

VERMONT LABOR RELATIONS BOARD

KAREN RODDY	)	
	)	
v.	)	DOCKET NO. 96-75
	)	
COMMUNITY COLLEGE	)	
OF VERMONT	)	

MEMORANDUM AND ORDER

This case involves a grievance and unfair labor practice charge filed by former Community College of Vermont ("CCV") employee Karen Roddy against CCV. Board Chairperson Catherine Frank has not been involved in the decision in this matter.

In her grievance, Roddy contends that a written reprimand she received violated the Vermont State Colleges Policy on Discipline and Discharge, was retaliatory in nature due to a previously filed grievance, and was part of a continuing pattern of harassment directed towards her. In the unfair labor practice charge, Roddy alleges that CCV committed unfair labor practices through: 1) a threat made by her supervisor at a February 21, 1996, meeting that Roddy would lose her job if she continued with her grievance; 2) actions by her supervisor in seeking information from students and other staff on Roddy's grievance; and 3) denying Roddy her due process rights by refusing to provide her with materials to help her prepare and present her grievance.

CCV has moved to dismiss the grievance and unfair labor practice charge as moot and untimely filed. The Colleges maintain the grievance and unfair labor practice charge are moot because Roddy voluntarily resigned from her CCV position

with the Colleges in February 1996. In further support of its position that the Labor Relations Board lacks jurisdiction, CCV relies on statements made by Roddy in an affidavit which she filed in this matter that she "presently live(s) in Charlottesville, Virginia and (has) no present plans to return to Vermont".

In response to the motion to dismiss, Roddy's attorney contends that CCV's motion is flawed because it rests on the inaccurate premise that Roddy voluntarily resigned from employment. Roddy's attorney states: "Karen Roddy contends, and has contended from the beginning, that her termination from employment at CCV was not voluntary, that she was constructively discharged."

This contention that Roddy was constructively discharged was not a stated basis for either the grievance or unfair labor practice charge filed in this matter. It was raised for the first time in response to CCV's motion to dismiss. As such, it was untimely raised and plays no part in our analysis whether this case should be dismissed.

Jurisdiction is conferred on the Board where an actual controversy between the parties exists. Grievance of Boocock, 150 Vt. 422, 424 (1988). To satisfy the actual controversy requirement, there must be injury in fact to a protected legal interest or the threat of an injury in fact. Id. Where future harm is at issue, the existence of an actual injury turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance. Id.

The Vermont Supreme Court has applied these standards in two cases in which employees have had grievances pending at the time they resigned from

employment. In Grievance of Boocock, 7 VLRB 265 (1984); *Affirmed*, 150 Vt. 422 (1988); the Board and the Supreme Court dismissed a resigned state police officer's grievance contesting his last performance evaluation. The Board and the Court reasoned that the potential harm to the employee which may have been caused by an adverse performance evaluation had been eliminated since the employee had obtained satisfactory employment in the Federal service. The Court stated:

By failing . . . to continue his grievance action within the context of a specific job pursuit, (footnote omitted) grievant essentially asked the Board to speculate about what the performance evaluation's general effect might be. The Board correctly declined to do so since there was a lack of an actual controversy under these circumstances. There was no threat of actual injury to grievant's legal interests. 150 Vt. at 425-26.

In Grievance of Moriarty, 156 Vt. 160 (1991), the Court dismissed the appeal by a former state police lieutenant, who had resigned to take other employment, from a Board decision that the lieutenant had failed to prove that his transfer was disciplinary rather than administrative. Moriarty argued before the Court that his future employment prospects were hindered because any prospective employer given access to his personnel file would conclude that the transfer was disciplinary. *Id.* at 163. He further contended that Boocock was inapplicable since Boocock did not intend to leave his new job, whereas Moriarty might seek reemployment with the State Police. *Id.* at 164. The Court was not persuaded and concluded that there remained no actual controversy:

The mere possibility that one might seek reemployment is not . . . sufficient to transform a nonjusticiable controversy into a justiciable one . . . Moriarty concedes that he does not have any legal right to reemployment. Moreover, he has failed to explain why his application for reemployment would be treated more favorably by the State

Police if he should succeed with his appeal. In these circumstances, Moriarty is merely "speculating about the impact of some generalized grievance." (citations omitted).Id. at 164.

There are significant differences between Karen Roddy's circumstances and those of Boocock and Moriarty in that they had obtained full-time employment elsewhere at the time their grievances were dismissed. Roddy's affidavit, on the other hand, indicates that she is "presently employed only part time as a substitute teacher" and "is presently looking for . . . a full time job in my field".

Nonetheless, Roddy's circumstances are sufficiently analogous to those facing Boocock and Moriarty to warrant dismissal of her case. Roddy states in her affidavit that "my prospects (for a full time job in my field) are impaired by the fact that I was harassed by my supervisor at CCV, that she unlawfully placed an unwarranted disciplinary letter in my personnel file, and that, as a result, I will be unable to obtain a favorable reference from CCV."

Like Boocock, who was asking the Board to speculate about what might be the general effects of the adverse performance evaluation which he received, Roddy essentially is asking the Board to speculate about what the general effects may be of the alleged harassment and placement of a disciplinary letter in her personnel file on her ability to obtain full-time employment. We decline to do so since there is a lack of an actual controversy under these circumstances; there is no threat of actual injury to Roddy's legal interests. Moreover, any potential effect of the disciplinary letter appears diminished since, as indicated in an affidavit filed in this matter by the

General Counsel for the Vermont State Colleges, Roddy's CCV personnel file is deemed confidential and a prospective employer would not have access to it.

Also, similar to Moriarty failing to explain why his application for reemployment would be treated more favorably by the State Police if he should succeed with his appeal, Roddy has not explained why she would receive a more favorable reference from CCV enhancing her employment prospects if she should prevail in her grievance and unfair labor practice charge. If the Board were to hear this case on the merits and find for Roddy, the Board would be limited to remedying the improper disciplinary action. In re Brooks, 135 Vt. 563, 570 (1977). The Board would be restricted to ordering the removal of the written reprimand from Roddy's personnel file; the Board would not have the power to order a more favorable job reference. Like Moriarty, Roddy is merely "speculating about the impact of some generalized grievance."

In sum, where future harm is at issue and Roddy is not seeking to return to her employment at CCV, Roddy must establish that she is suffering the threat of actual injury to a protected legal interest, rather than merely speculating about the impact of some generalized grievance. She has failed to demonstrate the threat of actual injury to a protected legal interest, and we thus conclude that we lack jurisdiction in this matter.

In so ruling, we are not diminishing the significance of the issues raised by Grievant; allegations of retaliation against an employee for pursuing grievances are very serious. Grievance of Santorello, 14 VLRB 203, 222 (1991). However, absent any plans by Roddy to return to Vermont and the speculative nature of any potential

harm to Roddy through CCV's alleged actions, we cannot grant any effective relief and this case is moot. Moriarty, 156 Vt. at 563. c.f., Santorello, *supra*. Given our conclusion, it is unnecessary to address CCV's further claims that the grievance and unfair labor practice charge were untimely filed.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the grievance and unfair labor practice charge filed by Karen Roddy against the Community College of Vermont are DISMISSED.

Dated this 27<sup>th</sup> day of August, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Louis A. Toepfer

Louis A. Toepfer

  
Leslie G. Seaver

  
Richard W. Park

DISSENTING OPINION

I dissent from the majority view that this case should be dismissed without a hearing. Contrary to my colleagues, I believe Roddy's circumstances are not sufficiently analogous to those facing Boocock and Moriarty to warrant dismissal of her case as moot. As the majority opinion recognizes, there are significant differences between Karen Roddy's circumstances and those of Boocock and Moriarty in that they had obtained full-time employment elsewhere at the time their grievances were

dismissed. Roddy's affidavit, on the other hand, indicates that she is "presently employed only part time as a substitute teacher" and "is presently looking for . . . a full time job in my field".

This ongoing job search very well may be hindered by the written reprimand imposed on Roddy. If we were to hear this case on the merits and find for Roddy, we would be able to order the written reprimand rescinded and removed from Roddy's personnel file. The presence of the written reprimand results in a threat of actual injury to Roddy's legal interests given its potential effect on Roddy's ability to secure a full time job.

Also, I am troubled by Roddy's allegations that she was retaliated against for pursuing grievances, and her due process rights were violated by the Employer refusing to provide her with materials to help her prepare and present a grievance. Allegations of retaliation against an employee for pursuing grievances are very serious; Grievance of Santorello, 14 VLRB 203,222 (1991); as are allegations that an employer is hindering an employee's ability to meaningfully pursue grievances. Such allegations go to the heart of what the Labor Relations Board exists to protect. We should assert jurisdiction in this matter to decide the merits of Roddy's allegations.

Further, CCV has not presented sufficient evidence to substantiate its claims that the grievance and unfair labor practice charge were untimely filed. With respect to the grievance, Roddy wrote a letter to the Board contesting actions taken by CCV within the time frame set by the Board's Rules of Practice for filing grievances. The fact that the Board required her to file an amended action to conform in other respects

to the Board's Rules of Practice does not result in an untimely grievance given that the amended action relates back to the circumstances set forth in Roddy's original letter. Grievance of Mason, 16 VLRB 222, 233-34 (1993).

Similarly, CCV has not established that the six month time frame for filing unfair labor practice charges has been exceeded. Roddy's allegations that CCV committed unfair labor practices through actions by her supervisor in seeking information from students and other staff on Roddy's grievance, and by denying Roddy her due process rights by refusing to provide her with materials to help her prepare and present her grievance, apparently involve events occurring within six months of Roddy filing her charge.



Carroll P. Comstock