

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES')	
ASSOCIATION v. STATE OF VERMONT)	DOCKET NO. 83-68
GRIEVANCE OF VERMONT STATE)	
EMPLOYEES' ASSOCIATION)	DOCKET NO. 84-6

MEMORANDUM AND ORDER

On November 27, 1985, the Vermont State Employees' Association ("VSEA") filed a motion requesting the Board to reopen the record in this matter to take new evidence. Simultaneously, VSEA moved the Vermont Supreme Court for an order remanding to the Board so the Board may rule on VSEA's motion to reopen.

The Board issued Findings of Fact, Opinion and Order herein on November 29, 1984. 7 VLRB 333. Subsequently, VSEA filed a motion for reconsideration, which motion was denied by our Memorandum and Order dated January 10, 1985. 8 VLRB 1. VSEA filed an appeal from those decisions to the Supreme Court.

On December 19, 1985, the Supreme Court granted VSEA's motion for limited remand so the Board may rule on VSEA's motion to reopen.

In the memorandum filed in support of its motion, VSEA contended the further evidence would demonstrate the invalidity of two points relied on by the State when this matter came before the Board; the two points being 1) that the Department of Personnel had determined in 1980 that all Department of Employment and Training employees had work schedules which met the State's interpretation of "regularly working", which is working for the full year, and 2) that subsequent to the

1980 review, while the Department of Employment and Training allowed employees to keep their insurance notwithstanding that they did not work at all for parts of the year, the Department of Personnel had no knowledge of this.

Included with VSEA's memorandum were pay records for Department of Employment and Training (DET) part-time employees covering the period July 1979 to July 1980 which indicate that 18 of those employees did not work at all or worked less than 15 hours for anywhere from one to 15 weeks during the period. VSEA contends that the conclusion to be drawn from these pay records is that the Department of Personnel was not interpreting "regularly working", the requirement for receiving insurance benefits, to mean 52 weeks a year.

These pay records do not persuade us that the record should be reopened in this matter, where the issue is whether fuel workers who work full-time eight months a year, and not at all the remaining four months, are entitled to insurance benefits. The fact a number of employees in one department received insurance benefits, notwithstanding their less than full year schedules three to four years prior to the hiring of the fuel workers, does not convince us the fuel workers should have received such benefits. A review of the DET employees' pay records indicates that none of them had work schedules comparable to the fuel workers' eight months on-four months off schedule. We hold to the conclusion reached in our original decision that the "evidence does not lead us to conclude that the State historically has interpreted the eligibility requirements to consider employees in comparable situations to the fuel workers as eligible for coverage". 7 VLRB at 352.

Also, we adhere to our position earlier stated in denying VSEA's motion for reconsideration that even assuming the Department of Personnel "overlooked a few employees out of approximately 7,000 State employees and permitted them to be covered even though they did not work the full year, we would not view such a small percentage of the entire group of State employees as evidence of the State's interpretation of the phrase 'regularly working'." 8 VLRB at 4.

VSEA contends that, if allowed to present further evidence, it would call into question a finding and conclusion made in our original decision that two DET employees were allowed to maintain their insurance coverage after 1980 notwithstanding that they worked less than 15 hours a week at times, but that the Department of Personnel was not aware of such action by DET.


Even if further evidence did demonstrate the Department of Personnel was aware of DET employees maintaining their insurance coverage, we fail to see how this would translate into the fuel workers being entitled to such coverage since the DET employees were not in comparable situations to the fuel workers (i.e. working full time for eight months, then having four months of no work).

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

The Vermont State Employees' Association's Motion to Reopen is DENIED.

Dated this 15th day of May, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.