

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' )  
ASSOCIATION )

v. )

STATE OF VERMONT )

DOCKET NO. 88-67

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should issue an unfair labor practice complaint in this matter. On November 29, 1988, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge. VSEA alleged that the State Department of Personnel ("Department") violated 3 VSA §961(1) through failure to provide timely notice to employees and their representative, VSEA, of certain actions taken by the State. VSEA alleged that the Department's conduct represented a purposeful effort to bypass employees and their representative, thereby depriving employees of effective representation.

The relevant events relied on by VSEA in support of this charge are as follows:

1. VSEA filed a classification grievance on behalf of Debbie Dameron. At the hearing before the classification panel, Dameron appeared without VSEA representation. The classification panel recommended that Dameron's position be upgraded. Subsequently, David Moers, Commissioner of Personnel, requested that the panel reconsider its recommendation. Neither VSEA nor Dameron were provided with copies of Moers' request. The panel reconsidered its recommendation and decided that Dameron's position should not be upgraded.

Subsequently, Moers notified Dameron by letter that he concurred in the panel's recommendation. Moers did not send a copy of this letter to VSEA.

2. Mary Alice Gower filed a classification grievance on her own behalf, without VSEA's involvement. Prior to the hearing before the classification panel, Gower sought and received the assistance of VSEA. There is no claim that VSEA's involvement was communicated to the Department of Personnel by VSEA or Gower. At the hearing before the classification panel, Gower appeared without a VSEA representative. The classification panel recommended that Gower's position be upgraded. Subsequently, Moers requested that the panel reconsider its decision. Neither VSEA nor Gower were provided with copies of Moers' request. The panel reconsidered its recommendation and decided that Gower's position should not be upgraded. Subsequently, Moers notified Gower by letter that he concurred in the panel's recommendation. Moers did not send a copy of this letter to VSEA.

3. On September 2, 1988, the Labor Relations Board issued a Memorandum and Order with respect to a classification appeal filed by VSEA on behalf of Mary Jane Cram. 11 VLRB 245. Therein, the Board ordered the Commissioner of Personnel to remand the matter to the classification panel and direct the panel to act according to specific instructions of the Board. Subsequently, the Commissioner remanded the matter to the panel. Neither Cram nor VSEA received notice of the Commissioner's remand at the time.

In determining whether to issue an unfair labor practice complaint, we concur fully with VSEA that a purposeful attempt to

bypass employees and their representatives, thereby depriving employees of effective representation, would be an unfair labor practice pursuant to 3 VSA §961(1). Such conduct would constitute an egregious violation of collective bargaining and grievance appeal rights of employees protected by the State Employees Labor Relations Act.

However, the events relied on by VSEA are insufficient for us to conclude there was any purposeful attempt to bypass employees and their representatives. In one case cited by VSEA, the failure to provide notice concerned a remand to a classification panel to act according to specific instructions of the Board, pursuant to a Board order involving a case filed by VSEA. We cannot conclude under such circumstances that the State purposefully attempted to hide its action from VSEA and affect VSEA's representation of the appellant in any way. In another case where notice was not provided to VSEA, concerning the classification grievance of Mary Alice Gower, the Department of Personnel was not on notice that VSEA was representing Gower.

As a result, there remain three instances of some significance where the Commissioner of Personnel inappropriately failed to provide contemporaneous notice to employees and/or VSEA of actions taken by the Commissioner concerning classification grievances. The three instances are: 1) failure to provide notice to the affected employee concerning the Commissioner's request that the panel reconsider its recommendation in the Gower matter, 2) failure to provide notice to the affected employee and VSEA concerning the Commissioner's request that the panel reconsider its recommendation in the Dameron matter, and 3) not providing VSEA with notice of the Commissioner's final decision in the Dameron matter. While this lack of notice was

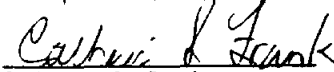
inappropriate and not to be condoned, it does not demonstrate a pattern which rises to a level sufficient to constitute a purposeful attempt to bypass employees and their representative.

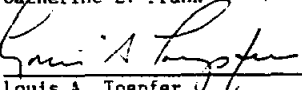
Now therefore, based on the foregoing reasons, the Labor Relations Board hereby declines to issue an unfair labor practice complaint in this matter and ORDERS this unfair labor practice charge DISMISSED.

Dated this 1 day of May, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
William G. Kemsley, Sr.

  
Catherine L. Frank

  
Louis A. Toepfer