VERMONT LABOR RELATIONS BOARD

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

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR LABOR
PRACTICE COMPLAINT

On November 29, 1983, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge and/or complaint concerning non-compliance with the contract, alleging the refusal of the State of Vermont to provide medical, life and dental insurance coverage to 25 permanent part-time employees of the Department of Social Welfare, whose positions were created in 1983 after authorization by the Legislature, constituted a failure to comply with the collective bargaining agreement in violation of 3 VSA §961(1) and/or 3 VSA §982(g). VSEA cites Article 36, State Employee Medical Benefits Plan; Article 38, Life Insurance; and Article 39, Dental Insurance; of the collective bargaining agreement between the State and VSEA for the period July 1, 1982 to June 30, 1984 ("Contract"), as the contract provisions violated by the State.

At issue is whether the Board should issue an unfair labor practice complaint and schedule a hearing before the Board pursuant to 3 VSA §965. The State contends the Board should not issue a complaint because the unfair labor practice charge is clearly a claim that the State is violating the provisions of the Contract, and VSEA's claim should have been filed as a grievance under the contractual grievance procedure.

3 VSA §965(a) gives the Board discretionary authority whether to issue an unfair labor practice complaint, and in this instance we choose not to issue a complaint. The State Employees' Labor Relations Act (SELRA) has established a labor relations structure providing that disputes will either be funneled through the collective bargaining process, the grievance procedure, or the unfair labor practice route. For reasons which follow, we believe the dispute here should be resolved through the grievance procedure.

VSEA alleges the State violated 3 VSA §961(1) and/or 3 VSA §982(g). §961(1) makes it an unfair labor practice for the employer to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Section 903 of this title, or by any other law, rule of regulation".

VSEA maintains that since §903(c) imposes a duty on the State to "maintain" collective bargaining agreements, if the State fails to comply with a collective bargaining agreement, it violates its duty to "maintain" such agreements. In short, VSEA claims, a violation of contract is a violation of Section 903(c), and, accordingly, a violation of §961(1).

We do not believe VSEA's statutory interpretation here is consistent with the intent of SELRA as a whole. VSEA's claim in this matter clearly falls within the scope of a grievance, since VSEA claims the State violated specific provisions of the Contract, and a grievance is defined, in pertinent part, as the "employee representative's expressed dissatisfaction... with aspects of employment or working conditions under collective bargaining agreement". 3 VSA §902(14).

An express procedure has been set up for resolution of grievances under SELRA, Board Rules of Practice, and the parties' Contract. §903(a) of SELRA gives employees the right to "appeal grievances as provided in this chapter". Grievance procedures are a mandatory subject of bargaining under SELRA, 3 VSA §904, and the Board is empowered to make final determination on grievances. 3 VSA §926. All employees have the right to appeal grievances to the Board in accordance with the rules and regulations of the Board, 3 VSA §928, and the Board shall prescribe a uniform procedure for the resolution of employee grievances submitted through the collective bargaining machinery. 3 VSA §941(i).

In accordance with SELRA, the Board has adopted a rule which provides the Board shall hear and make final determination on the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement. Section 23.1, Board's Rules of Practice. The parties' Contract sets up a four-step procedure to "provide for a mutually satisfactory method for settlement of... grievances" and expresses an expectation that "employees and supervisors will make a sincere effort to reconcile their differences as quickly as possible at the lowest possible organizational level." Article 16, Grievance Procedure.

SELRA protects employees' rights to appeal grievances through this procedure, and this is the procedure which should have been used by VSEA to resolve the issue before us. The duty of the State pursuant to 3 VSA §903(c) to "maintain" agreements in this regard refers to its duty to proceed in good faith through the grievance procedure.

Nonetheless, VSEA makes an alternative claim that 3 VSA §982(g) contemplates the use of the unfair labor practice procedure as an alternative to the grievance machinery as a means of enforcing the Contract. 3 VSA §982(g) provides:

> The board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party. In the event a complaint is made by either party to an agreement the board shall proceed in the manner prescribed in section 965 of this title relating to the prevention of unfair labor practices.

The Vermont Supreme Court has approved resort to 3 VSA §982(g) to allow the Board to invoke appropriate remedies where the employer has been found, through the grievance procedure, to have violated the collective bargaining agreement. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329, at 334 (1981). The Board, in grievance decisions, has discouraged disregard of negotiated provisions of a collective bargaining agreement by awarding monetary damages pursuant to §982(g). VSCFF and Peck v. Vermont State Colleges, 4 VLRB 334 (1981). Grievance of Sypher and VSCFF, 5 VLRB 102 (1982).

However, in those cases, unlike here, the contract violations had been resolved through the contractual grievance procedure. In our view, §982(g) contemplates a prior adjudication of a contract dispute through the grievance procedure, and was not intended by the legislature to provide an alternative to the grievance procedure.

For us to adjudicate this contract dispute through the unfair labor practice route would be to frustrate the evident intent of SELRA that alleged violations of collective bargaining agreements be appealed through the grievance procedure and the expressed intent of

the parties to reconcile contractual differences at the lowest possible organizational level. While it is apparent VSEA made attempts to resolve this dispute informally with the State, it did not do so through the contractually-agreed-upon method for resolving such disputes, the grievance procedure.

The Vermont Supreme Court, in Morton v. Essex Town School District, 140 Vt. 345 (1981), has expressed support for the position that contractual disputes should be resolved through the grievance procedure. In Morton, a case involving an Essex Town school teacher who had been dismissed, the collective bargaining agreement provided a teacher could not be dismissed without just and sufficient cause. The teacher did not file a grievance over his dismissal but instead filed suit in Superior Court, alleging that the School Board did not have just cause to dismiss him. The Superior Court upheld the teacher's claim. On appeal, the Supreme Court reversed the Superior Court, ruling that the failure of the teacher to follow the grievance procedure set forth in the collective bargaining agreement precluded his reliance on the protective provisions of that agreement to support his claim he was dismissed without just and sufficient cause. Similarly, in a case involving a State correctional employee, the Court stated its belief that in-house resolution of grievable issues under the collective bargaining agreement should first be attempted through the contractual grievance procedure. In re Grievance of Bushey, 142 Vt. 290 (1982).

We, too, are of the belief that productive labor relations are best served if the parties attempt to resolve contractual disputes through the grievance procedure.

VSEA points out that the probable consequences of our failing to issue a complaint is the absence of any resolution of the issue whether the involved employees are entitled to medical, life and dental insurance. In past cases, where pay practices were involved, employees did not grieve the alleged pay violations within 15 workdays of the date they initially became aware of them, but grieved the alleged violations during the period they were still occurring. The Board held the grievants were permitted to institute grievances over the matter at any time during the period in which the alleged violations were occurring, since there was a new "occurrence" of the alleged violation every time a paycheck was issued, with the restriction that the grievants waived their right to back-pay for the periods prior to the pay period immediately preceding the filing of the grievance. Grievance of VSEA on Behalf of Meat Inspectors, 4 VLRB 144 (1981). Grievance of Cole, 6 VLRB 204 (1983). Grievance of Byrne, et al., 6 VLRB 1 (1983). Here, the actual pay an employee receives is not in dispute, but economic benefits of substantial importance to employees are involved. We believe the above-cited Meat Inspectors rule extends to this case. There is a new "occurrence" of the alleged violation every time a pay period passes and the involved employees are not provided with insurance coverage. The contractual dispute can be resolved through the filing of a grievance in accordance with the Contract.