VERMONT LABOR RELATIONS BOARD

MAURICE CERUTTI	)	
	)	
v.	)	
	)	DOCKET NO. 94-8
AGENCY OF ADMINISTRATION,	)	
STATE OF VERMONT and	)	
VERMONT STATE EMPLOYEES'	)	
ASSOCIATION	)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint with respect to an unfair labor practice charge filed on March 9, 1994, as amended on March 24, 1994, by Maurice Cerutti, employee with the State Agency of Transportation. The charge was filed against the Agency of Administration, State of Vermont ("State"), and the Vermont State Employees' Association ("VSEA").

Mr. Cerutti alleges that the State and the VSEA committed unfair labor practices in connection with their negotiating a change in employees' pay days from every other Thursday to twice a month. He charges that the State interfered with, restrained or coerced employees in the exercise of their rights in violation of 3 V.S.A. §961(1) by violating the requirement of 3 V.S.A. §903(c) to "exert every reasonable effort to . . . maintain agreements", and failing to make available adequate funds to meet the terms of the contract contrary to 3 V.S.A. §905(a). This was because, Mr. Cerutti alleges, the State did not abide by Article 50 of the collective bargaining agreement between the State and VSEA effective for the period July 1, 1992 to June 30, 1994. Article 50 states that "Employees shall continue to be paid on the second Thursday following the end of the biweekly pay period". Mr.

Cerutti alleges that the State violated the cited statutory provisions by intending to "implement salary and expense reimbursement using a bi-monthly system instead of every other week".

Mr. Cerutti alleges that the VSEA violated 3 V.S.A. §962(6)(A) by entering into an agreement which is prohibited by 3 V.S.A. §982(a). 3 V.S.A. §962(A)(6) makes it an unfair labor practice for an employee organization or its agents "to threaten, coerce or restrain any person where in either case an object thereof is: (f)orcing or requiring any state employee . . . to enter into any agreement which is prohibited by the provisions of this chapter". 3 V.S.A. §982(a) provides:

> Collective bargaining agreements, except those affecting Vermont state colleges and the University of Vermont, shall be for a maximum term of two years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall be filed with the board. Upon the filing of such consent an agreement may be supplemented, cancelled or renegotiated.

Mr. Cerutti contends that the VSEA has "renegotiated or agreed to change the existing agreement during the terms of the agreement without filing" the necessary consent with the Board, and without approval of the employees represented by VSEA, in violation of these provisions. In sum, Mr. Cerutti contends that the State and VSEA have "cooperated on actions having far reaching effects on employees without including the employees in the planning or execution contrary to their current agreement and the State Employees Labor Relations Act". As a remedy, Mr.

Cerutti requests that the Board order the parties to cease implementation of the change in employees' paydays from every other week to twice a month, and that the Board order the parties to timely bargain over the issue.

Upon investigation of this charge, we decline to issue an unfair labor practice complaint. First, to the extent that the charge alleges that negotiating changes in the terms of an existing agreement constitutes failure by the State to maintain agreements, or failure by the State to ensure adequate funds to implement agreements, in violation of the State Employees Labor Relations Act, 3 V.S.A. §901 et seq. ("SELRA"), we reject such an argument as inconsistent with SELRA when considered as a whole. §982(a) clearly contemplates that terms of an existing collective bargaining agreement may be renegotiated during the term of the agreement if both parties mutually consent. Such renegotiation may result in new terms of an agreement which saves funds.

The action here by the State and the VSEA of negotiating changes in pay periods, which resulted in savings of funds during the term of the existing collective bargaining agreement, is consistent with §982(a). §903(c) and §905(a) cannot be construed to forbid actions which are specifically permitted under §982(a).

Second, this case is moot with respect to the remaining allegations of Mr.Cerutti. Mr. Cerutti faults the VSEA and the State for not filing the proper consent with the Board upon renegotiating the terms of the collective bargaining agreement, and for not involving employees in the planning and execution of the change. The potential adverse effect of any statutory

violations which may have been committed by the VSEA and the State has been eliminated by developments in this case.

At the time the State and the VSEA tentatively agreed to institute a pay system resulting in employees being paid twice a month instead of every two weeks, the parties agreed in writing that the tentative agreement would not become effective until it was ratified "by all bargaining units in conjunction with ratification of revised collective bargaining agreements with all bargaining units". This tentative agreement was entered into approximately two months prior to the unfair labor practice charge herein being filed.

Shortly after the unfair labor practice charge was filed, the parties filed a mutual consent with the Board to renegotiate the provisions of the collective bargaining agreement on the pay system. Subsequently, the VSEA, in conjunction with the ratification vote on a successor collective bargaining agreement to the existing agreement, submitted the tentative renegotiated terms of the existing agreement on the changed pay system to the membership for approval. The membership ratified the change in the pay system. The changed pay system will become effective June 1, 1994.

Given these developments, the employees represented by the VSEA have been provided adequate protection of their collective bargaining rights. We could order no greater input for employees on conditions of their employment than they have had in this matter. Under these circumstances, no good purpose would be served by issuing an unfair labor practice complaint.

NOW THEREFORE, based on the foregoing reasons, we decline to issue an unfair labor practice complaint, and the unfair labor practice charge filed by Maurice Cerutti in this matter is DISMISSED.

Dated this 20th day of May, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Carroll P. Comstock