

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY FEDERATION,)	
VFT, AFT Local #3180, AFL-CIO)	
)	DOCKET NO. 80-28
v.)	
)	
VERMONT STATE COLLEGES)	RE: Marvin Weber

MEMORANDUM AND ORDER DECLINING TO ISSUE UNFAIR LABOR PRACTICE
COMPLAINT AND DEFERRING TO ARBITRATION

On April 10, 1980, the Vermont State Colleges Faculty Federation (the "Federation") filed a charge of unfair labor practices against the Vermont State Colleges ("VSC") with the Vermont Labor Relations Board. In that charge, the Federation alleges that VSC coerced, interfered with, and discriminated against full-time faculty member Marvin Weber of Castleton State College, a member of the VSC system, in violation of 3 V.S.A. §961(1), (3), and (4).

In a journal maintained by Dr. Weber of the events surrounding his non-reappointment, he recounted an incident alleged to have taken place at a Christmas party in the home of President Meir. The following excerpt from that journal forms the basis of the charges here.

Dec. 14, 1979 Xmas party Dr. Meier's home. Dr. Meier called me over to the Xmas tree, took me aside ...
"Marv, I guess you know I had to make a decision by Dec. 15, 1979 to terminate Ann Sheppard - I want to tell you I did not give her notice. This means that I be (sic) giving you notice in March. However, I do need your support to get the program reaccredited. Thus, you can count on positive letters, if you co-operate by working on this program - what I don't need at this time is a lot of dessention (sic) ... do you know what I mean?

Our investigation was based on the lengthy presentation of facts and exhibits included in the Federation's charge. Pursuant to Vermont Labor Relations Board Rules of Practice, Section 24.4, VSC filed a responsive pleading entitled "Motion to Dismiss, Hold in Abeyance Subject to Deferral and Answer to Charge" on April 17, 1980. We have considered the VSC response as bearing on our discretion in issuing an unfair labor practice complaint here. For the following reasons, we decline to issue an unfair labor practice complaint, and grant the VSC motion to defer to the contractual grievance and arbitration procedure.

We first review the complaint to determine whether the facts alleged in the charge were sufficiently compelling allegations of unlawful employer practices as to warrant a dual process of review. Under the arbitration procedure set forth in the collective bargaining agreement controlling here, Article XIX and XX of the Agreement between the Vermont State Colleges and Vermont State Colleges Faculty Federation, the grievant is ensured a forum to redress and remedy any contractual violation as it relates to him individually. On the other hand, should the alleged statements of President Meir and others be scrutinized in the context of an unfair labor practice proceeding pursuant to 3 V.S.A. §965, our concern would not be limited to the effect of such communication on a particular faculty member, but its effect on the entire bargaining unit. Then we would need to determine whether any employer practice exists which would serve to poison labor-management relations, generally. Were this the case, a broad cease and desist order would be a more effective and thus more appropriate remedy.

In Burlington Education Association, Inc. and Burlington Board of School Commissioners, 1 VLRB 335, 343 (1978), this Board set forth a standard for deferring to contractual grievance procedures we think applicable here.

In determining whether to require the exhaustion of remedies doctrine, this Board will consider whether the action of the employer is designed or would have the effect of significantly undermining the union. The Board will examine the nature of the alleged unfair labor practice and its effect on the union and its members. The Board will defer to the arbitration procedure when it believes the dispute involves the interpretation of a contract ... [if, in our opinion] (t)he employees have an adequate redress for the alleged wrong through the grievance procedure.

The statements attributed to President Meir regarding Dr. Weber's termination can be viewed two ways. The President's alleged remarks, to wit -- should Dr. Weber continue his efforts in the re-accreditation of the social work program, he would receive positive recommendations from VSC in seeking employment elsewhere -- do not seem so offensive or coercive as to constitute the basis of an unfair labor practice. The remarks would be a reasonable position regarding President Meir's expectations of Dr. Weber during his "lame duck" semester. On the other hand, the President's remarks, as understood by Dr. Weber, may have conveyed an implied threat that such positive recommendations were contingent upon Dr. Weber's waiver of the grievance procedure. Even if this were so, it would be necessary to ascertain in a subsequent grievance whether Dr. Weber actually merited positive recommendations. The matter and remedy would relate to an individual rather than the system as a whole and could be addressed through the grievance procedure. More convincing evidence of an unfair labor practice would be a set of facts which indicate Dr. Weber did perform to President

Meir's level of expectations but was not given a positive reference letter because of Dr. Weber's grievance action.


In the context of these proceedings, VSC urges us to dismiss Dr. Weber's grievance as procedurally defective as well as to decline to issue an unfair labor practice complaint. The grievance is not before us yet, so we will not rule on that matter here. However, the facts contained in the pleadings suggest an objection to timeliness of the major grievance issue, at least, is unfounded, where it contradicts Castleton's initial response dismissing the grievance as premature (Petitioner's Exhibit AA). Grievant was not notified formally of his termination until at least February 26, 1980 (Petitioner's Exhibit BB).


For the foregoing reasons and based on our investigation and review of the facts alleged in the charge, we decline to issue an unfair labor practice complaint. We urge the parties to pursue the contractual grievance procedure, if they be so inclined.

Dated this 19th day of May, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


Robert H. Brown