VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
	)	
v.	)	
	)	DOCKET NO. 03-15
STATE OF VERMONT AGENCY OF OF NATURAL RESOURCES, DEPARTMENT OF FORESTS, PARKS AND RECREATION	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint. On April 8, 2003, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge with the Labor Relations Board. VSEA contends that the State of Vermont Agency of Natural Resources, Department of Forests, Parks and Recreation ("Employer"), violated Section 961(1) and (5) of the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.*, by implementing a policy generally prohibiting employees from commuting to work stations in state vehicles from November 10, 2002 to April 1, 2003.

In responding to the unfair labor practice charge on May 12, 2003, the Employer contends that the Board should dismiss the charge as untimely filed. As discussed in the companion decision issued by the Board today in Board Docket No. 03-12, Grievance of VSEA, Nottingham, et al, 26 VLRB 258, upon review of the materials filed in this case, we conclude that there are genuine issues as to material facts which require the full development of facts afforded by an evidentiary hearing before we can adequately address the timeliness of VSEA's allegations. Those facts can be developed in the evidentiary hearing before the Board in Docket No. 03-12. Id. Thus, we deny the Employer's request that we dismiss this unfair labor practice charge on timeliness grounds.

This does not mean, however, that we will issue an unfair labor practice complaint at this time. Instead, we conclude that it is appropriate to decline to issue such a complaint in this matter and defer to the grievance now before the Board for resolution in Docket No. 03-12.

The Board has not ruled on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and employees had an adequate redress for the alleged wrongs through the grievance procedure. Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9 VLRB 195 (1986). Fair Haven Graded School Teachers Association, Vermont-NEA v. Fair Haven Board of School Directors, 13 VLRB 101, 109-110 (1990). Available remedies under a collective bargaining agreement's grievance procedure must be exhausted before a statutory unfair labor practice complaint will be issued. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 518 (1991).

In the charge, VSEA alleges that the Employer has made an improper unilateral change in terms and conditions of employment by implementing a policy generally prohibiting employees from commuting to work stations in state vehicles from November 10, 2002 to April 1, 2003. This is the same underlying action at issue in the grievance in Docket No. 03-12. It is alleged in the grievance that the implementation of the policy violated a longstanding past practice and various provisions of the collective bargaining agreements between the VSEA and the State for the Non-Management and Supervisory Units.

VSEA and the involved employees have an adequate redress for the alleged wrongs through the grievance now before the Board. The Board will interpret contract

provisions to determine whether any contract violations occurred and address whether a binding past practice was not followed. If the Board concludes that the grievance has merit, it will award an appropriate remedy providing redress for the improper imposition of the policy. Given these considerations, we defer to the pending grievance in Docket No. 03-12 and decline to issue an unfair labor practice complaint.

This does not necessarily mean that VSEA is forever foreclosed from pursuing this unfair labor practice charge. Once the Board has ruled on the grievance in Docket No. 03-12, VSEA may move to reopen the unfair labor practice case if the Board decision has not clearly decided the unfair labor practice issue.

Based on the foregoing reasons, it is ordered:

a. The Labor Relations Board declines to rule on the unfair labor practice charge at this time and defers this matter to resolution by the Board of the grievance filed in Board Docket No. 03-12; and

b. The Labor Relations Board retains jurisdiction of the unfair labor practice charge filed in this matter for the purpose of entertaining a motion by the Vermont State Employees' Association that the resolution of the grievance by the Board in Board Docket No. 03-12 has failed to clearly decide the unfair labor practice issue, which motion shall be filed within 30 days of issuance of the final Board decision on the grievance in Docket No. 03-12.

Dated this ____ day of October, 2003, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____
Richard W. Park, Chairperson

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Carroll P. Comstock

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John J. Zampieri

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Edward R. Zuccaro