VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
v.	)	DOCKET NO. 83-68
STATE OF VERMONT	)	
GRIEVANCE OF:	)	
VERMONT STATE EMPLOYEES' ASSOCIATION	)	DOCKET NO. 84-6

MEMORANDUM AND ORDER

On November 29, 1984, the Vermont Labor Relations Board issued its Findings of Fact, Opinion and Order in these matters, dismissing the unfair labor practice complaint issued in Docket No. 83-68 and the grievance in Docket No. 84-6. 7 VLRB 333. On December 7, 1984, the Vermont State Employees' Association ("VSEA") filed a Motion for Reconsideration and supporting memorandum, pursuant to Section 11.1 of the Board's Rules of Practice and VRCP 52.

VSEA's Motion is based on four grounds. Each will be discussed in turn.

First, VSEA contends the Board made a finding not supported by the evidence in finding that contracts since 1976 "have provided mechanisms by which teachers and teachers aides are covered by insurance benefits during periods they are not working", Finding #33, 7 VLRB 333, at 344, insofar as that finding suggests that coverage has been bargained for employees not otherwise covered by the insurance plans' language. Likewise, VSEA contends the Board's conclusion that "(t)he extension of insurance benefits to teachers and teachers aides... has resulted from specific

contractual recognition of their eligibility for such benefits since 1976", 7 VLRB 333, at 352, is also not supported by the evidence. The effect of the Board's erroneous finding and conclusion, VSEA maintains, is teachers cannot be pointed to as an example of the correct interpretation of the term "regularly working" under the insurance plans themselves.

Finding #33 and the conclusion resulting therefrom are not erroneous and are amply supported by the evidence. Teachers and teachers aides employed by local districts are generally considered full-time employees who are eligible for insurance coverage even though they do not work during the summer months. The teachers and teachers aides employed by the State generally work the same work year as teachers in the regular school system. In an apparent recognition of the close relationship between the State teachers and teachers aides and their local counterparts and for competitive reasons, the State and VSEA treated these employees as a special class of employees and included them under the insurance plans by specific contractual recognition of their eligibility for such benefits.

Contrary to VSEA's claim, we do not intend to point to teachers and teachers aides as the correct interpretation of the term "regularly working". Instead, we recognize they have been included in the parties' contract as a special category of employees eligible for insurance coverage.

Although Finding #33 is supported by the evidence, we did make an erroneous finding in our decision. Finding #2 provides: "Prior to 1977, VSEA, as exclusive bargaining representative of State employees, and the State did not bargain concerning the terms of insurance coverage for employees". 7 VLRB 333 at 335. To accurately reflect the evidence it should provide:

> Prior to 1977, VSEA, as exclusive bargaining representative of State employees, and the State did not bargain concerning the terms of insurance coverage for employees except for teachers and teachers aides employed at the Vermont State Hospital and Brandon Training School. Since 1976, contracts between VSEA and the State have provided that "employee insurance benefits are available" to teachers and teachers aides.

While the State Employees Labor Relations Act did not explicitly provide that terms of insurance coverage was a mandatory subject of bargaining until July 1, 1978, the parties nonetheless bargained over the terms of insurance coverage for these employees. The erroneous Finding #2 was simply an oversight on our part, and did not affect the rationale leading to our decision.

The second ground for objection raised by Grievant is the Board does not explain what "regularly working" means, and thus the Board's decision appears to be an ad hoc determination. Further, VSEA contends the decision is ambiguous since it seems to adopt the State's interpretation of "regularly working" in one part of the decision but rejects it elsewhere. We will clearly state here what we mean by "regularly working" to clear up any ambiguity which may exist in our decision. We interpret the phrase "regularly working" the same way it is interpreted in insurance underwriting; that it customarily means working for the full year. This means that an employee is "regularly working" if he or she customarily works 52 weeks a year with the obvious exception of time spent on annual leave or sick leave. The fuel workers do not fall under this definition because they do not work four months of every year.

When we stated in our decision that we were not adopting the State's position in this case, 7 VLRB 333, at 351, we meant we could not accept the State's position that employees must work 15 hours per week

every week of the year in order to be eligible for insurance benefits. We do not believe that an employee who works less than 15 hours per week for a short period because of lack of work should be disqualified from receiving benefits.

Third, VSEA contends the Board's finding that "over the last few years, (Employee Benefits Chief) Geagan has... consistently interpreted the eligibility provisions of the respective group policies... to exclude from eligibility any permanent part-time employees who do not work the entire year", Finding #24, 7 VLRB 333, at 341, is unsupported by the evidence. In support of its claim, VSEA contends Geagan sanctioned the extension of benefits to Nutrition Specialists in the Department of Education and teachers, even though they did not work the full year. The extension of benefits to teachers was not "sanctioned" by Geagan, but negotiated by the parties. With regard to Nutrition Specialists, the evidence does not demonstrate Geagan approved of the extension of benefits to them. While we still adhere to this finding, even assuming for the sake of argument that Geagan overlooked a few employees out of approximately 7,000 State employees and permitted them to be covered even though they did not work the full year, we would not view such a small percentage of the entire group of State employees as evidence of the State's interpretation of the phrase "regularly working".

Finally, VSEA submits that the Board has improperly remade, rather than interpreted, the contract language in this case. Suffice it to say that for the reasons stated in our original opinion in this matter and elaborated on here, we disagree.

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

VSEA's Motion for Reconsideration is DENIED.

Dated this 10th day of January, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson