VERMONT LABOR RELATIONS BOARD

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| TERRENCE SANVILLE | ) | |
| | ) | |
| v. | ) | |
| | ) | DOCKET NO. 02-60 |
| STATE OF VERMONT | ) | |
| DEPARTMENT OF CORRECTIONS | ) | |

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint. On December 23, 2002, Terrence Sanville, a correctional officer with the State of Vermont Department of Corrections ("Employer"), filed an action with the Labor Relations Board. The Board made two requests of Sanville to amend his action to conform to the Board Rules of Practice. Through January 29 and April 4, 2003, filings, Sanville indicated that he was filing both an unfair labor practice charge and a grievance in this matter. In this Memorandum and Order, we address what action to take on the unfair labor practice portion of this case.

In his unfair labor practice charge, Sanville contends that the Employer committed an unfair labor practice in violation of the State Employees Labor Relations Act, 3 V.S.A. §901 *et seq.*, by improperly ordering him to refrain from engaging in the protected activities of assisting a mentally ill inmate to request assistance from Vermont Protection and Advocacy, Inc., the Attorney General's Office and the media. The Employer makes three alternative contentions: 1) the Board should dismiss the unfair labor practice charge as untimely filed, 2) the Board should dismiss the charge as lacking a factual basis, or 3) the Board should defer to the grievance procedure and decline to issue an unfair labor practice complaint.

We first consider the timeliness of the unfair labor practice charge. The State Employees Labor Relations Act provides that "no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board". 3 V.S.A. §965(a). Therefore, the Board has declined to issue unfair labor practice complaints in cases where the charge was filed more than six months after the alleged unfair practice. AFT Local 3333, VFT, AFL-CIO v. U32 High School Board of Directors, et al., 6 VLRB 115, 117 (1983). There must at minimum be an alleged violation of unfair labor practice provisions within six months of when the unfair labor practice charge was filed to support the issuance of an unfair labor practice complaint. Miller v. University of Vermont, 23 VLRB 205, 208-209 (2000). Essex Educators Association (ESP Unit) v. Essex Town Board of School Directors, 24 VLRB 206, 207 (2001).

Upon review of the materials filed in this case, we conclude that Sanville's unfair labor practice charge was untimely filed. He contends that the Employer committed an unfair labor practice by improperly ordering him to refrain from engaging in the protected activities of assisting a mentally ill inmate to request assistance from Vermont Protection and Advocacy, Inc., the Attorney General's Office and the media. This order issued by the Employer occurred on December 21, 2001, when Northern State Correctional Facility Superintendent Kathleen Lanman ordered him in email correspondence to stop any association with the involved inmate and Vermont Protection and Advocacy (Paragraph Number 5 of Sanville's April 4, 2003, filing; Attachment A to Employer's informal response to unfair labor practice charge).

Sanville did not file an action with the Board contesting this order until December 23, 2002; a year after the order was issued. This filing was well outside the six month period for contesting alleged unfair labor practices, and thus should be dismissed as untimely filed. Given this ruling, there is no need to address the other two alternative theories of the Employer supporting dismissal of this unfair labor practice charge.

Based on the foregoing reasons, it is ordered that the unfair labor practice charge filed by Terrence Sanville in this matter is dismissed as untimely filed, and this case shall remain open only for the purpose of acting on the grievance filed in this matter.

Dated this ____ day of October, 2003, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Chairperson

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Carroll P. Comstock

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John J. Zampieri

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Edward R. Zuccaro