Division Director was actually taking measures designed to cause the resignation.

Finally, Grievant contends that the Division Director demonstrated intent to induce Grievant's resignation by being slow to halt supervisor Linda Gomo's professed belief in Grievant's guilt after Grievant was cleared of the charges and returned to work. However, the evidence indicates that when Grievant told the Division Director on June 8 of problems she was having with Gomo and others making comments about her, the Division Director promised that he would direct Gomo and others to stop making comments about Grievant. Shortly thereafter, the Division Director moved to put a halt to Gomo's actions by informing Gomo that Grievant had been cleared of all charges and that Gomo should stop acting to the contrary. We do not believe, under such circumstances, that he moved slowly to halt Gomo's actions.

In sum, we do not believe that the Employer purposefully took actions intended to induce Grievant's resignation. Thus, Grievant was not constructively discharged and her resignation stands.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby *ORDERED* that the Grievance of Joanne Baldwin is DISMISSED.

Dated this 2nd of March, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

William G. Kemsley, Sr.

Catherine L. Frank