

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES')	
ASSOCIATION)	
)	DOCKET NO. 04-42
v.)	
)	
STATE OF VERMONT)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint. On September 23, 2004, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge against the State of Vermont ("State"), alleging that the State committed unfair labor practices by refusing to submit a proposal in collective bargaining negotiations on wages and benefits, attempting to condition bargaining on wages and benefits on the resolution of non-economic matters, and insisting on a confidentiality groundrule restricting VSEA's ability to communicate with its members regarding bargaining. The State filed a response to the charge on September 30, 2004. Board Executive Director Timothy Noonan met with the parties on October 1 and 4, 2004, in furtherance of the Labor Relations Board's investigation of the charge and to attempt to informally resolve issues in dispute. Following the meetings, the parties had resolved all issues in dispute except for one phrase on counterproposals in a negotiations groundrules paragraph on submission of proposals.

The parties agree on the entirety of the paragraph on submission of proposals except the phrase "or is a response raised in compliance with this paragraph" in the last sentence of the paragraph. The State seeks inclusion of this phrase; VSEA objects to it. The paragraph in its entirety provides as follows:

The parties agree that initial proposals on all subjects shall be submitted by the VSEA and by the State no later than October 15, that final exchange of such

proposals occur no later than October 22, 2004, and that no new proposals on these areas may be accepted thereafter unless mutually agreed upon by the parties or as a counterproposal that is directly responsive to another party's proposal or counterproposal and in full compliance with the law on good faith bargaining. Unless revised by agreement of the parties, bargaining shall be completed by November 15. To help assure that bargaining can be completed by that deadline, the parties shall clear their schedules for continuous bargaining, if necessary, between November 8 and 15. Proposals will be submitted in contract language form with the entire section or subsection desired to be changed typed, with proposed deleted material struck-through and proposed additional language underlined. If circumstances prevent the presentation of the proposal in contract language at the time of submission, the proponent shall provide contract language within three business days. While it is agreed that neither side may independently advance new proposals following the deadline for submission, such deadline shall not be considered as applicable to counter-proposals. For these purposes counter-proposals shall mean an indication that a proposal advanced by the other side would be acceptable if it was modified, or if it was added to, or subtracted from, as outlined in the other side's responses, or is a response raised in compliance with this paragraph.

The Board has discretion whether to issue an unfair labor practice complaint and hold a hearing on an unfair labor practice charge. 3 V.S.A. Section 965(a). In exercising this discretion here, our objective is a result that will best foster productive collective bargaining negotiations between the parties. We conclude that issuance of a complaint will serve no useful purpose in reaching this objective.

The processing of this case through the time-consuming process of hearing and decision would be prudent only if a substantive difference existed between the parties on the disputed groundrules language. This is not the case. The phrase on counterproposals which the State seeks to include in the groundrules paragraph on submission of proposals adds nothing of substance to the definition of counterproposal and is thus superfluous.

The phrase "or is raised in compliance with this paragraph" would add something of substance to the definition of counterproposal only if counterproposal is referred to more expansively elsewhere in the paragraph. The only other elaboration of the meaning of counterproposal is the wording in the first sentence of the paragraph that "new

proposals on these areas may be accepted” if it is “a counterproposal that is directly responsive to another party’s proposal or counterproposal and in full compliance with the law on good faith bargaining”. This language is consistent with, and adds nothing to, the more refined definition of counterproposals in the last sentence of the paragraph absent the disputed phrase. Accordingly, the parties’ respective language on submission of counterproposals has substantively identical meanings and they have reached agreement in essence on their groundrules.

Under these circumstances, the issuance of a complaint would have only the negative effect of delaying the commencement of substantive negotiations with no benefit to be gained of resolving a substantive difference between the parties. We decline to follow such a course. It is time for the parties to begin substantive negotiations now that they have reached agreement in essence on groundrules.

Based on the foregoing reasons, we decline to issue an unfair labor practice complaint and this matter is dismissed.

Dated this 5th day of October, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Chairperson

Carroll P. Comstock

John J. Zampieri

Joan B. Wilson