

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE EMPLOYEES’)	DOCKET NO. 15-25
ASSOCIATION (RE: REQUEST)	
FOR INFORMATION))	

GRIEVANCE OF:)	
)	
VERMONT STATE EMPLOYEES’)	DOCKET NO. 15-36
ASSOCIATION (RE: VERMONT)	
VETERANS HOME PETITION))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

The Vermont State Employees’ Association (“VSEA”) filed a grievance on June 1, 2015 (Docket No. 15-25), contending that the State of Vermont violated Article 6 of the collective bargaining agreement for the Non-Management Bargaining Unit effective for the period July 1, 2014 to June 30, 2016 (“Contract”) by refusing to provide information that is reasonably necessary for VSEA to serve its needs as collective bargaining representative in a grievance proceeding concerning VSEA circulating a petition outside of Vermont Veterans Home.

VSEA filed another grievance on September 10, 2015 (Docket No. 15-36). Therein, VSEA alleged that the State violated the right to organize under Article 3 of the Contract; and interfered with, restrained and coerced employees engaged in concerted activity protected by the Contract and the State Employees Labor Relations Act; by prohibiting covered employees from circulating a petition during non-work time and in non-working areas of the Vermont Veterans Home.

The parties agreed to consolidate Docket Nos. 15-25 and 15-36 for hearing. A hearing was held in the Labor Relations Board hearing room in Montpelier on March 3, 2016, before

Labor Relations Board Members Gary Karnedy, Chairperson; Richard Park and James Kiehle.

VSEA General Counsel Timothy Belcher represented VSEA. Senior Assistant Attorney General

Michael Duane represented the State. The parties filed post-hearing briefs on March 21, 2016.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

...

ARTICLE 3 VSEA RIGHTS

...

5. The State shall provide the VSEA with sufficient space on all State bulletin boards generally accessible to employees for the purpose of posting VSEA information.

6. Union organizing activity will not be conducted on State premises during scheduled work time, excluding all authorized breaks and meal periods.

...

8. The VSEA Director(s) or a representative shall be allowed to visit any State facility, office or work location during working hours for the purpose of conducting VSEA business or investigating an employee complaint or grievance, provided that permission is obtained in advance from the appropriate managers, if available, and provided that such meetings do not adversely affect the efficient conduct of State business. Permission shall not be unreasonably withheld.

...

ARTICLE 6 EXCHANGE OF INFORMATION

...

5. The State will also provide such additional information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent and which is neither confidential nor privileged under law. Access to such additional information shall not be unreasonably denied. Failure to provide information as required under this Article may be grieved through the grievance procedure to the Vermont Labor Relations Board . . . (Joint Exhibit 1)

2. The State Personnel Policy Manual contains a “No Solicitation Policy” providing:

The soliciting of money, contributions, subscriptions, organizational or group membership, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, pamphlets, handbills and flyers, or the collection of premiums, payments or private debts, and campaigning in or on State property, both during and after

normal working hours, is prohibited, unless as otherwise permitted by law or State building rules.

...

(Joint Exhibit 15)

3. The State Department of Buildings and General Services has a policy entitled “State Facilities Rules” which has provided in pertinent part at all times relevant:

...

8. Soliciting, Vending and Debt Collection

Soliciting charitable contributions, panhandling, commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, or collecting private debts at State facilities is prohibited. This rule does not apply to:

...

(c) solicitation of labor organization membership or dues authorized by 3 V.S.A. Chapter 27, or the Collective Bargaining Agreement entered into between the State of Vermont and the Vermont State Employees’ Association.

...

(f) political solicitation which occurs in a public area outside of a State Building where it does not obstruct the passage of the public.

...

15. Effects on Other Laws

Nothing contained in these rules shall be construed to nullify any state laws or regulations applicable to any area in which a State Facility is located. . . In the event that an agency occupying a State Facility has adopted a policy or rule which is more restrictive than these rules, that policy or rule shall control. . .

(State Exhibit 16)

4. The Vermont Veterans’ Home is located in Bennington, Vermont. It was incorporated in 1884 as a home for veterans. It is also a licensed nursing home. It is an instrumentality of the State, governed by a Board of Trustees appointed by the Governor except for one trustee elected by classified employees of the Home. 20 V.S.A. §§1712 – 1716 (Joint Exhibit 18).

5. Employees of the Veterans’ Home are classified employees unless otherwise provided by law. The Home is staffed in shifts on a 24-hour basis. 20 V.S.A. §1716.

6. The Veterans’ Home has a Personnel Policy Manual which includes the following provision:

...

No Solicitation/No Distribution Rule

In order to prevent disruption in the operation of the Home, interference with Resident care, and inconvenience to our Residents and their visitors, we have instituted a “no solicitation/distribution” rule which is set forth in the following paragraph:

The soliciting of money, contributions, subscriptions, organizational or group membership, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, pamphlets, handbills and flyers . . . and campaigning in or on State property, both during and after normal working hours, is prohibited, unless as otherwise permitted by law or State building rules. . . Solicitation and/or the distribution of literature or products for any purpose by non-employees in any areas of the Home are strictly prohibited.

...

(Joint Exhibit 14)

7. During the early winter of 2015, Governor Peter Shumlin proposed that the collective bargaining contracts between the State and VSEA be reopened on wages. The Governor also proposed a reduction in the State workforce, including many layoffs of state employees. In response, VSEA circulated a petition among state employees and state colleges employees which provided:

Vermont State Employees’ Association
Fight Back! Save State Services!

PLEASE READ ON YOUR BREAK – THIS IS A PUBLIC PETITION

We are Vermont State Employees and Staff at the Vermont State Colleges. We are frontline experts in our field, providing essential services to Vermonters and ensuring they are delivered in safe, efficient and effective ways.

We are united, and we are calling on Vermont lawmakers to join us in seeking alternatives to cutting the vital public services that we all rely on every day. We also ask that you respect our collective bargaining agreements, the terms and conditions of which are mutually negotiated and agreed to be state employees and the State.

In addition, we, as dedicated State employees, stepped up during Vermont’s recession, and in previous budget crises, to help balance the state budget. Since that time, continued ill-advised budget cuts have resulted in underfunded and understaffed programs, the negative effects of which our communities continue to experience to this day.

Therefore we call on you to be smart, collaborative, and courageous in this moment, incorporating input from state employees and exploring other options to solve Vermont's FY2016 deficit, especially finding new revenue; to include higher taxes on Vermont's wealthiest citizens.

Cutting state programs, or reducing their capacity, is not a real solution for Vermonters.

State employees stand united in calling for **NO CUTS TO STATE SERVICES**.

Vermont can and must do better.

<u>First and Last Name</u>	<u>Signature</u>	<u>Town of Residence</u>	<u>Personal Email</u>

PLEASE RETURN TO VSEA, 155 STATE ST., MONTPELIER, VT

(Joint Exhibit 11)

8. VSEA circulated the petition among state employees in various ways, including soliciting signatures from employees entering and leaving state buildings. The petitioning activity was conducted throughout the state by VSEA staff organizers and by state employee activists, often on state property. Hundreds of signatures were collected. VSEA ultimately presented the signed petitions to the Governor Shumlin Administration (Joint Exhibit 12).

9. In addition to obtaining signatures on the petitions, the petitioning activity provided a way for VSEA to hear directly from employees whether they supported reopening the collective bargaining agreements and whether they wanted VSEA to oppose the layoffs of state employees. VSEA determined that employees were opposed to reopening the contracts. VSEA communicated this to the Governor Shumlin Administration and the Legislature. Ultimately, the

collective bargaining agreements were not reopened and the number of layoffs was significantly less than originally proposed by the Governor Shumlin Administration.

10. On February 3, 2015, VSEA conducted a VSEA steward training at the Bennington state office building adjacent to the Veterans' Home. VSEA staff, including Union Representative Brian Morse and VSEA Organizer Timothy Boyle, conducted the training of VSEA stewards from the Veterans' Home, the Judiciary and other state agencies. The lunch break for the training was staggered, with Veterans' Home employees breaking first and going outside the state office building to obtain signatures on the petition discussed in Finding of Fact No. 7 from employees going on, or returning from, their lunch breaks. When the Veterans' Home employees returned to the training, the other employees involved in the training headed to the Veterans' Home to obtain signatures on the petition.

11. The team that petitioned at the Veterans' Home scheduled their efforts to coincide with the shift change at the Home. The team consisted of VSEA Organizer Boyle, VSEA Stewards Victoria Thorpe and Christopher Murphy and Judiciary employee Louise Rainville. They stationed themselves on sidewalks leading to the entrance that is closest to the designated employee parking lot. The entrance may be used by anyone, but has a sign that states "EMPLOYEE ENTRANCE". Two sidewalks lead to the entrance, one from the main employee parking lot and the other from the handicapped parking area. VSEA did not notify the Veterans' Home management in advance that it intended to petition outside the employee entrance on February 3 (Joint Exhibits 22 – 24).

12. The petitioning team took care not to block anyone's passage. They asked people who either approached or left the entrance whether they were employees and, if so, whether they

were on duty. They did not engage any person who was not an off-duty employee, or with any employee who did not wish to speak to them.

13. At approximately 2:30 p.m., shortly before the team completed the petitioning, Veterans' Home employee Wendy Ottaviono reported the petitioning activity to Mary Ryan, Veterans' Home Executive Assistant. Ryan went outside and informed the petitioning team that solicitation of any kind on the Veterans' Home property was against State policy. When someone mentioned to Ryan that VSEA was doing the petitioning, Ryan responded that VSEA was to give 24 hours' notice if they were to be at the Veterans' Home. A member of the team indicated that they were not in the building. Ryan responded that the policy still applied. The team discontinued seeking to obtain signatures on the petition.

14. At 3:01 p.m. that day, Ryan sent an email to Melissa Jackson, Veterans' Home Chief Operating Officer, providing in pertinent part:

At 1430 today, Wendy Ottaviono said that she was approached by some people outside the building asking if she was an employee. After talking with Wendy, I went to investigate the situation.

Outside of the employee entrance between North and American, 3 VSEA reps were soliciting signatures for a petition. (sorry I did not get a copy). I politely informed them that solicitation of any kind was against the State policy on the VVH property. Bonnie Hurley said that it was the VSEA to which I replied that it was applicable for all organizations and that VSEA was to give a 24 hour notice if they were to be at the VVH. One of the reps said they were not in the building to which I replied they were still at a State facility and the policy was still valid.

...

Sorry to trouble you with this but I thought you should know.
(Joint Exhibit 7)

15. VSEA Representative Morse filed a Step III grievance with the Department of Human Resources on February 27, 2015, contending that the State violated the right to organize under Article 3 of the Contract; and interfered with, restrained and coerced employees engaged in concerted activity protected by the Contract and the State Employees Labor Relations Act; by

prohibiting covered employees from circulating a petition during non-work time and in non-working areas of the Vermont Veterans Home. The grievance was dated February 23, 2015, and Morse sent a copy of it to Melissa Jackson. Jackson received the copy by February 26, 2015 (Joint Exhibit 2).

16. On February 26, 2015, Ryan sent Jackson an email stating: “This may affect the grievance response: Please see #8f of the link below”. The link connects to Joint Exhibit 16 which is addressed above in Finding of Fact No. 3 (Joint Exhibit 8).

17. Morse sent Human Resources Commissioner Maribeth Spellman a letter dated March 12, 2014, requesting, pursuant to Article 6 of the Contract, “any and all relevant information necessary to effectively represent the interests of the Grievants in grieving the denial of organizing rights at the Vermont Veterans’ Home.” Morse specifically requested emails between Ryan and Jackson. He sent a copy of the letter to Jackson. (Joint Exhibit 4).

18. On March 12, 2015, Jackson sent an email to Commissioner Spellman, attaching the Veterans’ Home Land Use Policy, and stating: “Attached is the Board of Trustees policy regarding land use of the Veterans’ Home. The Board owns the land not the state and they have a no solicitation policy. I am sending this policy to you in response to Brian Morse’s request for information.” The Land Use Policy provided as follows with respect to a no solicitation policy: “The facility has a **No Solicitation Policy** on facility grounds or within the facility without prior written approval by the Administrator or designee” (Joint Exhibits 9, 17).

19. Jackson also provided the Department of Human Resources copies of the February 3 and 26, 2015, emails from Ryan to her, discussed above in Findings of Fact No. 14 and 16, when Morse made his Article 6 request for information.

20. On April 20, 2015, Brian Tencellent of the Department of Human Resources responded to Morse's March 12, 2015, letter to Commissioner Spellman by providing only the Veterans' Home Land Use Policy. Tencellent stated: "Emails which have been requested have not been provided. Such a request is unduly burdensome, not reasonably calculated to lead to the discovery of relevant admissible evidence and inconsistent with the intent of Article 6." (Joint Exhibit 4).

21. On April 23, 2015, Morse sent Commissioner Spellman a second request for information pursuant to Article 6 of the Contract on the pending Step III grievance, requesting the following:

Any and all electronic or paper communications and records of meetings or other conversations between Mary Ryan, Melissa Jackson, Al Faxon, Christina Cullinane, Tonya Goodell, Joyce Santacross, and/or the staff of the Department of Human Resources, between December 1, 2014 and February 20, 2015 that relate in any way to solicitation, petitioning, organizing, or other expressive, political, or concerted activities of VSEA or its members conducted at VVH or on State of Vermont property in general. If you withhold any responsive record or document on the basis of privilege or confidentiality, please list such documents by date and author, and explain the basis for the claim of privilege or confidentiality. (Joint Exhibit 5)

22. A Step III grievance meeting was held on April 30, 2015, on the grievance filed by Morse on February 27, 2015. During the meeting, Morse produced a collection of photographs of solicitations that were posted on various bulletin boards and walls throughout the Veterans' Home. These included advertisements and notices posted by various employees and non-employees for such businesses or events as craft sales, the Bennington County Choral Society, a concert by the Eagle Band, tax preparation services, a pizza restaurant, an "American Pow Wow" to be held on Veterans' Home grounds, a cleaning service, a dentist, tailoring and sewing, a book fair, pets, Big Brothers/Big Sisters, a quilting group, and a lecture on the Battle of Bennington (Joint Exhibit 25).

23. Persons ask permission to place items on bulletin boards at the Veterans' Home, and such requests generally have not been denied by Home administrators. If persons place items on walls, the items are taken down and Home administrators contact them and tell them the items were placed in an improper area.

24. On May 8, 2015, Tencellent responded to the second information request made by Morse on April 23, 2015. He did not provide any further materials to Morse, and stated: "Emails that were requested have not been provided because such a request is unduly burdensome, not necessary to carry out representational duties regarding this grievance, and inconsistent with the intent of April 6." (Joint Exhibit 5)

25. On June 1, 2016, VSEA filed the grievance with the Board contending that the State of Vermont violated Article 6 of the Contract by refusing to provide information that is reasonably necessary for VSEA to serve its needs as collective bargaining representative in the grievance proceeding concerning VSEA circulating a petition outside of Vermont Veterans Home (Docket No. 15-25).

26. The State filed an answer in Docket No. 15-25 on June 26, 2015. Labor Relations Board Executive Director Timothy Noonan met with the parties in informal status conferences on the case on August 6 and 20, 2016. On August 21, 2016, the attorneys representing the State and VSEA jointly agreed to delay the hearing in Docket No. 15-25 while they attempted to agree on a framework for future Article 6 requests. The Labor Relations Board took no further action on Docket No. 15-25 for several months pending the parties' attempts to reach such an agreement.

27. On August 14, 2015, Labor Relations Specialist Shelley Morton issued a Step III grievance decision denying the original grievance filed by Morse on February 27, 2015, concerning the circulating of the petition at the Vermont Veterans Home (Joint Exhibit 2).

28. On September 10, 2016, VSEA filed the grievance with the Board alleging that the State violated the right to organize under Article 3 of the Contract; and interfered with, restrained and coerced employees engaged in concerted activity protected by the Contract and the State Employees Labor Relations Act; by prohibiting covered employees from circulating a petition during non-work time and in non-working areas of the Vermont Veterans Home (Docket No. 15-36).

29. Noonan met with the parties in an informal status conference in Docket No. 15-36. At the meeting, it was agreed that the parties would exchange requests for production of documents by December 18, 2015, and that the parties would respond to these requests by January 19, 2016.

30. On December 17, 2015, VSEA requested that Docket Nos. 15-25 and 15-36 be consolidated. On January 18, 2016, the State indicated that it had no objection to the consolidation of the cases.

31. VSEA served its request for production of documents on December 14, 2015. Therein, VSEA reiterated its request for the emails and communications requested in Morse's April 23, 2015, request to the State. The State did not respond to the requests for production. VSEA filed a Motion to Compel Discovery on February 3, 2016. On February 4, 2016, Noonan scheduled a February 8 conference call with the parties to discuss the Motion to Compel. On February 5, 2016, the State delivered the requested documents to VSEA, including the February

3 and 24, 2015, emails from Ryan to Jackson discussed above in Findings of Fact Nos. 14 and 16 (Joint Exhibit 6)

OPINION

Docket No. 15-25

VSEA contends in Docket No. 15-25 that the State violated Article 6 of the Contract by refusing to provide information that was reasonably necessary for VSEA to serve its needs as collective bargaining representative in the grievance proceeding concerning VSEA circulating a petition outside of Vermont Veterans Home. Article 6 provides that the “State will . . . provide such . . . information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent and which is neither confidential nor privileged under law”, and that. “(a)ccess to such additional information shall not be unreasonably denied.” “Failure to provide information as required under this Article may be grieved” to the Board.

VSEA contends that the State violated Article 6 by failing to provide VSEA with two emails sent by the Veterans’ Home Executive Assistant to the Chief Operating Officer of the Home, one sent the same day the petition was circulated at the Home and the other sent after VSEA filed a grievance concerning the petitioning. VSEA contends that having these emails would have been valuable during the Step III grievance meeting on the circulating of the petition.

The State responds that the request for information is now moot as there is no longer an actual controversy between the parties regarding producing the emails requested under Article 6. The State bases this position on the fact that the State provided VSEA with the requested emails through the discovery process before the Board in the underlying grievance of the circulating of the petition in Docket No. 15-36.

When the employer, prior to the Board hearing on the case, has provided as a remedy the most that the Board could award as a remedy, the Board has determined that the "actual controversy" requirement has not been met, and has dismissed the grievance, even though the employer had not admitted to any contract violations. Grievance of Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO, 28 VLRB 220, 235-236 (2006). Grievances of Cray, 25 VLRB 194, 216-217 (2002). Grievance of Rennie, 16 VLRB 1, 5-6 (1993). Grievance of Ray, 14 VLRB 67, 78-79 ((1991). Grievance of Sherbrook, 13 VLRB 359, 362-63 (1990). The Board reasoned that, to provide an adequate basis to assert jurisdiction, a grievance must be more than an argument over contract interpretation; it also must be a request for action that the Board has the authority to order. Id.

We conclude here that the State has provided the most that the Board would award as a remedy by providing the two emails requested by VSEA under Article 6 of the Contract. We have considered whether to decline to dismiss this grievance on the grounds that it is "capable of repetition, yet evading review." In one case, the Board sustained a grievance in part for failure of the State to timely respond to an Article 6 request on the basis that it was an action that was capable of repetition, yet evading review in a timely manner. Grievance of VSEA, et al, 32 VLRB 274, 322 – 325 (2013).

We ultimately determine that the type of case before us is not one that evades review in a timely manner. It is true that the State did not produce the emails requested by VSEA under Article 6 until VSEA filed a motion to compel discovery in the underlying grievance of the circulating of the petition in Docket No. 15-36. Nonetheless, such a delay in receiving the information could have been avoided by VSEA if it had proceeded differently. The Board was prepared to schedule a hearing on the Article 6 request in Docket No. 15-25 before the

underlying grievance in Docket No. 15-35 was filed with the Board. This would have allowed VSEA to obtain the information in a much timelier manner on this preliminary matter well before a hearing on the merits. However, VSEA jointly agreed with the State to delay the hearing in Docket No. 15-25 while they attempted to agree on a framework for future Article 6 requests, and subsequently the parties agreed to consolidate the hearings in Docket Nos. 15-25 and 15-36.

In sum, we determine that the actual controversy requirement is not met here, and we dismiss the grievance in Docket No. 15-25. The Employer, prior to the Board hearing on the case, has provided as a remedy the most that the Board would award as a remedy, and this is not a case that is capable of repetition yet evading review.

Docket No. 15-36

VSEA contends in Docket No. 15-36 that the State violated the right to organize under Article 3 of the Contract; and interfered with, restrained and coerced employees engaged in concerted activity protected by the Contract and the State Employees Labor Relations Act; by prohibiting covered employees from circulating a petition during non-work time and in non-working areas of the Vermont Veterans Home.

The VLRB has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In deciding grievances the VLRB is limited by the statutory definition of grievance, which provides:

"Grievance" means an employee's, group of employees', or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under a collective agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors. 3 V.S.A. §902(14).

Statutory provisions are not encompassed within the definition of "grievance" unless they are incorporated into a collective bargaining agreement, rule or regulation. Boynton v. Snelling, 147 Vt. 564 (1987). In re McMahon, 136 Vt. 512 (1978). Grievance of VSCSF and Laflin, 16 VLRB 276 (1993).

Our adjudicatory jurisdiction to decide grievances precludes us in this grievance from addressing VSEA's claim that the State interfered with, restrained and coerced employees engaged in concerted activity protected by the State Employees Labor Relations Act ("SELRA"). Section 903(a) of SELRA provides that employees "shall have the right . . . to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection". Section 961(1) of SELRA makes it an unfair labor practice for an employer "to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by section 903, or by any other law, rule or regulation". Sections 903(a) and 961(1) of SELRA are not incorporated into any provision of the Contract or any rule or regulation cited by VSEA to have been violated in this grievance. Thus, such provisions of SELRA are not encompassed within the definition of "grievance".

VSEA has not filed an unfair labor practice charge alleging violations of these provisions of SELRA, and the deadline for filing one has passed. Unfair labor practice charges must be filed within six months of the occurrence of the alleged unfair labor practice. 3 V.S.A. Section 965(a). More than six months have passed since the circulating of the petition at the Veterans' Home. Thus, we have no jurisdiction to address VSEA's claim that the State interfered with, restrained and coerced employees engaged in concerted activity protected by SELRA.

This leaves the remaining question for us to decide as whether VSEA has established its allegation that the State violated Article 3 of the Contract by prohibiting covered employees from

circulating a petition during non-work time and in non-working areas of the Veterans' Home. VSEA specifically contends that the State violated Article 3, Section 6, which provides: "Union organizing activity will not be conducted on State premises during scheduled work time, excluding all authorized breaks and meal periods."

VSEA contends that it agreed through this language to not engage in union organizing activity on state premises on work time, while the State agreed that this restriction would not apply to authorized breaks or meal periods. VSEA maintains that union organizing rights arise by necessary implication from the language itself; that if VSEA agreed to accept contractual limits on its organizing rights, that implies that VSEA is not agreeing to any other limitations. VSEA asserts that the contractual right to engage in "union organizing activity" should be read broadly to encompass the full range of solicitation engaged in by unions – i.e., that unions organize their members by soliciting them to join the union, come to meetings, run for union office, wear insignia, file grievances and a wide variety of other activities. VSEA contends that any narrower definition would mean that the contract itself interferes with, or limits, union members' protected rights.

In interpreting Article 3, Section 6, we follow the rules of contract construction developed by the Vermont Supreme Court. The cardinal principle in the construction of any contract is to give effect to the true intention of the parties. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). The Board will not read terms into a contract unless they arise by necessary implication. Id. at 71. The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts; not to

make or remake them for the parties, or ignore their provisions. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982). Ambiguity exists where the disputed language will allow more than one reasonable interpretation. In re Grievance of Vermont State Employees' Association and Dargie, 179 Vt. 228, 234 (2005). If this analysis concerning whether contract language is ambiguous results in a determination that the language is clear and unambiguous, extrinsic evidence under such circumstances should not be considered as it would alter the understanding of the parties embodied in the language they chose to best express their intent. Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981). If the analysis instead leads to a conclusion that the contract language is ambiguous because the disputed language allows more than one reasonable interpretation, it is appropriate to look to the extrinsic evidence of bargaining history and past practice to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Grievance of Majors, 11 VLRB 30, 35 (1988).

In applying these rules of construction here, we conclude that the broad reading of “union organizing activity” advocated by VSEA is not supported. The common meaning of union organizing activity in a case such as here where a union is the exclusive bargaining representative of employees in the workplace refers to attempts by a union to convince employees either to become union members, continue as union members or maintain the union as exclusive bargaining representative. Any more expansive meaning does not arise by necessary implication. Even assuming for the sake of argument that ambiguity exists as to the meaning of

“union organizing activity”, VSEA has introduced no evidence of bargaining history or past practice which would support the broader meaning which it advocates.

The petitioning activity engaged in at the Veterans’ Home at issue here did not constitute union organizing activity. The petitioning did not involve an attempt by VSEA to convince employees to become VSEA members, continue as VSEA members or maintain VSEA as their bargaining representative. Instead, it was directed at combatting the Governor’s proposals that the collective bargaining contracts between the State and VSEA be reopened on wages, and that layoffs of state employees occur. In sum, we conclude that the State did not violate Article 3, Section 6, of the Contract by prohibiting covered employees from circulating a petition during non-work time and in non-working areas of the Vermont Veterans Home.

We disagree with VSEA that this interpretation of the Contract itself interferes with, or limits, VSEA members’ protected rights. Instead, we simply conclude that the Contract does not cover the petitioning engaged in by VSEA at the Veterans’ Home. The rights of VSEA and employees to engage in such petitioning would be adjudicated through the unfair labor practice provisions of SELRA. As already discussed, VSEA has not filed a timely unfair labor practice charge, leaving us without adjudicatory jurisdiction in the matter.

ORDER

Based on the foregoing findings of facts and for the foregoing reasons, it is ordered that the Grievances of the Vermont State Employees' Association in Docket Nos. 15-25 and 15-36 are dismissed.

Dated this 27th day of May, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle