

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
NORMA BARNEY, BRENDA)	DOCKET NO. 98-65
CHAMBERLIN AND GLORIA)	
DANFORTH)	

MEMORANDUM AND ORDER

On December 24, 1998, Attorney Norman Blais filed an application to intervene as a party in this matter on behalf of Lieutenant Glenn Cutting. The application to intervene was filed pursuant to Section 12.6 of the Rules of Practice of the Labor Relations Board, which provides in pertinent part: "A person desiring to intervene in any proceedings . . . shall file with the Board a verified application setting forth the facts upon which such person claims an interest in the proceeding." On December 28, 1998, Grievants filed a memorandum in opposition to the application to intervene. The State filed a memorandum in support of the intervention application on January 4, 1999.

Upon review and consideration of the application to intervene, and the memoranda filed in response to the application, we deny Lieutenant Cutting party status in this matter, but allow him to intervene to the extent of allowing his attorney to advise him during the grievance proceedings. Section 928(b)(5) of the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.* ("SELRA"), specifically addresses parties at interest in grievance proceedings before the Board. It provides "(t)hat in appeals from the decisions of the department of personnel or any state agency or officer, the state agency and officer and the state employee shall be parties in interest, and the commissioner of personnel or the collective bargaining

representative on motion, may intervene as a party in interest." Under this section, the consistent practice before the Labor Relations Board has been that party status has never extended beyond the aggrieved employee, the employee organization serving as exclusive bargaining representative of the employees, the employing department or agency, and the Department of Personnel.

In this case, the grievants allege that Lieutenant Cutting violated the collective bargaining contract through various actions in his supervisory capacity at the Bethel Barracks. These allegations do not warrant granting party status to Lieutenant Cutting. Instead, party status to defend against these allegations resides in the employing agency, the Department of Public Safety. The Department is ultimately responsible for ensuring that supervisors in the Department do not violate the contract, and is liable for any contractual violations engaged in by supervisors. Here, the Department has denied that Grievants' allegations have merit, and it is the Department which has to defend against these allegations in the grievance before the Board, not Lieutenant Cutting individually.

Nonetheless, Attorney Blais contends that party status should be granted to Lieutenant Cutting because of a related unfair labor practice charge filed with the Board. The bulk of the factual allegations made, and the legal issues raised, in the grievance also are made in an unfair labor practice charge filed by the Vermont State Employees' Association and the grievants in VLRB Docket No. 98-38. In the unfair labor practice charge, the charging parties named the Department of Public Safety and Lieutenant Cutting as having committed unfair labor practices. Attorney Blais has entered an appearance to represent Lieutenant Cutting in the charge. The Board

has declined to issue an unfair labor practice complaint, and has deferred the issues raised in the unfair labor practice charge to this grievance proceeding pending before the Board. 21 VLRB 230. Since such deferral, however, does not necessarily end the Board's later consideration of the unfair labor practice charge, Attorney Blais contends that, if the allegations made in the grievance are found to be true by the Board, that conclusion would impact on the pending unfair labor practice case to which his client is named as a party, thus warranting granting party status to Lieutenant Cutting in this grievance.

We disagree. Under SELRA, unfair labor practices can only be committed by an employer, 3 V.S.A. Section 961; or an employee organization or its agents. 3 V.S.A. Section 962. This means that the Department of Public Safety ultimately is the one responsible for any actions of Lieutenant Cutting which might have resulted in unfair labor practices. Accordingly, the Department of Public Safety as the employer is the sole party in the unfair labor practice case responsible for defending against the allegations made there. Lieutenant Cutting may be involved in the case as an agent of the employer, but is not properly considered a party in his own right.

However, because of the Department of Public Safety's internal investigation of Lieutenant Cutting, which is related to the allegations made against him in this grievance, we conclude that Lieutenant Cutting has a sufficient interest in the grievance proceedings warranting his intervention to the extent of allowing his attorney to advise him during the grievance proceedings.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that Lieutenant Glenn Cutting is denied party status in this matter, but he is granted

the right to intervene to the extent of allowing his attorney to advise him during these grievance proceedings.

Dated this 14th day of January, 1999, at Montpelier, Vermont.


VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson

/s/ Leslie G. Seaver

Leslie G. Seaver


Carroll P. Comstock


Richard W. Park