

VERMONT LABOR RELATIONS BOARD

LINDE EMERSON)	
)	
v.)	
)	DOCKET NO. 96-93
VERMONT DEPARTMENT)	
OF FORESTS, PARKS AND)	
RECREATION AND BRUCE)	
BROWN)	

MEMORANDUM AND ORDER

On December 13, 1996, as amended on December 26, 1996, Attorney Steven Schindler filed a grievance and unfair labor practice charge on behalf of Linde Emerson ("Complainant") against the Vermont Department of Forests, Parks and Recreation and Bruce Brown ("Employer"). Therein, Grievant contested his dismissal from his position as a Park Ranger at Emerald Lake State Park. The Employer has filed motions to dismiss the grievance and unfair labor practice charge.

We first address the grievance. The Employer contends that the grievance should be dismissed because Complainant was a temporary employee when he was dismissed, and the Board has no jurisdiction to decide grievances of temporary state employees. Complainant acknowledges that he was a temporary employee, but contends that the sexual harassment procedures implemented by the Employer provided him with grievance rights under the collective bargaining agreement between the State and the Vermont State Employees' Association.

The Labor Relations Board, as a public administrative body, has such jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). The State Employees Labor Relations Act ("SELRA"), 3 V.S.A. Section

901 *et seq.*, does not give the Board jurisdiction over grievances of temporary State employees. Grievance of McCluskey, 7 VLRB 359 (1984). 3 V.S.A. Section 926 provides: "(t)he Board shall hear and make final determination on the grievances of all employees who are eligible to appeal grievances to the Board . . . (t)he right to institute grievances extends to individual employees, groups of employees and collective bargaining units." Temporary employees are not considered "employees" under SELRA. SELRA defines "state employee", in pertinent part, as "any individual employed on a permanent or limited status basis by the State of Vermont . . . but excluding an individual: A) exempt or excluded from the State classified service under the provisions of Section 311 of this title . . ." 3 V.S.A. Section 902(5). 3 V.S.A. Section 311(a)(11) expressly excludes "persons employed in a temporary capacity" from the State classified service.

The sexual harassment procedures implemented by the Employer do not give the Board the jurisdiction over grievances of temporary employees which is not given by these statutory provisions. An employer cannot give the Board jurisdiction through unilateral implementation of procedures over matters which the Vermont General Assembly expressly has declined to confer jurisdiction. Moreover, it is not apparent that the Employer's sexual harassment procedures are designed to grant temporary employees grievance rights under the collective bargaining agreement. A statement of employment conditions received by Complainant from the Employer explicitly provided that the collective bargaining agreement did not apply to him as a temporary employee. A fair reading of the Employer's sexual harassment procedures is that employees covered by the collective bargaining agreement who are

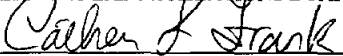
disciplined as a result of sexual harassment complaints can grieve the discipline under the provisions of the collective bargaining agreement. The broad reading of the procedures to cover temporary employees, advanced by Complainant, is not warranted. Thus, we conclude that Complainant's status as a temporary employee leaves us without jurisdiction to hear his grievance.

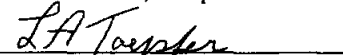
We conclude similarly with respect to Complainant's unfair labor practice charge. The exclusion of temporary employees from the definition of "employees" under SELRA results in temporary employees having no standing to file unfair labor practice charges under SELRA. 3 V.S.A. Sections 311(a)(11), 902(5)(a), 961; Section 16.1, Board Rules of Practice. Moreover, the subject matter of Complainant's charge is not within the scope of unfair labor practices. He alleges age discrimination, but age is absent from the list of prohibited forms of discrimination under SELRA's unfair labor practice provisions. 3 V.S.A. Section 961(6).

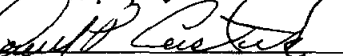
NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the grievance and unfair labor practice charge filed by Linde Emerson against the Department of Forests, Parks and Recreation and Bruce Brown are DISMISSED.

Dated this 27th day of March, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Louis A. Toepfer


Carroll P. Comstock