

## Vermont Labor Relations Board

VSEA, INC. )  
 )  
 v. ) Docket #78-67S  
 )  
 STATE OF VERMONT, et al )

### FINDINGS OF FACT, OPINION AND ORDER

The above entitled cause of action came on for hearing before the Labor Relations Board on April 21, 1978 at Waterbury, Vermont, upon the complaint of the VSEA that the State had engaged in an unfair labor practice. The VSEA appeared by its attorney, Alan S. Rome, Esq., and the State was represented by Louis P. Peck, Esq., Chief Assistant Attorney General.

#### Discussion of the Evidence and Issues

This is a case wherein evidence is undisputed and is contained in the Stipulation of Facts filed by the parties, and the ultimate issue is whether, upon the facts in this case, the State has committed an unfair labor practice. The issues sought to be raised are (1) whether under the circumstances of this case the employer can unilaterally negotiate with the employees, or whether can only bargain with the employees' union representative; (2) whether the complainant is attempting to renegotiate the contract during the term of the same, contrary to 3 VSA 982(a), or more precisely put, whether any matter can be raised which is not covered by the contract, by either side, during the period the contract is in existence.

#### Findings of Fact

Based upon the pleadings and the evidence introduced in said cause and parties Stipulation of Facts, the Board finds as follows:

1. On February 27, 1978, the Commissioner of Taxes sent a Memorandum to all employees stating in substance that the Tax Department was considering the establishment of an alternative work schedule for an experimental six month period, and had drafted a standard operating procedure; and that the VSEA Board would be meeting on March 13, 1978, to consider the proposal and that it would be helpful if employees would review such procedure and pass along comments through their supervisors or VSEA representative before March 13. (Complainants Exhibit #1)
2. On March 15, 1978, Mr. Balcock, Executive Director of VSEA sent a letter to the Commissioner stating VSEA's

willingness to negotiate and also raising the question of potentially longer working hours.

3. Without further communication to VSEA, but by directly negotiating with the employees, the Tax Department instituted an alternative work schedule (State's Exhibit A) which permitted some employees to start as early as 6:30 AM, and work extended to 6:00 PM for one employee.

4. The alternative work-time (other than the standard 7:45 AM - Noon, 12:45 - 4:30 PM) presently being worked by some Tax Department employees were chosen by the employees themselves in response to the opportunity to do so afforded them by Commissioner Wickes and in accordance with the Memorandum to Employees.

5. Employees of the Tax Department were not compelled to select alternative work-time schedules. All employees were and are free to work the standard work day (7:45 AM - Noon, 12:45 - 4:30 PM).

6. In the case of only two employees were proposals for alternative work times disapproved. Both were so-called telephone (tax) collectors who wished originally to commence work at 6:30 AM. The Commissioner felt, however, that since a major part of their work involved telephone contact with taxpayers, that such contacts early in the morning was not appropriate. Both employees, however, submitted second proposals which were approved.

7. All employees had to work the "core time" hours of 9:00 AM to 11:00 AM, and 1:00 PM to 3:00 PM.

8. The times fixed for all employees are within normal daytime working hours, except before 7:00 in the AM, and the days of work are the normal workdays in most government employment, i.e. - Monday through Friday.

9. There is no evidence of Complaint by any employee as to the work schedule, and no grievance has been filed.

10. The Tax Department alternate work-time program is presently a test, or pilot project only, limited to a six-month period. The parties agree that presently no decision has been made as to any continuation after six months, or whether, if the program is considered to be successful, it would be implemented in other agencies.

11. There is no controversy or grievance between the employing unit, and the employees.

12. Since there is no grievance by any employee, and since with the exception of the two employees who start work at 6:30 AM, all the working hours are scheduled within the time limits of a regular (although not a "standard") daytime

workday, and no change of days of work, there is no controversy here which justifies further consideration of this matter.

13. The Complainant VSEA is the representative of the employees involved in this matter, and this Board recognizes the existence of a contract between VSEA and the State of Vermont for non-management employees covering many, if not all, of the employees involved in this matter.

14. If the State has negotiated directly with employees, instead of through the VSEA, it has been with respect to hours of work during a regular week time working day, and no employee has asked VSEA to intervene on his behalf. If any employee has asked the VSEA to intervene and represent him, it would seem that such a controversy should have been raised by a grievance, not an unfair labor practice. The State has been merely attempting to utilize personnel in the most appropriate manner possible.

#### Opinion

The changes instituted by the State in this instance do not rise to the level of a change in working conditions, nor are they an unfair labor practice.

The Board is unable to find that the actions of the State constitute an unfair labor practice.

The facts already found resolve this case, but it is to be noted that this decision is based upon changing work schedules during Monday to Friday and during daytime working hours. The hours are within the range of normalcy for the type of work. If the hours of work were to be changed without the range of normalcy for the type of work, for a whole department, then the decision of the Board might be different.

#### Order

In accordance with the Findings of Fact and Conclusions of Law above stated, it is hereby Ordered and Adjudged that the Unfair Labor Practice Charge of Complainant is hereby:

"DISMISSED".

Dated at Montpelier, Vermont, this 28th day  
of June, 1978.

VERMONT LABOR RELATIONS BOARD

William J. Br...  
Robert H. Brown