VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
v.	)	DOCKET NO. 83-68
STATE OF VERMONT	)	

MEMORANDUM AND ORDER
VACATING PRIOR ORDER AND
UNFAIR LABOR PRACTICE COMPLAINT

On April 12, 1984, the Vermont Labor Relations Board issued a Memorandum and Order declining to issue an unfair labor practice complaint in this matter. 7 VLRB 119 (1984). On April 20, 1984, the Vermont State Employees' Association ("VSEA") filed a Motion for Vacation of Order, pursuant to VRCP 59(e) and Section 11.1 of the Board's Rules of Practice, and a supporting memorandum. On May 1, 1984, VSEA filed a supplemental memorandum in support of the Motion for Vacation of Order. On May 3, 1984, the State filed an Opposition to VSEA's Motion for Vacation of Order.

In our original memorandum and Order, we held that VSEA's claim in this matter, that the State violated specific provisions of the applicable collective bargaining agreement, clearly fell within the scope of a grievance and that VSEA should have used the grievance procedure, not the unfair labor practice route, to resolve this issue. We rejected VSEA's claim that 3 VSA §982(g) provided a procedural avenue of adjudication separate from the grievance procedure to enforce a collective bargaining agreement. Ordinarily we think that approach is correct because the parties can seek review without addressing our discretionary powers, and have the opportunity to settle matters prior to coming before the Board. Our ruling was not intended to decide any substantive

meaning of 3 VSA §982(g). On reflection, we believe extraordinary circumstances exist in this case which warrant adjudication of this contract dispute through the unfair labor practice route.

First, the issue involved here concerns a large number of employees, whose claims cannot be handled as efficiently through the grievance procedure as is possible through an unfair labor practice proceeding. VSEA alleges the State failed to comply with the collective bargaining agreement by not providing medical, life and dental insurance coverage to 25 permanent part-time employees represented by VSEA. 3 VSA §1002(d) prevents class actions in grievances, allowing the Board to act only when there are actual appeals by named and identified aggrieved employees. Grievance of Beyor, 5 VLRB 222, 231-232 (1982). Absent class actions, VSEA would have to file timely grievances for all 25 employees in order to ensure uniform treatment of all affected employees. Moreover, late filing might waive certain benefits if their position was ultimately upheld. c.f. Grievance of VSEA - Meat Inspectors, 4 VLRB 144 (1981). Additionally, VSEA has an important institutional interest at stake here; the alleged exclusion of employees it represents from coverage of certain contractual provisions, and it is appropriate VSEA be able to pursue its, and their, interests without impediment, and without perhaps triggering a complaint of failure to represent. Bowen v. United States Postal Service, ___ U.S. ___ (January 11, 1983, Docket No. 81-525).

Second, it is evident by the pleadings that the Deputy Commissioner of Personnel made the determination not to provide insurance coverage to the involved employees. The Department of Personnel is the last level of the grievance procedure before appeal to the Board, and it would be useless for VSEA to grieve to Personnel under such circumstances.

Third, because of the nature of this issue, it is clear it will not be settled at a level below the Board, and probably not until a Supreme Court ruling. There is too much money involved and the applicable labor law principles are likely to excite a spirited contest between the parties. In such a case, there are some practical differences in deciding this matter through the unfair labor practice route, as we have pointed out. However, substantively the outcome is likely to be unaffected since we decide both grievances and unfair labor practices. 3 VSA §926, §965. 3 VSA §982(g) gives the Board authority to enforce compliance with all provisions of the collective bargaining agreement through the unfair labor practice procedure, and we believe it appropriate under the extraordinary circumstances of this case to exercise that authority to adjudicate this contract dispute through the issuance of an unfair labor practice complaint.

Now therefore, based on the foregoing reasons, the Board Order of April 12, 1984, is VACATED, and

WHEREAS, the Vermont State Employees' Association filed an unfair labor practice charge on November 28, 1983, and amended the charge April 30, 1984, copies of which are attached and made a part of this order; and

WHEREAS, taking the verified allegations contained in the charges as true, the State of Vermont may have committed an unfair labor practice in violation of 3 VSA §961(1), or in the alternative, a violation of 3 VSA §982(g); and

WHEREAS, after investigating the matter, it appears to the Vermont Labor Relations Board that a formal hearing should be instituted:

NOW THEREFORE, the Vermont Labor Relations Board adopts for purposes of this complaint the allegations contained in the charge and causes this complaint to be issued and notice to be served upon the parties hereto of a hearing on this matter July 12, 1984, at 9:30 a.m. in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont.

Dated this 7th day of June, 1984, at Montpelier, Vermont

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson