VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
v.	)	DOCKET NO. 83-71
STATE OF VERMONT	)	

MEMORANDUM AND ORDER
DECLINING TO ISSUE UNFAIR
LABOR PRACTICE COMPLAINT

On December 6, 1984, the Vermont State Employees' Association ("VSEA") filed an unfair labor practice charge and/or complaint concerning non-complaince with the Contract. VSEA alleged that the refusal of the State of Vermont to allow employees who are VSEA members to travel on December 8, 1983, to a meeting of the regional organization with which VSEA is affiliated wihout charge to accrued benefits constituted a failure to comply with the Contract in violation of 3 VSA §961(1) and/or 3 VSA §982(g) and domination or interference with the administration of VSEA, in violation of 3 VSA §961(2).

We need determine whether the Board should issue an unfair labor practice complaint and schedule a hearing before the Board pursuant to 3 VSA §965.

The operative facts here, as stated in the charge, are as follows: On Friday, December 9, 1983, and Saturday, December 10, 1983, the regional organization with which VSEA is affiliated, the Eastern Region Assembly of Governmental Employees ("ERAGE"), held a meeting in Maryland. The meeting dealt with business officially involving VSEA . Four members of VSEA were selected to attend the meeting

and were required to travel from Vermont to Maryland on December 8, 1983. The State allowed the employees to attend the December 9 meeting without charge to accrued benefits but refused to allow employees to travel on December 8, 1983, without charge to accrued benefits.

VSEA presents two alternative theories as to why an unfair labor practice complaint should issue: 1) that the State violated 3 VSA §961(1) or 3 VSA §982(g) by violating Article 6 of the collective bargaining agreement between VSEA and the State effective for the period July 1, 1982 to June 30, 1984 ("Contract") or a past practice implicitly embedded in the Contract, and 2) that the State violated 3 VSA §961(2), which proscribes domination or interference with the administration of an employee organizatio

VSEA's first theory, that the State violated 3 VSA §961(1) and/or 3 VSA §982(g) because its actions violated Article 6 of the Contract or a past practice embedded in the Contract, clearly is a claim that the State violated the provisions of the Contract. For the reasons stated in our decision, VSEA v. State of Vermont (re: Insurance Coverage), 7 VLRB 119 (1984), VSEA's claim of Contract violations should have been filed as a grievance through the contractual grievance procedure, and we decline to issue a complaint on those grounds. We note that while VSEA v. State, supra, did not involve an alleged violation of past practice, we have recognized that day-to-day practices may attain the status of contractual rights and duties and become "implicitly embedded in the Contract". Alleged violations of a binding past practice are resolved through the contractual grievance procedure just as are grievances over specific contractual provisions. Grievance of Cronan, 6 VLRB 347 (1983). Grievance of Cronin, 6 VLRB 1 (1983). Grievance of Allen, 5 VLRB 411 (1982). Grievance of Beyor, 5 VLRB 222 (1982).

We also decline to issue a complaint on VSEA's allegation that the State's action violated 3 VSA §961(2). §961(2) provides, in pertinent part, "It shall be an unfair labor practice for an employer... to dominate or interfere with the... administration of any employee organization". If the operative facts indicated the State refused to permit employees time off to travel to attend the ERAGE meeting, we might be inclined to issue an unfair labor practice complaint on the grounds that the action may constitute interference with the administration of VSEA. However, the operative facts do not indicate employees were not allowed time off to travel, but simply that the employees had to charge the time off to accrued benefits (i.e., presumably annual leave or accumulated compensatory time). We know of no requirement in law that an employer must allow an employee to travel to union functions on work time without charge to annual leave. Such a requirement may be negotiated into the contract in which case a grievance should be filed over a violation of that requirement, not an unfair labor practice charge.

Now therefore, based on the foregoing reasons, we decline to issue an unfair labor practice complaint, and the unfair labor practice charge filed by the Vermont State Employees' Association against the State of Vermont is hereby ordered DISMISSED.

Dated this 26 day of April, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

William G. Kemsley, Sr.

James S. Gilson