

GRIEVANCE OF: )  
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B.M., B.B., S.S., C.M. AND J.R. ) DOCKET NO. 92-32

At issue is whether the Labor Relations Board should grant the motion of the University of Vermont ("University") to dismiss this grievance in part. On July 9, 1992, Attorney Beth Danon filed a grievance on behalf of University employees B.M., B.B., S.S., C.M., and J.R. ("Grievants"). Therein, Grievants claimed that the University had discriminated against Grievants, who are gay and lesbian faculty, on the basis of their sexual orientation by refusing to extend medical benefits to Grievants' domestic partners, but extending those benefits to the spouses of their colleagues who are legally married. Grievants contend that, by depriving them of the same benefits provided to employees who are legally married, the University: 1) is violating its non-discrimination policies, rules and regulations which apply to compensation and benefits, and which provide that the University does not discriminate on the basis of sexual orientation in access to, treatment or employment in its programs or activities; and 2) is engaging in a unlawful employment practice proscribed by the Fair Employment Practices Act, 21 VSA §495 et seq. ("FEPA"), which prohibits employment discrimination on the basis of sexual orientation.

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independent of any claim arising out of the State Employees Labor Relations Act, 3 VSA §901 et seq., which is administered by the Board. Grievants oppose the University's partial motion to dismiss. Grievants contend that the Board has jurisdiction over FEPA claims pursuant to Section 270.5 (C) of the University's Officer's Handbook, which provides for grievances over violations of "extra-University statutory and administrative rights including but not limited to violations of . . . freedom from discrimination on the basis of . . . sexual orientation."

We concur with the University that we lack jurisdiction over the FEPA claims of Grievants. The Board has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In deciding grievances, the Board is limited by the definition of the term grievance in 3 VSA §902(14). In re Grievance of Guttman, 139 Vt. 574, 576 (1981). §902(14) includes within the definition of grievance "the discriminatory application of a rule or regulation".

This definition of "grievance" is not so expansive to permit us to take jurisdiction over alleged violations of FEPA. FEPA specifies that the rights created by FEPA are enforced either by the Attorney General, a State's Attorney, or by the aggrieved person bringing an action in superior court. 21 VSA §495b. Where the Vermont General Assembly has set up such specific enforcement mechanisms under a statute, it is beyond our jurisdiction to disregard those mechanisms and resolve FEPA claims. Just as the Vermont General Assembly has specifically conferred on us exclusive original jurisdiction to resolve alleged violations of the specific labor relations statutes which we administer, so too has the Legislature specifically conferred exclusive original

jurisdiction on the Attorney General, State's Attorneys and the superior courts to address alleged violations of FEPA. A rule or regulation promulgated by an employer cannot expand our jurisdiction to include the enforcement of FEPA, contrary to Grievants' claim. For us to so decide would be to assume jurisdiction beyond that conferred on us by the General Assembly.

In sum, Grievants may not pursue their claim that the University is engaging in unlawful employment practices proscribed by FEPA, since the Board lacks jurisdiction over such a claim.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Motion to Dismiss In Part filed by the University of Vermont to dismiss claims made by Grievants premised upon alleged violations of the Fair Employment Practices Act, 21 VSA §495, et seq., is GRANTED.

Dated this 10th day of December, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
Catherine L. Frank

  
Carroll P. Comstock