

VERMONT LABOR RELATIONS BOARD

BARRE CITY POLICE OFFICERS ASSOCIATION)
AMERICAN FEDERATION OF STATE, COUNTY)
AND MUNICIPAL EMPLOYEES)
and) DOCKET NO. 78-73R
CITY OF BARRE, VERMONT)

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

This matter is an unfair labor practice complaint pursuant to 21 V.S.A. Sec. 1727(a). Barre City Police Officers Association, an affiliate of the American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter sometimes referred to as "Association") charges that the employer, the City of Barre, Vermont, implemented a shift rotation system in retaliation against the organizational activities of the employees of the Barre City Police Department, in violation of 21 V.S.A. Sec. 1726(a) of the Vermont Municipal Labor Relations Act. The complaint was filed with the Board on May 10, 1978 and the Answer by the City of Barre was received on May 23, 1978. At a hearing on the merits, held in Montpelier on June 16, 1978, AFCSME was represented by Thomas L. Heilmann, Esquire, and the City of Barre was represented by John F. Nicholls, Attorney for the City of Barre.

FINDINGS OF FACT

1. The Barre City Police Officers Association, AFSCME, AFL-CIO is the collective bargaining representative of the employees of the Barre City Police Department.
2. The City of Barre, Vermont is the employer of the members

of said Association.

3. On May 1, 1978, the Association presented the City Manager of Barre with a proposed stipulation for recognition of the Barre City Police Officers Association as the exclusive representative for purposes of collective bargaining (Petitioner's Exhibit #1) and the authorization cards signed by eight of the nine patrolmen employed by the Barre City Police Department, (Petitioner's Exhibit #2).

4. For almost a year prior to May 1, 1978, the possible formation of a union by the employees of the Barre City Police Department had been discussed at various times by the patrolmen, the Chief of Police, the City Manager and members of the City Council.

5. On May 1, 1978 the City Manager went to the office of the Chief of the Barre City Police, Paul Dranbauer, and told him that the cost of overtime for the Police Department had been \$500.00 more than it had been for the corresponding week the year before. The City Manager told Chief Dranbauer that he wanted him to find a way of reducing the amount of overtime needed by the Police Department.

6. On the morning of May 1, 1978 Chief Dranbauer telephoned Detective Ronald West and requested that he bring with him the shift rotation schedules which Detective West had drafted on previous occasions, when he reported for duty that day.

7. Chief Dranbauer then ordered Detective West to prepare a shift rotation schedule while Detective West was on duty that afternoon as the dispatcher. He told Detective West the names of the employees he wanted on each shift.

8. When Detective West came on duty and during the afternoon of May 1, 1978 he proceeded to draft a shift rotation schedule in accordance with Chief Dranbauer's instructions. The shift rotation schedule which he prepared on May 1, 1978 was implemented on May 14, 1978. (Petitioner's Exhibit #3)

9. Prior to the implementation of the shift rotation schedule, the shifts for the Barre City Police Department had been assigned on the basis of seniority. The shift rotation system eliminates the seniority system of shift assignment.

10. The matter of a shift rotation schedule had been discussed by employees of the Barre City Police Department, Chief Dranbauer, the City Manager and members of the City Council for approximately a year prior to May 1, 1978.

11. Detective Ronald West had drafted five or six shift rotation schedules during the year prior to May 1, 1978, and Sergeant Paul Farnham had also drafted a shift rotation schedule during the time that he was Acting Chief of Police in August of 1977.

12. During the month of August, 1977 members of the City Council screened applicants for the position of the Chief of the Barre City Police. All four of the final applicants including Chief Dranbauer were asked if they were in favor of implementing a shift rotation schedule and all four replied that they were in favor of such a system. Applicants were also asked during their interviews about their views concerning union representation of police employees.

13. Chief Dranbauer, during his interview as applicant for the position of Chief of Police, told the City Manager and City

City Council members that he would implement a shift rotation system if he were hired. Shortly after he was hired, the City Manager advised him not to implement a shift rotation schedule until after he had completed his six month probationary period as Chief of Police.

14. Chief Dranbauer discussed the possibility of switching to a shift rotation schedule on several occasions with employees of the Barre City Police Department prior to May 1, 1978.

15. It has been estimated that the rotation schedule which was implemented by the Barre City Police Department will save the City of Barre up to \$1,200.00 in overtime pay per year.

16. The shift rotation schedule also would carry out other policy objectives of the Chief of Police: Equity in duty assignments, improved training opportunities, and compliance with the wishes of about one-half of the members of the police force.

17. Chief Dranbauer did not know about the proposed stipulation for recognition of the Association until May 2, 1978 when he was informed by Mr. Heilmann that the stipulation and the authorization cards had been presented the day before to the City Manager.

18. Sometime during the day of May 1, 1978, a verbal exchange took place between the City Manager and Patrolman Edwin Bishop during which the subjects of shift rotation and union representation were mentioned. Patrolman Bishop took the conversation to mean the City was retaliating for union activity, the City Manager said the conversation was jocular. The Board finds, based on all the surrounding circumstances that the conversation

is not clear evidence of retaliation.

19. On May 2, 1978 the Barre City Council passed a resolution authorizing the City Manager to enter into the stipulation for recognition of the Association as the exclusive representative for purposes of collective bargaining.

OPINION

The Association has the burden of proving a prima facie case by a preponderance of the evidence. If it fails to do so, the complaint will be dismissed.

In determining whether the Association has met it's burden of proof, the Board may weigh and consider the evidence and need not view the evidence in the light most favorable to the non-moving party. cf. Rule 41(b), Vermont Rules of Civil Procedure.

To establish a prima facie case, it is essential for the Association to prove a causal relationship between the union organizational activities of the employees and the implementation of a shift rotation system by the employer.

In its argument to the Board the Association urges the Board to infer from the evidence that such a causal connection existed between the events which took place on May 1, 1978 involving the Association's presentation of a stipulation for recognition as a bargaining unit to the City Manager of Barre and the drafting of a shift rotation schedule by Detective West in accordance with the orders of the Chief of the Barre City Police. The Association relies on indirect evidence, primarily the coincidence in timing between these events to support this

inference and establish such a causal connection.

While the Board acknowledges, as it did in the complaint of Michael Peck v. Vermont State Colleges, Docket #78-56S, that an inference of cause and effect as urged by the Association may be drawn from the evidence introduced, the Board does not feel that such an inference should be drawn. The Board is not persuaded that the coincidence in the timing of these events establishes a causal relationship between them. The matters of union organization by the employees of the Barre City Police Department and the implementation of a shift rotation system to replace the seniority based assignment of shifts in the Barre City Police Department, had been subjects of general discussion for a substantial period of time. Both parties were aware that these events were likely to take place sometime in the near future. In the Board's opinion the fact that both events took place on the same day was due to a coincidence in timing and not due to any retaliatory motives on the part of the City of Barre.

On the basis of the state of the evidence at the time the Association rested its case, the Board is unable to find that a prima facie case for a violation of 21 V.S.A. Sec. 1726(a) has been made by the Federation and, therefore the Board concludes that an unfair labor practice charge should be dismissed.

ORDER

Now, therefore, it is hereby ORDERED that the above-captioned unfair labor practice charge be DISMISSED.

Dated this 28th day of June, 1978, in Montpelier, Vermont.

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.
Commissioner

Commissioner Brown was not present at the hearing held on May 16, 1978. The Reporter at the hearing was Beverlee Hill.