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

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

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.

On April 12, 1984, the Board declined to issue an unfair labor practice complaint, concluding that the dispute should be resolved through the grievance procedure. 7 VLRB 119. On June 7, 1984, the

Board vacated its April 12, 1984, Order declining to issue a complaint and issued a complaint. On reflection, we determined extraordinary circumstances exist in this case which warrant adjudication of the contract dispute through the unfair labor practice route. 7 VLRB 227. In issuing a complaint, the Board accepted the verified allegations contained in the November 29, 1983, charge and those made in an April 30, 1984, amendment to the charge. In its amendment, VSEA charged the State committed an unfair labor practice by seeking to make individual contracts with employees by telling the incumbents of the positions in this matter that they would not receive insurance benefits and then suggesting the employees had waived their rights to such benefits by accepting the positions.

On February 6, 1984, VSEA filed a grievance alleging that the denial of medical, life and dental insurance benefits to the incumbent of the position of Social Welfare Review Specialist (Fuel) in the Barre District Social Welfare Review Office violated Articles 36, 38 and 39 of the Contract. On June 7, 1984, the Board consolidated this grievance for hearing with the unfair labor practice complaint issued on June 7, 1984.

Hearings were held before the full Board on June 28, 1984, and September 20, 1984. Special Assistant Attorney General Scott Cameron represented the State. VSEA Staff Attorney Michael Zimmerman represented VSEA.

Requested Findings of Fact and Memoranda of Law were filed by VSEA and the State on October 18, 1984. Both parties filed Reply Briefs on October 25, 1984.

FINDINGS OF FACT

1. Prior to 1977, the State Employee Labor Relations Act ("SELRA") did not explicitly include terms of insurance coverage as a mandatory subject of bargaining.

2. 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.

3. By Act No. 109, the 1977 General Assembly amended SELRA in certain respects. Among the amendments enacted was the following:

> 904. SUBJECTS FOR BARGAINING
>
> (a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include but are not limited to:
>
> ... (8) Terms of coverage and amount of employee financial participation in insurance programs...

That provision became effective on July 1, 1978.

4. From the 1950's (or thereabouts) to January 1980, the group health insurance policy provided by the State to its employees was through Mutual of Omaha, whose Burlington agent processed claims submitted by employees. Until 1978, the policy itself defined eligible employees as follows:

> All active full-time employees who have completed a qualifying period of 30 days... (State's Exhibit A)

5. Even though the policy itself made no provision for part-time employees' eligibility, in practice part-time employees who worked at least 15 hours per week were covered.

6. In 1975, Robert Geagan became Employee Benefits Chief for the State of Vermont Department of Personnel, which position he has held since then.

7. At some point, Geagan determined that the Mutual of Omaha health plan language did not conform to existing practice insofar as it did not make part-time employees eligible. During the period Fall 1977 - Spring 1978, Geagan bargained with Mutual of Omaha to provide a policy that reflected actual practice concerning part-time employees. As a result, the following language was adopted as part of the medical plan:

> All active, full-time employees and permanent part-time employees who regularly work fifteen or more hours per week are eligible on the date following completion of a qualifying period of thirty days' continuous service.
>
> (State's Exhibit 36, State's Exhibit 54)

8. That language has remained unchanged as part of the State Employees Medical Benefit Plan (SEMBP) to date.

9. On December 1, 1979, the State decided to self-insure the medical benefit plan, and to hire the Prudential Insurance Company to process claims under the self-insured plan.

10. In early 1982, Geagan and Prudential's underwriting department wrote the medical benefit plan presently in effect, a copy of which was given to VSEA after it was developed. That plan provides, in pertinent part, as follows:

DEFINITIONS

> ACTIVE WORK RULE - a requirement that the employee be actively at work on a full-time basis (or the full schedule for a part-time employee) at

the business place of his employer or such other work location to which he or she is required to travel to perform the duties of his or her position.

ELIGIBLE EMPLOYEES

Subject to the Active Work Rule, the following are eligible to be plan participants on the day following completion of a qualifying period of thirty (30) days of continuous employment:

Permanent full-time employees of the State as defined in 3 VSA 631

Permanent part-time employees of the State provided they regularly work at least fifteen (15) hours weekly.

(VSEA Exhibit 16)

11. Following the change in SELRA explicitly providing that "terms of coverage and amount of employee financial participation in insurance programs" was a mandatory subject of bargaining, each collective bargaining contract negotiated since that change has contained provisions on health insurance, life insurance and dental insurance.

12. The contract provisions negotiated by VSEA and the State on health insurance have uniformly not contained the actual terms of coverage concerning which employees are eligible for coverage but have simply provided that the terms of coverage during the contract terms shall be at least substantially equivalent to the benefits under the SEMBP in effect as of a certain date preceding the date the contract went into effect. The July 1, 1982 - June 30, 1984, Contract contains the following pertinent provision:

ARTICLE 36

STATE EMPLOYEE MEDICAL BENEFIT PLAN

1. ... (T)he terms of coverage under the State Employee Medical Benefit Plan (SEMBP) shall be at least substantially equivalent to the benefits under SEMBP in effect as of July 3, 1982...

13. During the period he has been Employee Benefits Chief, Geagan, with the approval of the involved insurance companies, has periodically written booklets explaining health, dental and life benefits in clear, understandable language for distribution to employees. All the booklets contained a provision to the effect that if a discrepancy in meaning should arise between the booklet and the actual insurance policy, the provisions of the policy would govern.

14. The most recent health insurance explanatory booklet was written by Geagan in early 1982, and provided in pertinent part:

> Permanent part-time employees are eligible ONLY if they regularly work 15 or more hours weekly.
>
> (VSEA Exhibit 17, pages 6-11)

15. Since the 1950's, the State has provided a group life insurance policy to its employees through the Aetna Life Insurance Company. Since at least 1959, the policy has contained the following language concerning eligible employees:

> All employees of a Participant Employer shall be eligible for Employee coverage except employees in the following classes:
>
> ...(b) employees who are actively working for such Employer on a part-time basis whose regular work schedule is less than fifteen hours per week per year...
>
> (State's Exhibits 12, 37, 38)

16. The contract provisions negotiated by VSEA and the State on life insurance have uniformly not contained the actual terms of coverage concerning which employees are eligible for coverage but have simply provided that the terms of coverage during the contract term shall be at least substantially equivalent to the life insurance

benefits in effect as of a certain date preceding the date the contract went into effect. The July 1, 1982 - June 30, 1984, Contract contains the following pertinent provision:

ARTICLE 38
LIFE INSURANCE

> 1. The life insurance program effective July 1, 1982, shall be at least substantially equivalent to the program in force on June 30, 1982...

17. The most recent explanatory booklet for the life insurance plan was written by Geagan in early 1982. The booklet provided in pertinent part as follows:

> The plan is for full-time employees and permanent part-time employees who work at least 15 hours weekly.
>
> (VSEA Exhibit 12, pages 5-8)

18. The contract between VSEA and the State in effect from July 1, 1979, to June 30, 1981, contained the following provision:

ARTICLE XXXVIII
DENTAL INSURANCE

> Pursuant to 3 VSA 631,
>
> A. The Secretary of Administration shall contract on behalf of the State to secure the benefits of a dental insurance policy for State employees effective July 6, 1980...
>
> (VSEA Exhibit 8)

19. Prior to July of 1980, the State did not provide dental insurance to its employees. In the Spring of 1980, the State, pursuant to Article XXXVIII of the then-existing collective bargaining agreement, submitted an application for group dental insurance to Connecticut General Insurance Company. On that application, eligible employees were described as "(a)ll full-time employees and permanent part-time employees

working 15 hours or more per week". The contract itself between the State and the company describes eligible employees as "permanent full-time employee(s) of the Employer, or permanent part-time employees, who work 15 or more hours a week for the employer" (State's Exhibit 15, 35).

20. The contract between VSEA and the State in effect from July 1, 1981 to June 30, 1982, contained the following provision:

ARTICLE 39

> Pursuant to 3 VSA Section 631, the Secretary of Administration shall contract on behalf of the State to secure the benefits of a dental insurance policy for State employees effective July 6, 1980...
>
> (VSEA Exhibit 9)

21. The contract between VSEA and the State in effect from July 1, 1982 to June 30, 1984, contained the following provision:

ARTICLE 39
DENTAL INSURANCE

> 1. ... (T)he State of Vermont Employee Dental Assistance Plan effective July 1, 1982, shall be at least substantially equivalent to the benefits under the Plan in effect on June 30, 1982.

22. The most recent explanatory booklet for the dental plan was written by Geagan in 1983, and provided in pertinent part as follows:

> Benefits are provided... for you... provided you are a permanent full-time employee or a permanent part-time employee regularly working 15 or more hours weekly.
>
> (VSEA Exhibit 13, pages 5-7)

23. The State has always furnished to VSEA copies of the insurance policies in effect under the collective bargaining agreement and copies of the explanatory booklets written by Geagan. VSEA has always had access to the terms and conditions of the policies of insurance (group health, dental and life) and had, or should have had, copies of all said policies in their possession shortly after they were issued.

24. Over the last few years, Geagan has reviewed several inquiries concerning insurance coverage for part-time employees. He has consistently interpreted the eligibility provisions of the respective group policies (i.e., dental, medical and life), to exclude from eligibility any permanent part-time employees who do not work the entire year. For example, several years ago permanent part-time employees of Vermont Life Magazine, hired to fill increased business needs during the months of September through February, were found by Geagan to be ineligible for insurance benefits because they did not work 15 hours per week all year. Geagan also determined that permanent part-time employees at the Pownal racetrack were ineligible because they were employed on a seasonal basis, and did not work the entire year. In addition, Geagan recently found a person in the Lieutenant Governor's office to be ineligible for insurance benefits because that employee only worked during the legislative session, which lasts only part of the year.

25. On August 4, 1980, Sandra Dragon, Commissioner of the Department of Employment Security (now Department of Employment and Training), wrote to Jacquel-Anne Chouinard, Commissioner of Personnel, to discuss the eligibility of permanent part-time employees of her Department for participation in the medical benefit plan and the dental plan (State's Exhibit 29).

26. After consulting with Geagan and soliciting information from Dragon on hours worked each calendar week during the last fiscal year by each authorized parttime position (State's Exhibits 30-32), Chouinard informed Dragon:

> We are satisfied that all those employees meet the definition of "regularly working at least 15 hours weekly" and are, therefore, eligible for health, life and dental benefits under the same terms as full-time employees.
>
> It is recognized that one or the other of these employees may not be active for a payroll period or two during the course of a year. The employee will be treated as any other employee who goes off payroll during such periods.
>
> We wish to emphasize that anytime one of these positions is changed so as to no longer require 15 hours weekly on a regular basis, the incumbent should be notified (along with Payroll) that the incumbent's eligibility and coverage be cancelled with appropriate prior notice...
>
> (State's Exhibit 33)

27. Anita Parker is a Typist B employed, since September 1980, by the Department of Employment and Training in the Barre District Office. She is a permanent part-time employee. When she was hired, Parker was told that during periods of high seasonal unemployment she would work full-time (i.e., 40 hours per week). Her work schedule is, in fact, irregular, with her hours increased during periods of high unemployment. In general, she works 40 hours per week during the winter months (i.e., from November to March), and she works the entire year. During the summers, her schedule varies in the range of zero to 20 hours per week. In her first year of employment, she was laid off for three weeks during the summer. During her second year of employment, she worked during the summer months, but her hours were reduced to six hours a week (or less). During 1984, she worked 32 hours per week in March and April, 12 to 16 hours a week in April and May, and three hours a week in June. Since her employment, Parker has been covered by the group medical, dental and life insurance plans. In March of 1983, she had a baby, the expenses of which were covered by the medical plan. On June 26, 1984, Parker was notified by the Barre Office Manager that her insurance coverage might be dropped.

28. Dianna Reed has been employed as an Unemployment Compensation Interviewer (a permanent part-time position) since April of 1980. She works in the St. Albans District Office of the Unemployment Compensation Division, Department of Employment and Training. Prior to accepting the position, Reed was told that because the amount of work varied with the rate of unemployment, she would be subject to periods of layoff, but that it was not possible to predict when layoffs would occur. Reed was also told that she would be eligible for insurance benefits in the job. Reed's schedule does vary with the level of unemployment. For example, from April 1980 to April 1981, she worked 52 weeks, 40 hours per week. From May 1981 to August 1981, Reed worked in an interim temporary position in another department. From February 1982 to May 1982, she worked 40 hours per week in the UC Interviewer position. From May 1982 to November 1982, she worked odd schedules (one week here, three days there), but was not in a layoff status. From November 1982 to August 1983, she worked 40 hours per week. From August 1983 to November 1983, Reed was in an inactive status. From November 1983 to the third week of April 1984, Reed worked 40 hours per week. From the third week in April, 1984, to May 21, 1984, she was laid off. From May 21, 1984 to June 26, 1984, she worked 16 hours per week. On June 26, 1984, she was placed, again, in an inactive status.

29. In April of 1981 (the beginning of her first period of inactive status), Reed was told that while she was on inactive status, she would have no insurance coverage, but that when she returned to work she would again be eligible. She was also told that she could, during inactive periods, carry medical insurance if she paid the entire premium during such periods.

30. Until recently, Reed has (at least during the periods she is working) been covered by medical, dental and life insurance. In the first week of May 1984, however, she was informed by the Department's Personnel Officer that it had been determined that she was not eligible for any insurance coverage. Subsequently, the State terminated her eligibility for coverage.

31. No evidence was introduced to show that Geagan or anyone else at the Department of Personnel were aware Parker and Reed were covered by insurance.

32. The State employs teachers and teachers aides at the Vermont State Hospital and at Brandon Training School. The teachers and aides generally work the same work year as teachers in the regular school systems, i.e., from September through June. The teachers and teachers aides do not work the months of July and August.

33. Since 1976, contracts between VSEA and the State have provided that "employee insurance benefits are available" to teachers and teachers aides and have provided mechanisms by which teachers and teachers aides are covered by insurance benefits during periods they are not working. The contracts have provided that the State shall make its "normal contributions" even during periods the teachers and teachers aides are not working (VSEA Exhibit 7, pages 1-4; VSEA Exhibit 8, pages 5-6; VSEA Exhibit 9, pages 6-7; VSEA Exhibit 10, pages 4-5).

34. Richard Holbrook has been continuously employed by the Department of Education for about 15 and one-half years. Holbrook is one of three School Nutrition Specialists employed by the State. Each School Nutrition Specialist covers one-third of the State (with

Holbrook responsible for the bottom third of the State). The School Nutrition Specialists are permanent part-time employees. They normally work 10 months out of the year, 40 hours a week, beginning the first week in August and ending the second week in June. Holbrook goes off-payroll during the summer months, and is eligible for unemployment compensation during the summers. All School Nutrition Specialists, including Holbrook, have been covered by medical, dental and life insurance during the period Holbrook has been employed. During the months he works, Holbrook's share of the premiums for life and medical insurance are deducted from each paycheck. During the summer months (while Holbrook does not receive a paycheck), premium payments for medical and health insurance have been handled this way: 1) up until about three years ago, Holbrook would pay his share of premiums in advance; 2) starting about three years ago, the State pays the premiums, then deducts Holbrook's share from his first paycheck in August.

35. During February, 1984, Holbrook was told by one of his superiors, Peter Ryan, that the Department of Personnel had informed Ryan that there was a possibility School Nutrition Specialists may not be covered by insurance benefits in the future because they did not work two months of the year.

36. A vacancy arose in one of the School Nutrition Specialist positions in March, 1984. Banba Foley, Chief Nutrition Specialist, was told by her superiors that when interviewing applicants for the position to tell them they would not be covered by insurance benefits. The person eventually hired for the position, Sue Goodwin, is presently receiving insurance benefits because she is working at least 15 hours a week during the summer as well as the rest of the year.

37. On August 1, 1983, the Department of Social Welfare requested the Legislature to authorize (effective September 1, 1983) the creation of 25 classified positions to administer the Federally-funded fuel assistance program in Vermont. The Department justified that request on the basis that while temporary employees had been filling the jobs during the period of uncertainty about continued Federal funding, the likelihood of the program becoming permanent had become evident, and the Department desired "a core of trained, stable personnel who would be employed immediately with a minimum of update training". The Department requested that employees in those positions would have insurance benefits (VSEA Exhibit 25).

38. In August of 1983, the Legislature, by Section 137 of Act No. 95, authorized creation of 25 permanent part-time classified positions in the class Income Maintenance Specialist. The Department of Personnel, based on that authorization, established 14 Social Welfare Review Specialist (Fuel)(Pay Scale 11) positions, and 11 Clerk B (Pay Scale 6) positions. Those 25 positions are hereinafter referred to as "fuel worker positions".

39. The fuel worker positions were set up by the Department of Social Welfare as 40-hour a week positions from September through April, with the incumbents of the positions not working from May through August (VSEA Exhibit 25).

40. Geagan, on behalf of the Department of Personnel, took the position that the fuel workers were not eligible for insurance coverage because they did not work every week of the year.

41. By letter dated September 6, 1983, the Commissioner of the Department of Social Welfare, James O'Rourke, requested that the Commissioner of Personnel, Jacquel-Anne Chouinard, extend insurance coverage to the 25 fuel postiions. By letter dated September 8, 1983, Chouinard refused to do so. By letter dated October 12, 1983, the Deputy Secretary of the Agency of Human Services, John O'Donnell, made the same request, and proposed a means of collecting premiums from the employees during their four month period of inactive status. Chouinard also denied that request (VSEA Exhibits 25-28).

42. The occupants of the fuel worker positions worked 40 hours per week from approximately September 1983 through approximately April 30, 1984. They did not work from May 1984 through August, 1984.

43. The State did not allow the fuel workers to be covered by the life, medical and dental insurance plans and they were not in fact covered.

44. Prior to accepting the fuel worker positions, the fuel workers were informed by the State that they would be employed only for eight months a year and would be ineligible for medical, life and dental insurance.

45. Prior to the dispute before us arising, neither Geagan nor anyone else at the Department of Personnel personally informed VSEA that the State interpreted the language of the medical, life and dental insurance policies to require a permanent, part-time employee to work every week of the year to be eligibile for insurance coverage.

46. The phrase "regularly working" as used in insurance underwriting customarily means working for the full year.

47. The exclusionary language in the medical, life and dental insurance plans restricting the eligibility of permanent part-time employees to be covered by the plans is based on a principle of insurance that a group insurance plan should be protected against adverse selection. "Adverse selection" exists when something in the makeup of the group as a whole, or individual health conditions in small groups or late entrants to the plan, will produce loss experience substantially in excess of that anticipated by insurance rates. For example, in the context of this case, adverse selection means the potential for a part-time employee who does not work the full year to be covered by another insurance plan or to defer matters such as non-emergency surgery until the period when the employee is working and covered by the plan. In such a case workers could obtain 12 months of benefits while paying only eight months of premiums. Most insurers design policies so that they do not contain any material elements which result in adverse selection (State's Exhibits 23, 24).

OPINION

The central dispute before us is whether the refusal of the State to provide medical, life and dental insurance coverage to 25 permanent part-time fuel workers of the Department of Social Welfare violated Articles 36, 38 and 39 of the Contract between VSEA and the State.

However, prior to discussing that central issue, we first discuss VSEA's additional charge that the State committed an unfair labor practice by improperly seeking to make individual contracts with employees. The basis for that allegation, as stated by VSEA, was the State's apparent suggestion that since fuel workers had been fully informed of their ineligibility for insurance benefits but had, nonetheless, accepted the positions with that knowledge, they somehow waived the right to claim entitlement to insurance coverage.

We need not decide the individual contract issue since VSEA has essentially withdrawn that charge. In its Reply Brief, VSEA states that if the State is not arguing that fuel workers waived their right to seek insurance benefits, then VSEA would concede that the State did not commit an unfair labor practice merely by informing the fuel workers of their purported ineligibility for insurance benefits. It is clear in reading the State's Memorandum of Law and Reply Brief submitted in this matter that the State is not arguing the fuel workers waived their right to seek insurance benefits by reason of their acceptance of the fuel workers positions after the State informed them the positions would not have such benefits. Accordingly, we consider this charge withdrawn by VSEA.

We now turn to deciding whether the permanent part-time fuel workers are eligible for insurance coverage. In deciding this issue we look to the eligibility language of the State employee medical benefit plan, the life insurance plan and the dental plan. The State and VSEA have adopted these plans as part of their collective bargaining contract and, thus, in construing these plans, we are guided by the contract construction rules established by our Supreme Court.

The eligibility language of the various plans differ slightly with regard to coverage of permanent part-time employees. The medical benefit plan provides "permanent part-time employees who regularly work fifteen or more hours per week are eligible". The life insurance plan exempts "employees who are actively working for such Employer on a part-time basis whose regular work schedule is less than 15 hours per week per year" from coverage. Under the dental plan, "permanent part-time employees who work 15 or more hours a week for the employer" are eligible for coverage.

While the language of the various plans differ slightly, we presume the plans were all intended to cover the same group of employees since no evidence was introduced to indicate eligibility was intended to differ under the plans. Thus, we construe the language of the plans so as to give effect to every part and from the parts to form a harmonious whole. In re Grievance of VSEA on behalf of Certain "Phase-Down" Employees, 139 Vt. 63 (1980). Under this contract construction rule, we interpret the plans as a whole to cover permanent part-time employees who regularly work 15 or more hours per week.

Thus, the crux of the issue before us is whether the fuel workers "regularly" work 15 or more hours per week. Their work schedule provides they work full-time eight months of the year (i.e., 40 hours per week, September through April), while not working at all the remaining four months.

In our view, such a schedule does not constitute "regularly" working 15 or more hours per week. We will interpret a contract by the common meaning of its words where the language is clear . In re Stacy, 138 Vt. 68 (1980). "Regularly working" means at least working during most of the year. By having four months off a year, fuel workers do not meet this requirement.

Our conclusion as to the meaning of this language is bolstered by the meaning of the phrase "regularly working" as used in insurance underwriting; that it customarily means working for the full year. The inclusion of such language in the insurance policies is designed so that the policies do not contain any elements which result in adverse selection. In the context of this case, adverse selection means, for example, the poten

for a part-time employee who does not work the full year to be covered by another insurance plan or to defer matters such as non-emergency surgery until the period when the employee is working and covered by the plan. We recognize that certain phrases have certain meanings because of normal business practice and we look to such usage to guide us. The meaning the phrase "regularly working" is given in the insurance field and the underlying principle of group insurance it is based on serve here to reinforce our construction of the pertinent language.

We recognize the State takes the position that permanent part-time employees must work 15 hours per week every week of the year in order to be eligible for insurance benefits. In deciding this case, we are not adopting the State's position. We need not go so far in the context of this case.

The provisions of booklets explaining the meaning of the insurance plans in clear understandable language were offered at the hearing as evidence of the meaning of the insurance plans' eligibility provisions. For the following reasons, the explanatory booklets do not change our interpretation of the plans' eligibility provisions.

First, the booklets were unilaterally promulgated by the State. We are skeptical about looking to the provisions of a unilaterally-promulgated document where the parties have contractually agreed to the plans' eligibility provisions. The Supreme Court has determined that we may not look to unilaterally-promulgated employer policy where the contract addresses the involved subject matter. In re Grievance of Muzzy, 141 Vt. 463, 475-476 (1982). Second, while the eligibility language of some of the explanatory booklets slightly differs from the eligibility language in the various plan documents, the booklets are not inconsistent with our interpretation of the plans' language.

Evidence presented at the hearing demonstrated that various permanent part-time employees - two Department of Employment and Training employees, teachers and teachers' aides employed at Vermont State Hospital and Brandon Training School, and three Nutrition Specialists - received insurance benefits although they did not work at least 15 hours a week every week of the year.

This evidence does not lead us to conclude that the State historicall has interpreted the eligibility requirements to consider employees in comparable situations to the fuel workers as eligible for coverage. The Department of Personnel is the State agency which administers various insurance benefit plans. The Department of Personnel reviewed the situation involving the Department of Employment and Training (DET) employees in 1980, and at that time the involved employees met the "regularly working" eligibility test. The fact that two DET employees subsequently received benefits although they did not meet eligibility requirements resulted from the Department of Personnel not being aware of the situation, but was not a conscious decision by the Personnel Department to allow such benefits. The extension of insurance benefits to teachers and teacher aides, who worked 10 months a year, has resulted from specific contractual recognition of their eligiblity for such benefits since 1976. With regard to the school Nutrition Specialists, who work 10 months a year, when the Department of Personnel disovered they were receiving insurance benefits, it ensured that those hired into that position would not receive such benefits. Accordingly, no evidence was introduced to indicate the Department of Personnel has inconsistently applied eligibility requirements. Further, none of the employees

receiving the insurance benefits were in comparable situations to the fuel workers (i.e., working full-time for eight months, then having four months of no work).

The union suggests that a possible solution to this dispute would be for the fuel workers to pay the full cost of premiums the four months they are not working while the State pays its normal contribution the eight months the fuel employees are on the payroll. However, we have no authority to order this result even if we considered it wise policy. It is our duty to interpret the provisions of a disputed contract, not remake it or ignore it. In re Grievance of VSEA on Behalf of Certain "Phase-Down" Employees, 139 Vt. 63, 65 (1980).

ORDER

Now therefore, based on the foregoing findings of fact and the foregoing reasons, it is hereby ORDERED:

The unfair labor practice complaint issued in Vermont State Employees' Association v. State of Vermont, Docket No. 83-68, and the Grievance of Vermont State Employees' Association, Docket No. 84-6, are DISMISSED.

Dated this 27th day of November, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson