

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' )  
ASSOCIATION AND NORMA BARNEY )  
 )  
v. )  
 )  
STATE OF VERMONT DEPARTMENT )  
OF EMPLOYMENT AND TRAINING )

DOCKET NO. 99-59

MEMORANDUM AND ORDER

The issue in this case is whether to grant the the motion filed by the Vermont State Employees' Association and Norma Barney ( collectively the "Complainants") on November 8, 1999, to amend the unfair labor practice charge filed in this matter. Complainants seek to amend the charge to allege that the State of Vermont Department of Employment and Training ("Employer") violated 3 V.S.A. Section 961(1) because the dismissal of Norma Barney constituted discrimination and retaliation on the basis of her actual and suspected free speech and whistleblowing activities. On November 23, 1999, the Employer filed a memorandum in opposition to Complainants' motion to amend the charge.

3 V.S.A. Section 961(1) provides in pertinent part that it is an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed . . . by any . . . law, rule or regulation". Complainants contend that this language is broad enough to encompass claims that Barney's free speech rights have been violated and that she has been discriminated against on the basis of free speech and whistleblowing activities. Complainants maintain that the Board has previously ruled that the constitutional right of free speech is specifically guaranteed by 3 V.S.A. Section

961(1). The Employer contends that whistleblowing protection arises under the collective bargaining agreement between VSEA and State, and Complainants' whistleblowing claim is not an appropriate subject for an unfair labor practice charge.

Complainants' claim that the Board has previously ruled that the constitutional right of free speech is specifically guaranteed by 3 V.S.A. Section 961(1) is incorrect. In Grievance of Barrows, 8 VLRB 82 (1985), a case in which a two member panel of the Board concluded that it lacked jurisdiction over a grievance filed by a state correctional officer in an original probationary period, one member of the panel expressed the view in dicta that the free speech rights of the employee were protected through 3 V.S.A. Section 961(1). Id. at 84. However, the other member of the Board panel expressly declined to decide whether the employee's free speech rights were protected by Section 961(1). Id. at 86. Accordingly, the decision in this case does not constitute the precedent claimed by Complainants. The Board has not subsequently addressed the issue, and therefore there is no Board precedent holding that free speech rights of employees are protected by Section 961(1).

Complainants state in their Memorandum of Law that they are seeking to amend their unfair labor charge to include free speech and whistleblowing claims because the Board dismissed Barney's grievance which alleged, among other things, discrimination on the basis of whistleblowing activities. 22 VLRB 310 (1999). Whistleblowing protection has been provided many state employees through the collective bargaining agreements between the State and VSEA, but no legislation has been enacted granting statutory whistleblowing protection to employees. In the absence of such a law, we are not inclined to conclude that our unfair labor practice jurisdiction, protecting the exercise

of employee “rights guaranteed . . . by any . . . law, rule or regulation”, extends to the claim that Barney was discriminated against on the basis of her whistleblowing activities. It would be inappropriate for us to extend such rights to state employees when the Legislature has declined to grant specific statutory protection to whistleblowers.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the motion filed by the Vermont State Employees’ Association and Norma Barney to amend their unfair labor practice charge is DENIED.

Dated this \_\_\_\_ day of February, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Catherine L. Frank, Chairperson

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Carroll P. Comstock

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Richard W. Park

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Edward R. Zuccaro