VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
	)	DOCKET NO. 92-36
v.	)	
STATE OF VERMONT	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On August 5, 1992, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge against the State of Vermont ("State"). Therein, VSEA alleged that the State violated 3 VSA §961(1) and (5) by refusing to bargain in good faith with VSEA over a health insurance premium increase.

Specifically, VSEA alleges that the State bargained in bad faith by: 1) refusing to use more current data to revise its estimate of cash which would be in reserve in the health plan as of June 30, 1992; 2) refusing to consider the impact of provider discounts which would result from a new claims administration contract; 3) refusing to negotiate the premium increase based on its own consultant's estimate of the cost of administering the health plan; 4) maintaining an intransigent posture both during, and prior to, negotiations over the premium increase; 5) refusing to disclose information which it used during negotiations to justify its proposed premium increase; 6) making a new proposal regarding the premium increase after negotiations had ended and after it had informed VSEA that the increase would be imposed; and 7) by imposing a 22.9% increase on

state employees after having failed to engage in good faith bargaining on the subject. VSEA contends that the totality of the State's conduct in this matter indicates that the State was engaging in surface bargaining in violation of its duty to bargain in good faith.

The State filed a memorandum in opposition to the issuance of an unfair labor practice complaint on August 21, 1992. Board Chairman Charles McHugh has recused himself from this matter, and thus has not participated in the decision whether to issue an unfair labor practice complaint.

The State Employees Labor Relations Act, 3 VSA §901 et seq. ("SELRA"), provides the Board with discretion whether to issue an unfair labor practice complaint. 3 VSA §965(a). We exercise our discretion not to issue an unfair labor practice complaint in this matter. The negotiations dispute before us is not a typical one under SELRA where statutory dispute resolution procedures apply and the State is never permitted to take permanent unilateral action. Cf. VSEA v. State of Vermont (Re: Implementation of 6-2 Schedule at Vermont State Hospital, 5 VLRB 303 (1982). Instead, the parties conducted negotiations over the health insurance premium increase under the much more limited requirements of the health insurance plan article of the collective bargaining agreement between the parties, which provided as follows:

> (T)he State will give written notice to VSEA of its intent to apply any Fund surplus to premium reduction, new benefits or continued accumulations, or, in the case of an anticipated deficit, of the necessity to raise premiums. At the request of VSEA the State will negotiate with VSEA over any proposed premium increase

> for a period not exceeding 45 calendar days from the date of such notice by the State, after which the State may implement its decisions, whether or not the parties have bargained to genuine impasse. The statutory impasse procedure shall not apply.

In VSEA v. State, supra, the Board discussed the importance of mandated dispute resolution procedures in the public sector, in the absence of a right to strike, to induce meaningful bargaining between the parties:

> (I)n the public sector, the economic weapon of strike has generally been taken away from employees by state legislatures in order that the continuation of the delivery of essential government services be ensured. In the absence of the strike threat, the balance of power is shifted heavily in favor of the employer. The union is left without an effective response to unilateral action by an employer once impasse is reached; and accordingly the inducement to meaningful bargaining the strike threat provided no longer exists.
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> In recognition of the need to induce meaningful bargaining and balance the bargaining powers of the parties, many jurisdictions have provided for the use of dispute resolution machinery to assist public sector parties in resolving their negotiations disputes. These mechanisms generally provide for mediation, and/or factfinding, and/or arbitration. 5 VLRB at 315-16.

The Vermont General Assembly has provided for the full range of these dispute resolution procedures in SELRA. The dispute resolution procedures, which can be invoked upon declaration of impasse by either party, are successively: mediation, factfinding, selection of one of the parties' last best offers by the Board and recommendation of its choice to the General Assembly, and final resolution by the General Assembly. 3 VSA §925. Under this statutory scheme, permanent unilateral management action is never permitted. VSEA v. State, 5 VLRB at 321. Failing agreement by the parties, the General Assembly effectively acts as an arbitrator whose decision is final and binding on the parties. Id.

However, in enacting the contract provisions concerning the negotiation of health insurance premium increases, the parties expressly waived any right to invoke the statutory dispute resolution procedures by providing that the "statutory impasse procedure shall not apply". Without resort to the impasse resolution procedures, state employees are left without meaningful collective bargaining rights in regard to disputes over premium increases. VSEA v. State, 5 VLRB at 327-28. Employees have neither the strike weapon nor threat of a Board (or legislatively) imposed settlement to induce the State to bargain meaningfully. Id. at 328.

It is in consideration of this negotiations context, and the special contract provisions governing them, that we decline to issue an unfair labor practice complaint. In accepting the facts set forth by VSEA in its charge as true for purposes of deciding whether to issue a complaint, it is evident that the State's negotiations conduct with respect to the premium increase did not promote meaningful and productive bargaining. However, if we were to issue a complaint, conduct an evidentiary hearing and ultimately conclude that an unfair labor practice occurred, the only remedy which we could order would be rescinding the premium increase and directing the parties back to the bargaining table. In such event, there would be no more inducement for the State to engage in meaningful bargaining than existed in the original round of bargaining since statutory dispute resolution procedures still would not apply. Under these circumstances, we decline to expend our limited resources 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 that the unfair labor practice charge filed by the Vermont State Employees' Association in this matter is DISMISSED.

Dated this 10th day of December, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank

Louis A. Toepfer

Leslie G. Seaver