IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

DAVID V. HENRY, and ELDA NEOME HENRY, Plaintiffs, v. GOVERNMENT OF THE VIRGIN ISLANDS, and ANTONIO STEELE, Defendants.	CIVIL NO. 1255/84 ACTION FOR DAMAGES

ESZART A. WYNTER, ESQUIRE
#1 Strand Street
Frederiksted, St. Croix
U.S. Virgin Islands 00840
(809) 772-1900)
(Attorney for Plaintiffs)

SHARON McGAHEE, ESQUIRE
Assistant Attorney General
Department of Law
P.O. Box 1074
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-0295
(Attorney for Government & Steele)

PETERSEN, Judge

MEMORANDUM OPINION
September 25 1985

This matter comes before this Court on defendants' motion to dismiss. For the reasons herein stated, the motion will be granted as to the Government of the Virgin Islands, but denied as to Antonio Steele.

FACTS

Plaintiff Elda Henry, a teacher at the Evelyn Williams Elementary School, alleges that on August 31, 1984, Defendant Antonio Steele, principal at the school, maliciously revealed confidential information pertaining to an arbitration award in plaintiff's personnel file to the public. She claims that the alleged actions of Defendant Steele constituted an invasion of privacy and an intentional infliction of emotional distress. Plaintiff David Henry, claims that the defendants' misconduct resulted in the loss of his wife's society and consortium.

Defendants move to dismiss Plaintiffs' action for damages on the ground that Elda Henry's failure to file and pursue a grievance action under the Collective Bargaining Agreement precludes this Court from ruling on the merits of plaintiff's action.

DISCUSSION

The issues presented for determination can be stated as follows: Whether Elda Henry's action against the Government of the Virgin Islands as employer of Antonio Steele is barred by the terms of the collective bargaining agreement then in effect; assuming that Elda Henry's suit against the

Government of the Virgin Islands is barred, whether David Henry's action may be maintained for consortium; whether Antonio Steele can be held individually liable for disclosing the contents of an arbitration award.

The legislative and case history of the Labor Management Relations Act (LMRA) may be considered as being instructive in resolving issues concerning the Virgin Islands government and collective bargaining agreements. Manning v. Bouton, 18 V.I. 457, (D.C.V.I. 1981), aff'd, 678 F.2d 13 (3d Cir. 1982); Labor Management Relations Act, 29 U.S.C. §152(2). (1973). In Bouton, supra at 463, the District Court of the Virgin Islands noted that:

> where the federal labor policy applies, the court will order specific performance of promises to submit disputes to grievance and arbitration procedures, Textile Workers v. Lincoln Mills, 353 U.S. 448 (1956); the court will not examine the merits of a claim which on its face is governed by the Collective Bargaining Agreement, United Steelworkers of America v. American Mfg., 363 U.S. 564 (1960); the court will construe a dispute as arbitrable unless compelled to do otherwise by express contractual exclusion, United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); and the court will not hear an employee's case if the subject matter of the case is arbitrable and the employee has failed to initiate the applicable grievance and arbitration procedure, Republic Steel Corp. v. Maddox, 379 U.S. 650 (1964).

The District Court in United Steelworkers of America v. Manassah Bus Lines, Inc., 20 V.I. 480, 483 (D.C.V.I. 1984), noted that collective bargaining agreements involve a contractual relationship where a party cannot be required to submit to arbitration of any dispute which is not covered by the terms of the agreement. The District Court also noted that congressional policy favors arbitration of labor disputes, pursuant to 29 U.S.C. §173(d) (1978), and the Supreme Court in support of this policy, has established "a strong presumption favoring arbitrability." Id. at 482.

Virgin Islands labor laws regarding public employee labor relations are reflective of national labor policies. See 24 V.I.C. 361 et. seq. (1970 Supp. 1982)

> It is expressly prohibited for any. . . . public employee willfully to violate or fail to comply with any of the terms of a valid collective bargaining agreement to which it is a party or which is applicable by virtue of being a member of a bargaining unit exclusively represented by a party thereto.

The Virgin Islands Code 24 V.I.C. §348 (1970 & Supp. 1982) provides not only for Public Employees Relations Board (hereinafter referred "PERB") to review alleged violations of a collective bargaining agreement but also judicial review of PERB final orders. 24 V.I.C. §379-380 (1970 & Supp. 1982). Indeed it appears that even without considering the analogies that can be drawn with federal labor policy, there is a statutory scheme favoring the settling of disputes through the labor organization and through PERB prior to petitioning the court. This is further supported by the statutory provision for suits by and against labor organization which allows the union, not the aggrieved individual, to "sue or be sued as an entity and on behalf of the employees whom it represents". 24 V.I.C. §383(b) (1970 & Supp. 1983).

Under the collective bargaining agreement, the scope of the union's authority to resolve a claim is limited by the terms of the collective bargaining agreement in effect between the Union and the Department of Education at the time the present claim arose. United Steelworkers of America, AFL-CIO, v. Mannassah Bus Lines, Inc., 20 V.I. 480, 482 (D.C.V.I. 1984); Teamsters Local Union No.764 v. Merritt and Co., No. 84-5827, slip op. at 4 (3d Cir. 1985). In the instant case, the union was the "sole and exclusive bargaining representative for all . . . teachers". Collective Bargaining Agreement Art. I(A) and Art. I(B)3. Under this Agreement, "[a]ll grievances . . . shall be governed by" Article III of the collective bargaining agreement. Collective Bargaining Agreement, Art. III(7). A grievance is therein defined as:

> [a] complaint submitted by an
> employee or a group of employees
> having the same grievance, or

> by the department:
> A. That there has been a violation or misinterpretation of any act of the provisions of [the Collective Bargaining] Agreement; or,
> B. That an employee has been treated unfairly or inequitably by reason of any act or condition which is contrary to established [Government] policy or practice governing or affecting employees.

Collective Bargaining Agreement, Art. III(1)."

The alleged deliberate exposure of confidential information from plaintiff Elda Henry's personnel file, without a compelling public interest or her consent, appears to readily qualify as an issue of unfair or inequitable treatment that is contrary to established policy or practice of maintaining confidential personnel files, See Collective Bargaining Agreement, Art. III(1).

This Court concludes that Plaintiff Elda Henry's claim against the Virgin Islands Government involves issues which, by the terms of the collective bargaining agreement dated December 20, 1982, may not be adjudicated in court prior to exhaustion of the grievance procedure provided in the Agreement. This Court further finds that Plaintiff, Elda Henry failed to exhaust said remedies. Accordingly, Plaintiff's action against the Virgin Islands Government is dismissed.

As a result of the dismissal of Plaintiff Elda

Henry's claim, this Court must next determine whether plaintiff David Henry's claim is barred. Where an action for loss of consortium is seen as purely derivative of the original cause action for the injury, it has been held that once the original cause of action has been released, the action for loss of consortium is barred. 29 ALR 4th 1200, 1201; Benjamin v. Cleburne Truck & Body Sales, Inc., 424 F.Supp. 1294, 1299 (D.C.V.I. 1976). Section 693 of the Restatement (Second) of Torts Provides: "[U]nless it is not possible to do so, the action for loss of society and services is required to be joined with the action for illness or bodily harm, and recovery for loss of society and services is allowed only if the two actions are so joined". Plaintiff David Henry's right of action is a derivative right which may "accrue only to the extent that the other spouse has a cause of action against the same defendant". Id. at 1299. Defendant Henry Steele's alleged actions must be established to have caused Elda Henry's injury. Then and only then can David Henry's claims for suffering and loss of consortium be considered. Since Elda Henry's cause of action has been dismissed against the Government of the Virgin Islands, dismissal of David Henry's claim against the Government is warranted.

Restatement (Second) of Torts §652D provides that one who invades the right of privacy of another is subject to liability for the resulting harm to the other.

Plaintiffs' claim that Defendant Steele also acted outside of the scope of his employment when he allegedly invaded Elda Henry's privacy and intentionally inflicted emotional distress. Plaintiff admitted in her answers to interrogatories that defendant Antonio Steele disclosed information contained in an arbitration award; that he read the award to the faculty, mentioned contents of it at a Parent Teachers Association meeting and also disclosed confidential information contained in her personnel file to the media.

The generally recognized elements of the tort of public disclosure of private facts are (1) the publication, (2) absent any waiver or privilege, (3) of private matters in which the public has no legitimate concern, (4) such as to bring shame or humiliation to a person of ordinary sensibilities. <u>See</u> W. Prosser, Handbook of the Law of Torts §117, at 810-12 (4th ed. 1971).

Restatement (Second) of Torts §652D provides that:

> One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not

> of legitimate concern to the public.

It is clear that "the interests in privacy fade when the information involved already appears on the public record." Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 494-95, 95 S.Ct. 1029, 1046, 43 L.Ed.2d 328, 349 (1975). The Supreme Court explicitly held in Cox Broadcasting that:

> Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business. 420 U.S. at 495, 95 S.Ct. at 1046, 43 L.Ed.2d at 349.

Obviously, the public has a strong interest in the teaching profession. Disclosures relevant to the education of young people are clearly within the realm of public interest. As the Court noted in Barber v. Time, Inc., 159 N.W.2d 291 (1942) "establishing conditions of liability for invasion of the right of privacy is a matter of harmonizing individual rights with community and social interests".

There is insufficient evidence presented at this juncture for this Court to determine whether the information allegedly contained in the arbitration award is a matter of public record and whether the alleged publication contained a matter of legitimate public interest. Accordingly, the motion for Summary Judgment as to Antonio Steele must be denied.

EILEEN R. PETERSEN
Judge