

VERMONT LABOR RELATIONS BOARD

DONNA MAILHIOT)	DOCKET NO. 85-33
)	
v.)	
)	
BRANDON TRAINING SCHOOL)	

MEMORANDUM AND ORDER

On July 24, 1985, Attorney Emily Joselson filed an unfair labor practice charge on behalf of Donna Mailhiot ("Complainant"). The charge alleges Complainant was dismissed from her position as a Mental Retardation Program Specialist A at Brandon Training School in violation of 3 VSA §961(1). Complainant specifically contends her dismissal was in wrongful retaliation for her filing of a worker's compensation claim, and thus constitutes a violation of §961(1), which makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed by ... any other law, rule or regulation."

Subsequently, the Board conducted an investigation for purposes of deciding whether to exercise our discretion under 3 VSA 965(a) to issue an unfair labor practice complaint. The state filed a response to the charge on August 15, 1985. Complainant filed a Responsive Memorandum on August 30, 1985, and other written materials upon request of the Board on November 7 and November 14, 1985.

At the time Complainant was dismissed, she was serving in a classified position in her original probationary period. As a classified employee,

Complainant's right of appeal to the Board is extremely limited. 3 VSA §1001(a) provides probationary employees may appeal to the Board "if they believe themselves discriminated against on account of their race, color, sex, age or national origin." Complainant has alleged no discrimination pursuant to §1001(a).

This does not necessarily mean that, in cases involving probationary employees where alleged violation of 3 VSA §1001(a) is absent, the Board lacks jurisdiction to proceed further. In Grievance of Peplowski, 6 VLRB 16, 26-28 (1983), and Grievance of Barrows, 8 VLRB 82, 85 (1985), the Board recognized probationary employees have some protection under the State Employees Labor Relations Act's unfair labor practice provisions, and that protection extends to this case.

3 VSA §902(4) and §902(5) provide in pertinent part:

4) "Employee" means a State employee as defined by subdivision (5) of this section except as the context requires otherwise.

5) "State employee" means any individual employed on a permanent or limited status basis by the State of Vermont...and an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice...

The "context requires otherwise" here. For us to review this case under our unfair labor practice jurisdiction provides a meaningful administrative remedy to an employee for exercising rights under workers' compensation laws, 21 VSA § Chap. 9, which would not otherwise exist. Barrows, supra at 85. If Complainant established by a preponderance of the evidence that she was discharged for filing a workers' compensation claim, we would conclude the employer violated §961(1) by interfering with her statutory right to file a workers' compensation claim.

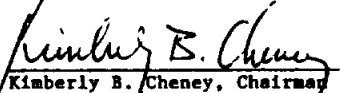
However, in our judgment, upon reviewing the file and upon our investigation, insufficient evidence exists to indicate Complainant may have been dismissed for filing a workers' compensation claim. Thus, we conclude this is an inappropriate case to exercise our discretion to issue an unfair labor practice complaint.

Now therefore, based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is hereby ORDERED:

The unfair labor practice charge filed by Donna Mailhiot on July 24, 1985, is DISMISSED.

Dated the 24 day of February, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


James S. Gilson