

STATE OF VERMONT
LABOR RELATIONS BOARD

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| VERMONT STATE COLLEGES FACULTY |) | |
| FEDERATION, AFT LOCAL #3180 |) | |
| AFL-CIO |) | |
| |) | |
| Petitioner |) | Docket No. 78-56S |
| |) | |
| v. |) | UNFAIR LABOR PRACTICE CHARGE |
| |) | |
| VERMONT STATE COLLEGES |) | |
| |) | |
| Employer |) | |

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This matter is an unfair labor practice complaint pursuant to 3 V.S.A. § § 961-966. Vermont State Colleges Faculty Federation, AFT Local #3180, AFL-CIO (hereinafter sometimes referred to as "Federation"), charges that the employer, Vermont State Colleges (hereinafter sometimes referred to as "VSC"), violated 3 V.S.A. § 961(1), (3) and (4) by failing to renew the teaching contract of Michael Peck because he pursued the contractual grievance procedure in connection with a dispute with the employer. At the hearing on the merits held on April 28, 1978, the Federation was represented by Stephen Butterfield, Federation Grievance Chairperson, and VSC was represented by its attorney, Nicholas DiGiovanni, Jr. At the conclusion of the Federation's case, VSC moved for a dismissal of the charge. For the

reasons stated below, the Board has decided that the VSC Motion to Dismiss should be granted.

Findings of Fact.

1. The Vermont State Colleges Faculty Federation, AFT Local #3180, AFL-CIO, is the duly certified collective bargaining representative for the faculty bargaining unit at the Vermont State Colleges.

2. Michael Peck is an Instructor of Co-operative Education at Lyndon State College currently in his second year of employment. He has been treated as a first-year faculty member by the administration for the current academic year, following a change to faculty status last summer.

3. On January 2, 1978, Mr. Peck requested an unpaid leave of absence for the upcoming academic year.

4. Under Article XIV of the Collective Bargaining Agreement between the Federation and VSC, approval of the request for a leave of absence made by first-year faculty are entirely discretionary with the VSC administration.

5. On February 3, 1978, Mr. Peck's request for a leave of absence was officially denied.

6. Mr. Peck lodged an official "complaint" with the VSC regarding the denial of his request for a leave of absence and on February 14, 1978, Dean Ronald Addison sent Mr. Peck a written response to his complaint explaining why VSC denied his request for a leave.

7. On February 21, 1978, Dean Addison orally told Mr. Peck that he was planning not to recommend renewal of Mr. Peck's employment for the 1978-1979 academic year. Under the applicable Collective Bargaining Agreement, the VSC was required to give notice of non-renewal no later than March 1.

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8. Following the February 21, 1978, meeting at which Dean Addison informed Mr. Peck of the Dean's recommendation for non-renewal, Mr. Peck filed a Step One formal grievance over the denial of his request for leave. Mr. Peck did not tell Dean Addison that he was definitely filing such a grievance at their meeting on February 21.

9. In a letter dated February 28, 1978, and hand-delivered to Mr. Peck on March 1, 1978, VSC notified Mr. Peck that he would not be renewed for the up-coming year.

10. Under the Collective Bargaining Agreement between the VSC and the Federation, no reasons for non-renewal are required to be given for faculty members with less than three years' service (see Article XXIII, pp. 22-23).

11. The Federation did not introduce evidence sufficient in the Board's judgment to establish that Mr. Peck was a union member or active in the union, and if he were, that any VSC official knew of his union membership. There was no evidence that Mr. Peck had ever been criticized about or disciplined for union activity in the past.

12. No evidence was presented to the Board that Mr. Peck was treated any differently than other faculty, that is, there was no general evidence of discrimination.

13. The only union "activity" that was established by evidence at the hearing was the filing of a grievance by Mr. Peck over the denial of his leave of absence. This grievance was not filed at Step One until after the Dean had told Mr. Peck that he was recommending Mr. Peck's non-renewal.

14. No evidence was presented at the hearing of "concerted activities" for "mutual aid or protection". Mr. Peck acted alone in his request for a leave, in his complaints and in his grievance filings.

Conclusions of Law and Opinion.

15. The Federation has the burden of proving a prima facie case by a preponderance of evidence. If it fails to do so, the Motion to Dismiss of VSC should be granted.

16. In determining whether the Federation has met its 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.

17. To establish a prima facie case, it is essential for the Federation to prove a causal relationship between Mr. Peck's activities in protest of the denial of his request for a leave of absence and the decision to not renew his employment. The Federation contends that these protest activities are Mr. Peck's "exercise of ... rights" under Section 961(1), involvement in employee organizations which might be "discouraged" under Section 961(3) and his "charges or complaints" provoking discrimination under Section 961(4).

18. The Board need not reach the VSC position that, even if proved, retaliation against Mr. Peck's protest activities would not be violation of one or more of these sections as a matter of law because as indicated below, the Board cannot find that such retaliation has been proved. Without deciding the question the Board notes, however, that it is not inclined to limit the application of Section 961(4) to formal "complaints" to the Board.

19. In its argument to the Board, the Federation urges the Board to infer from the evidence that there exists a causal connection between Mr. Peck's exercise of lawful rights to contest the denial of his leave of

absence and the VSC decision not to renew his employment. The Federation relies on indirect evidence, primarily the coincidence in timing between these events to support this inference and establish such a causal connection.

20. While the Board acknowledges that an inference of cause and effect as urged by the Federation 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 Federation offered no proof that Mr. Peck was treated differently than others have been in similar circumstances, that is, the Federation offered no direct evidence of discrimination against Mr. Peck. The Federation offered no evidence that Mr. Peck was engaging in concerted or union activities which might have provoked the displeasure of VSC. Without such evidence, the mere coincidence in timing is not sufficient to support the proffered inference of cause and effect. In the absence of evidence more compelling than mere coincidence, the Board believes that the coincidence can be explained by the Collective Bargaining Agreement provision which required notice of renewal and non-renewal to be given not later than March 1.

21. On the basis of the state of the evidence at the time the Federation rested its case and VSC made its Motion to Dismiss, the Board is unable to find that a prima facie case for a violation of 3 V.S.A Section 961(1), (3) or (4) has been made by the Federation and, therefore, the Board concludes that the unfair labor practice charge should be dismissed.

Order.

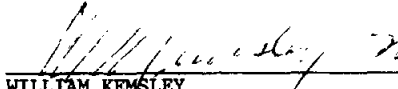
NOW, THEREFORE, IT IS HEREBY ORDERED THAT THE ABOVE-CAPTIONED UNFAIR
LABOR PRACTICE CHARGE BE DISMISSED.

DATED this 26 day of 11, 1978.

VERMONT LABOR RELATIONS BOARD


KIMBERLEY CHENEY, Chairman


ROBERT BROWN


WILLIAM KEMSLEY